

**ACCIDENTS AT SEA – ACTION FOR COLLISION,
RULE 498 OF THE FEDERAL COURTS RULES AND THE
REGULATIONS FOR PREVENTING COLLISIONS AT SEA**

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1. INTRODUCTION

Collisions have always and undoubtedly always will be a serious risk of navigation.

Vessels today are bigger, heavier and faster. Manoeuvring them is a delicate business. A large vessel can take several miles to come to a stop. It is subject to wind, tide, current and, in restricted waters, to the hydrodynamic effects caused by the interaction either between vessels, or between a vessel and the shore or seabed. The latter interaction, and the resulting phenomenon, are referred to as “squat effect”.

Collisions are violent, and can have serious consequences. In addition to significant damage to the vessels and their cargo, a collision can cause personal injury, fatalities and environmental damage.

A priori, a collision between two vessels should be avoidable. Rules exist to govern navigation and prevent collisions between vessels. Even today, however, we find that collisions continue to occur. They can result from the breakdown of the machinery or equipment of a vessel, a poor assessment of a situation, an incorrect or incomplete information, or an incorrect or poorly executed order.

According to the most recent figures published by the Transportation Safety Board of Canada, there are on average some fifteen collisions each year in Canada.

The constraints of navigation require the application of specific rules to prevent collisions. The rules are drawn up by the International Maritime Organization (IMO). They are set out in the International Regulations for Preventing Collisions at Sea, appended to the London Convention 1972,¹ and incorporated into the International Convention for the Safety of Life at Sea of November 1, 1974, known as the SOLAS Convention. These rules are part of Canadian law, and are reproduced with Canadian modifications in the *Collision Regulations*.²

While the rules set out in the *Collisions Regulations* are designed to regulate conduct so as to avoid collisions, the 1910 International Convention for the

¹ Convention on the International Regulations for Preventing Collisions at Sea, (London, October 20, 1972).

² C.R.C., c.1416.

Unification of Certain Rules of Law with respect to Collision between Vessels³ contains substantive provisions on liability for a collision however caused, it may be due to a failure to observe the rules designed to prevent collisions, or to other causes. The legal principles set out in the Convention are incorporated into Canadian law in the *Marine Liability Act*, which provides for proportional division of damages based on degree of fault or proportionate fault rule.

Civil action for damages resulting from collision is governed by a specific scheme with its own provisions. In Canada, such action is called an "action for collision", and is subject to the *Federal Courts Rules*.

This paper will focus on the action for collision and on some of the rules designed to prevent collisions.

2. ACTIONS FOR DAMAGES FOLLOWING A COLLISION

2.1 Action for collision

A review of decisions by courts of various jurisdictions shows that it is sometimes difficult to reconcile the versions of participants and witnesses in collision cases. Disputes resulting from collisions very often lead to counterclaims, and by the very nature of disputes, the identity of the party initiating an action for collision cannot be regarded as indicative of which vessel is at fault. It is not surprising, therefore, that admiralty courts have developed a special scheme applicable to actions for collision.

In Canada, the *Federal Courts Act*⁴ defines the action for collision as follows:

<p>2.(1) « action pour collision » S'entend notamment d'une action pour dommages causés par un ou plusieurs navires à un ou plusieurs autres navires ou à des biens ou personnes à bord d'un ou plusieurs autres navires par suite de l'exécution ou de l'inexécution d'une manœuvre, ou par suite de l'inobservation du droit, même s'il n'y a pas eu effectivement collision.</p>	<p>2.(1) "action for collision" includes an action for damage caused by one or more ships to another ship or ships or to property or persons on board another ship or ships as a result of carrying out or omitting to carry out a manoeuvre, or as a result of non-compliance with law, even though there has been no actual collision;</p>
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It is thus not necessary for vessels to collide in order for the right to institute an action for collision to be recognized: For instance, damage resulting from the interaction between vessels would allow an action for collision.⁵

The specific characteristics of the action for collision are illustrated by Rule 498 of the *Federal Courts Rules*. These characteristics are justified by the importance

³ Convention for the Unification of certain Rules of Law with respect to Collisions between Vessels (Bruxelles, 23 septembre 1910).

⁴ L.R.C.1985,c.F-7.

⁵ *Algoma Central Corp. v. Prestigious (The)* (1994), 74 F.T.R. 145 (T.D.).

of preserving a measure of objectivity in the judicial contract, and preventing the defendant from shaping its account of the essential technical and factual elements according to the allegations of the party bringing the action. The action for collision accordingly consists of two separate steps that are ultimately complementary. These are set out in paragraphs (a) to (d) of Rule 498 (1), as follows:

498.(1) Sauf ordonnance contraire de la Cour, dans le cas d'une action pour collision entre navires :

a) la déclaration peut ne contenir que les renseignements sur la collision qui permettent aux autres parties de l'identifier;

b) la défense n'a pas à contenir de renseignements sur la collision;

c) un acte préliminaire accompagne la déclaration et la défense ou est déposé dans les 10 jours suivant le dépôt de la déclaration ou de la défense, selon le cas;

d) l'acte préliminaire est mis dans une enveloppe scellée qui porte l'intitulé de l'action.

(...)

498.(1) Unless otherwise ordered by the Court, in an action in respect of a collision between ships,

a) the statement of claim need not contain any more particulars concerning the collision than are necessary to identify it to the other parties;

b) the statement of defence need not contain any particulars concerning the collision;

c) a preliminary act shall accompany a statement of claim and a statement of defence or be filed within 10 days after the filing of the statement of claim or the statement of defence, as the case may be; and

d) a preliminary act shall be contained in a sealed envelope bearing the style of cause.

(...)

Initially, therefore, the statement of claim need not contain particulars of the circumstances that led to the collision. It need only provide sufficient information for the parties to identify the collision for which the defendant is allegedly liable. Similarly, the statement of defence need not contain particulars. This does not mean, however, that the circumstances are not to be disclosed – far from it. In the second step, particulars are provided in the form of answers to a comprehensive list of questions set out in Rule 498, and known as the “preliminary act”. The preliminary act is contained in a sealed envelope.

In *Admiralty Law and Practice*, Mayers describes the purpose of the preliminary act as follows:

“The object of the preliminary act is to obtain from the parties statement of facts at a time when they are fresh in their recollection (*The Frankland*, L.R. (1872) 3 A. & E. 511); and before either party knows how his opponent shapes his case (*Secretary of State for India v. Hewitt*, (1888), 6 Asp.M.L.C. 384).”⁶

2.2 Content of the preliminary act

The preliminary act is a unique and specific procedure. It is unique in that it applies only to collisions. It is specific in that it is detailed, requiring precise

⁶ Mayers E.C., *Admiralty Law and Practice in Canada*, 1st Ed. Carswell, Toronto 1916 p. 242.

answers, and these constitute admissions that will be binding on the party unless the Court rules otherwise. The content of the preliminary act can be described as both argument and evidence.

Through the questions asked under Rule 498(2), the Court seeks factual and technical information from each vessel involved from various angles. First, in dynamic terms, that is the actual navigation of the vessel for which answers are to be provided; and second, in terms of that vessel's perception of the position, conduct and actions of the other vessel involved.

On reading the questions asked in the preliminary act, the reader will note that some of them are related in many respects to one or other of the rules intended to prevent collisions. The answers may assist the Court in determining which rules apply to a given case. For example, some of the answers sought may make it possible to identify which, if any, of the situational steering and sailing rules is to apply: overtaking (Rule 13), head-on (Rule 14) or crossing (Rule 15).

Rule 498(2) reads as follows:

498.(2) L'acte préliminaire contient les renseignements suivants :

- a) la date de la collision;
- b) l'heure de la collision à l'endroit où elle s'est produite;
- c) l'endroit où s'est produite la collision;
- d) les noms des navires qui sont en cause dans la collision;
- e) les précisions suivantes au sujet du navire de la partie qui dépose l'acte préliminaire :
 - (i) son nom,
 - (ii) son port d'immatriculation,
 - (iii) le nom du capitaine en service au moment de la collision,
 - (iv) les nom et adresse de la personne qui avait le commandement du navire au moment de la collision et immédiatement avant celle-ci,
 - (v) les nom et adresse des personnes qui étaient en vigie au moment de la collision et immédiatement avant celle-ci,
 - (vi) son itinéraire ou, si le navire était stationnaire, son cap, au moment où l'autre navire a été vu pour la première fois ou immédiatement avant que des mesures aient été prises à cause de la présence de l'autre navire, selon celui de ces moments qui est

498.(2) A preliminary act shall state

- a) the date of the collision;
- b) the time of the collision at the location of the collision;
- c) the location of the collision;
- d) the names of the ships that collided;
- e) in respect of the ship of the party filing the preliminary act,
 - (i) the name of the ship,
 - (ii) the port of registry of the ship,
 - (iii) the name of the master of the ship at time of the collision,
 - (iv) the name and address of the person who was in command at the time of the collision and during the period immediately before the collision,
 - (v) the names and addresses of any persons keeping lookout at the time of the collision and during the period immediately before the collision,
 - (vi) the course of the ship or, if the ship was stationary, its heading, at the time when the other ship was first seen or immediately before any measures were taken with reference to the other ship's presence, whichever was the

antérieur à l'autre,

(vii) sa vitesse sur l'eau au moment où l'autre navire a été vu pour la première fois ou immédiatement avant que des mesures aient été prises à cause de la présence de l'autre navire, selon celui de ces moments qui est antérieur à l'autre,

(viii) toute modification apportée à son itinéraire après le moment visé au sous-alinéa (vi) ou immédiatement avant la collision, et le moment où elle a été apportée,

(ix) tout changement de vitesse apporté après le moment visé au sous-alinéa (vii) ou immédiatement avant la collision, et le moment où il a été apporté,

(x) les mesures prises pour éviter la collision et le moment où elles ont été prises,

(xi) les signaux sonores ou visuels qui ont été donnés et le moment où ils ont été donnés,

(xii) les feux disponibles à bord du navire et ceux qui étaient allumés au moment de la collision et immédiatement avant celle-ci;

f) les précisions suivantes au sujet de chaque autre navire en cause dans la collision :

(i) son nom,

(ii) sa distance et son relèvement au moment où son écho radar a été perçu pour la première fois par une personne à bord du navire de la partie qui dépose l'acte préliminaire,

(iii) sa distance, son relèvement et son cap approximatif au moment où il a été vu pour la première fois par une personne à bord du navire de cette partie,

(iv) ceux de ses feux qui étaient allumés au moment où il a été vu pour la première fois par une personne à bord du navire de cette partie,

(v) ceux de ses feux qui étaient allumés après ce moment jusqu'au moment de la collision,

(vi) toute modification apportée à son itinéraire après qu'il a été vu pour la première fois par une personne à bord du navire de cette partie, et le moment où elle a été apportée,

(vii) tout changement de vitesse apporté après qu'il a été vu pour la première fois par une

earlier,

(vii) the speed of the ship through the water at the time when the other ship was first seen or immediately before any measures were taken with reference to the other ship's presence, whichever was the earlier,

(viii) any alteration made to course after the time referred to in subparagraph (vi) or during the period immediately before the collision, and the time at which the alteration was made,

(ix) any alteration made to the speed of the ship after the time referred to in subparagraph (vii) or during the period immediately before the collision, and the time at which the alteration was made,

(x) any measure taken to avoid the collision, and the time at which the measure was taken,

(xi) any sound or visual signals given, and the time at which the signals were given, and

(xii) the lights carried by the ship and the lights it was showing at the time of the collision and during the period immediately before the collision;

f) in respect of every other ship involved in the collision,

(i) the name of the ship,

(ii) the ship's distance and bearing at the time when its echo was first observed by radar by a person on the ship of the party filing the preliminary act,

(iii) the ship's distance, bearing and approximate heading when it was first seen by a person on the ship of the party filing the preliminary act,

(iv) the lights the ship was showing when it was first seen by a person on the ship of the party filing the preliminary act,

(v) the lights the ship was showing from the time referred to in subparagraph (iv) to the time of the collision,

(vi) any alteration made to the ship's course after it was first seen by a person on the ship of the party filing the preliminary act, and the time at which the alteration was made,

(vii) any alteration made to the ship's speed after it was first seen by a person on the ship

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| personne à bord du navire de cette partie, et le moment où il a été apporté, | of the party filing the preliminary act, and the time at which the alteration was made, |
| (viii) les mesures prises pour éviter la collision et le moment où elles ont été prises, | (viii) any measure that the ship took to avoid the collision, and the time at which the measure was taken, |
| (ix) les signaux sonores ou visuels qui ont été donnés et le moment où ils ont été donnés, | (ix) any sound or visual signals given, and the time at which the signals were given, and |
| (x) la faute ou le manquement, le cas échéant, reproché au navire; | (x) any fault or default attributed to the ship; |
| g) les conditions météorologiques au moment de la collision et immédiatement avant celle-ci; | g) the state of the weather at the time of the collision and during the period immediately before the collision; |
| h) l'étendue de la visibilité au moment de la collision et immédiatement avant celle-ci; | h) the extent of visibility at the time of the collision and during the period immediately before the collision; |
| i) l'état, la direction et la force de la marée, ou du courant si la collision est survenue dans des eaux sans marée, au moment de la collision et immédiatement avant celle-ci; | i) the state, direction and force of the tide, or of the current if the collision occurred in non-tidal waters, at the time of the collision and during the period immediately before the collision; |
| j) la direction et la vitesse du vent au moment de la collision et immédiatement avant celle-ci; | j) the direction and force of the wind at the time of the collision and during the period immediately before the collision; |
| k) les parties de chaque navire qui sont d'abord entrées en contact; | k) the parts of each ship that first came into contact; and |
| l) l'angle approximatif entre les navires au moment de la collision, illustré par un croquis approprié annexé à l'acte préliminaire. | l) the approximate angle, as illustrated by an appropriate sketch annexed to the preliminary act, between the ships at the moment of contact. |
| (3) Les renseignements que contient l'acte préliminaire sont disposés en colonnes parallèles et, dans la mesure du possible, exprimés en valeurs numériques. | (3) The contents of a preliminary act shall be set out in parallel columns and, wherever possible, stated in numerical values. |

2.3 Opening of preliminary acts

As noted above, the preliminary acts are placed in sealed envelopes. They are opened by the Administrator only after the pleadings have been closed, or with the consent of all parties, or as ordered by the Court, at any other time.

Rule 498 reads in part as follows:

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| 498. (4) L'administrateur ouvre les enveloppes contenant les actes préliminaires après que les actes de procédure sont clos et que tous les actes préliminaires ont été déposés ou, avec le consentement des parties, à tout autre moment. | 498. (4) The Administrator shall open the envelopes containing the preliminary acts after the pleadings have been closed and all preliminary acts have been filed or, with the consent of all parties, at any other time. |
| (5) La Cour peut, sur requête présentée après | (5) The Court may, on motion brought after all |

le dépôt des actes préliminaires et avant la clôture des actes de procédure, ordonner à l'administrateur d'ouvrir les enveloppes contenant les actes préliminaires.

(6) À l'ouverture d'une enveloppe contenant un acte préliminaire, l'administrateur inscrit sur l'acte les dates de son dépôt et de son ouverture ainsi que la date de l'ordonnance ou du dépôt du consentement autorisant son ouverture.

(7) L'acte préliminaire est lu avec la déclaration ou la défense, selon le cas, et en fait partie comme s'il s'agissait d'une annexe.

preliminary acts have been filed but before pleadings have been closed, order that the Administrator open the envelopes containing the preliminary acts.

(6) On the opening of an envelope containing a preliminary act, the Administrator shall endorse the preliminary act with the date on which it was filed, the date on which the envelope was opened and the date on which any order was made, or consent filed, pursuant to which the envelope was opened.

(7) A preliminary act shall be read with and form a part of the statement of claim or statement of defence, as the case may be, as though it were a schedule thereto.

As mentioned before, this procedure prevents either party from adopting a position based on the information provided by the other party involved. By the same logic, the defendant may examine the plaintiff for discovery only after filing a statement of defence and preliminary act.

500. Malgré le paragraphe 236(2), dans une action pour collision entre navires, le défendeur ne peut soumettre le demandeur à un interrogatoire préalable qu'après avoir déposé sa défense et l'acte préliminaire.

500. Notwithstanding subsection 236(2), in an action in respect of a collision between ships, a defendant may examine the plaintiff for discovery only after filing a statement of defence and preliminary act.

2.4 Contemporary technology and Rule 498

It might be advisable to review Rule 498 to determine whether the information now made available by some on-board data recording systems would justify changes in the questions the parties have to answer in their preliminary acts. These days, large vessels are fitted with a voyage data recorder (VDR), which has been mandatory on passenger vessels and most commercial vessels since July 1, 2002 under SOLAS⁷ and, in Canada, under the *Voyage Data Recorder Regulations*.⁸ Such systems are the equivalent of the familiar "black boxes" used on aircraft.

The data that must be recorded include date and time, ship's position (satellite positioning system), speed through the water or speed over the ground (log or Doppler), heading (gyrocompass or magnetic compass), radar data, bridge audio, VHF communications audio (transmitted and received), depth of water under the keel (sounder), rudder angle, rudder order and response, engine order and response (engine telegraph), bow thrusters, direction status, percentage power or rotational speed (rpm), and relative or true wind speed and direction (anemometer or wind vane)

⁷ International Convention for the Safety of Life at Sea (SOLAS), 1974, c.V, regulation 20.

⁸ SOR/2011-203.

Such information is highly relevant in determining the causes of an accident, particularly a collision. Except for bridge audio,⁹ VDR data could be the subject of a disclosure requirement in the production of preliminary acts.

2.5 Trial

The action for collision cannot be discussed without reference to the trial. A review of Canadian and British decisions shows that during trials, the courts rely in many cases on the expertise of assessors, whose obligation is to assist the trial judge on technical maritime matters. In the United Kingdom, the assessors are drawn from the Elder Brethren of Trinity House.

In Canada, the *Federal Courts Rules* authorize the Court to appoint assessors to assist it in understanding technical evidence, or to provide a written opinion in a proceeding.¹⁰

The Rules were amended following a Supreme Court decision in a collision case.¹¹ As a result, the appointment of assessors no longer precludes expert evidence.¹²

The amendments to the Rules also ended the practice whereby exchanges between judge and assessors were not disclosed. Communications between the Court and the assessors now take place in open court.¹³

The Court must “allow the parties to make submissions in respect of the form and content of the question” to be put to the assessors.¹⁴ Lastly, before judgment is rendered, the Court “must provide the parties with the questions asked of, and any opinion given by, an assessor and give them an opportunity to make submissions thereon.”¹⁵

3. RESPONSIBILITY FOR COLLISIONS, AND RULES TO PREVENT THEM

Most actions for collision assert tortious liability based on negligence amounting to a breach of duty of good seamanship or a breach of the *Collision Regulations*.

Mariners must demonstrate the skill and care expected of a competent seaman. Deficiency in that respect constitutes a failure to exercise good seamanship, or contravene the regulations for preventing collisions at sea.

⁹ Subject to the privilege given to “on board recording” pursuant to section 25 (2) of the Canadian Transportation Accident Investigation and Safety Board Act. s.c. 1989, c.3 See *Wappen-Reederei GmbH & Co. KG v. The “Hyde Park”*, 2006 FC 150.

¹⁰ DORS/98-106, r.52

¹¹ *Porto Seguro v. Belcan S.A.*, [1997] 3 R.C.S.1278.

¹² *Supra* note 10, r. 52.1.

¹³ *Ibid.* r.52 (3).

¹⁴ *Ibid.* r.52(4).

¹⁵ *Ibid.* r.52(5).

The rules are intended not only for the benefit of the vessel required to observe them, but also for other vessels which may be approaching or manoeuvring at close quarters and which have every reason to believe that the rules will be observed and none to suppose they will be broken.¹⁶

3.1 Collision rules

The *Collision Regulations* incorporate the International Regulations for Preventing Collisions at Sea, 1972 into Canadian law, with Canadian modifications.

The regulations apply to Canadian vessels regardless of the waters in which they are operating.¹⁷ They do not apply to Canadian vessels operating in the waters of a country other than Canada if they are "inconsistent with a law of that country that, by its terms, applies in respect of the vessel when in the waters of that country."¹⁸ They do not apply to vessels belonging to the Canadian Forces or a foreign military force.¹⁹

A person or vessel that contravenes any of the rules set out in the regulations commits an offence.²⁰ In any action for collision, it has to be determined whether any of the mariners failed to obey the rules.

The Regulations for Preventing Collisions at Sea are peculiar to the marine sector. They are technical in many respects and can be complex in application because they require a mariner to assess *a priori* the situation, the dynamic environment and the conditions in which his vessel finds itself. The authors of *Collisions and their Causes* rightly emphasize these difficulties.

"The practice of keeping a proper watch at sea is, in essence, a question of avoiding collision with all the vessels or the seabed and obstructions arising from it. While the latter aspect of this problem will yield to a greater or lesser degree to a certain amount of logical analysis and deductive reasoning, the problem of keeping out of collision with other ships is a much less clear-cut affair. This is shown by the fact that while lengthy tomes have been written on the art and practice of navigation, no one has quite succeeded in pinning down, with precision, the principles of the practice of collision avoidance.

There are of course substantial and variable books on the rules of the road, or COLREGS as they are less romantically known today. Yet, no one has succeeded to show, in clear and specific detail, how one should keep out of collision. It might seem that a well-developed intuitive sense about which almost nothing can be written is, if not an essential, certainly

¹⁶ *Marsden on Collisions at Sea*, 12th ed. London, Sweet & Maxwell, 1998. p.79.

¹⁷ *Supra* note 2. art. 3(1) a).

¹⁸ *Canada Shipping Act*, L.C. 2001, c. 26, art.7 (3).

¹⁹ *Supra* note 2, art. 3(4).

²⁰ *Supra* note 18. art.121(1)(s).

a very valuable asset in practicing the art of collision avoidance, or as it is prosaically known, "handling a vessel in traffic."²¹

The Collision Regulations are divided into five parts. Part A addresses general matters such as the application of the regulations, the obligation to comply with them, and good seamanship. Part B sets out the steering and sailing rules "in any condition of visibility", that is both when vessels are in sight of one another, and in conditions of restricted visibility. Part C deals with "lights and shapes", and Part D with the use of sound and light signals. Part E concerns exemptions at the time of the coming into force of the regulations. There are also four highly technical annexes covering the positioning and technical details of lights and shapes, sound signal appliances and distress signals.

3.1.1 General

The rules apply to all vessels, from small boats to large cargo vessels, on all navigable waters of Canada.

The provisions respecting the prevention of collisions are not mere cautionary rules: they are mandatory, and must be observed. First, lights and shapes must be shown as the rules require in order to provide information on the type of vessel, and its direction of travel. Second, the steering and sailing rules stipulate how two vessels in head-on, crossing or overtaking situations are to manoeuvre, and how they are to behave in a narrow channel. In short, the rules govern the conduct of the vessels so as to eliminate the risk of collision. They set out the responsibilities of vessels underway, and which has priority in given circumstances or situations. They also set out the rules to be followed in poor visibility.

3.1.1.1 Responsibility

Rule 2 of the Collision Regulations addresses the application and interpretation of the rules, and the precautions which may be required by circumstances or the ordinary practice of seamen.

Rule 2 – Responsibility

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger."

²¹ Cahill, R.A., *Collisions and their Causes*, 3rd ed, London, The Nautical Institute, 2002, p. 150.

This rule recognizes and emphasizes the importance of the ordinary practice of seamen in relation to precautions designed to prevent collisions. For example, Rule 2 will be invoked in support of the principle whereby a vessel underway is to stay clear of a vessel at anchor. The ordinary practice of seamen also requires that in determining what is a safe speed, the effects of hydrodynamics are to be taken into consideration when the depth under the keel is reduced in shallow waters. The same applies, for the same reasons, when meeting or overtaking in a narrow channel.

Rule 2 allows for a departure from the rules in special circumstances. The allowance becomes an obligation when it is necessary to avoid imminent danger. This could be the case when a vessel being overtaken, which, as a stand-on vessel, is required to maintain course and speed, is confronted by an immediate danger posed by another vessel.

3.1.1.2 Definitions

Rule 3 contains a number of definitions, some of which will be referred to in discussing the steering and sailing rules. It will be useful, however, to note the definition of the term “underway”:

“(i) The word “underway” means that a vessel is not at anchor, or made fast to the shore, or aground.”

The conclusion is that a vessel not making way through the water and that is not moored, anchored or aground will be considered to be underway, with all the obligations that entails.

3.1.2 Steering and sailing rules

The steering and sailing rules are divided into three sections: the conduct of vessels in all conditions of visibility, the conduct of vessels in sight of one another, and the conduct of vessels in or near an area of restricted visibility.

Two important principles apply to the interpretation of the rules. The first is that they are international in character, and are therefore applied by persons of different nationalities. They are also subject to interpretation in many jurisdictions. It is consequently important for the rules to be construed uniformly, so that they are understood in the same way by mariners of different nationalities.

The second principle is that they are intended first and foremost for the prevention of collisions, and not for the determination of liability after the event. It goes without saying, however, that the applicable rules will be analysed and the Court will have to determine whether a negligent failure to obey the rules caused the collision, and the resulting damage.

Given the scope of the subject, we will restrict ourselves to reviewing some of the steering and sailing rules.

3.1.2.1 Conduct of vessels in any condition of visibility

Rules 5 to 10 apply in any condition of visibility. The rules are invariably reviewed whenever a collision occurs. They concern look-out, speed, a assessment of risk of collision, and avoiding action. They also govern the conduct of vessels in narrow channels, or in traffic separation schemes.

LOOK-OUT

Rule 5 – Look-out

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.”

Maintaining a proper look-out by sight and hearing includes the use of radar, Automatic Radar Plotting Aid (ARPA), monitoring marine radio traffic, and the verification of information received through the Automatic Identification System (AIS) with which vessels are now equipped. The latter system, known as AIS, is relatively new, and conveys the route, heading and speed of nearby vessels.

What constitutes “a proper look-out” is a question of fact to be determined in the light of circumstances. However the obligation to maintain it is of capital importance, and in many cases, vessels have been held liable on the basis of an inadequate look-out constituting negligent conduct contributing to a collision.

When conditions require the use of radar, its use must be optimized. In practical terms, this means that a mariner must select the most appropriate range in the circumstances, and use radar plotting to determine the course, speed and closest point of approach of nearby vessels.

A visual look-out means that crew members are present on the bridge in sufficient numbers to carry out navigational tasks and maintain a thorough and sustained look-out. When circumstances require it, a look-out should be posted at the bow.

The look-out obligation applies not only to vessels underway, but also to vessels at anchor, particularly to ensure that their anchor is not dragging.

SPEED

Rule 6 – Safe Speed – International

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
 - (i) the state of visibility,
 - (ii) the traffic density including concentrations of fishing vessels or any other vessels,
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions,
 - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights,
 - (v) the state of wind, sea and current, and the proximity of navigational hazards,
 - (vi) the draught in relation to the available depth of water.
- (b) Additionally, by vessels with operational radar:
 - (i) the characteristics, efficiency and limitations of the radar equipment,
 - (ii) any constraints imposed by the radar range scale in use,
 - (iii) the effect on radar detection of the sea state, weather and other sources of interference,
 - (iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range,
 - (v) the number, location and movement of vessels detected by radar,
 - (vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

Safe Speed — Canadian Modifications

- (c) In the Canadian waters of a roadstead, harbour, river, lake or inland waterway, every vessel passing another vessel or work that includes a dredge, tow, grounded vessel or wreck shall proceed with caution at a speed that will not adversely affect the vessel or work being passed, and shall comply with any relevant instruction or direction contained in any Notice to Mariners or Notice to Shipping.
- (d) For the purpose of paragraph (c), where it cannot be determined with certainty that a passing vessel will not adversely affect another vessel or work described in that paragraph, the passing vessel shall proceed with caution at the minimum speed at which she can be kept on her course.”

Rule 6 respecting speed applies in all conditions of visibility. The determination of a safe speed is based on the vessel's ability to take appropriate and effective action to prevent a collision, or to come to a stop.

Rule 6 lists the factors to be taken into consideration by all vessels in determining a safe speed. The main factors include the state of visibility, traffic density, stopping distance and manoeuvrability.

Other factors are listed for vessels with operational radar. These relate mainly to the limitations of this shipborne navigational equipment.

Modifications were made to Rule 6 by the Governor in Council. These require mariners to take into account the adverse effects of vessel speed when passing nearby vessels or works.

"Safe speed" is a relative term. Whereas in most cases it could be determined that speed was too high, in some circumstances speed may be considered too low. This would be the case when the speed of the vessel is insufficient to maintain steerage, because of the ineffectiveness of its rudder at low speed.

RISK OF COLLISION

Rule 7 – Risk of Collision

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:
 - (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change,
 - (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range."

The term "risk of collision" is not defined in the regulations. The requirement to determine whether a risk of collision exists is set out in the first paragraph of Rule 7; its remaining paragraphs merely identify some of the available means of determining the risk. The risk of collision does not have to be probable: a

possibility suffices. Where there is any doubt, moreover, the Rule states that the risk shall be deemed to exist.

Mariners now have various means of determining whether the risk of collision exists; in addition to compass bearings and radar, there is the radiotelephone and on most large vessels, Automatic Identification System (AIS). The latter uses transmitters to exchange data automatically between vessels concerning the identity, status, position and route of vessels within the navigation zone. The data are displayed on integrated electronic plotting and radar systems. Among other things, the AIS provides early detection of course changes by another vessel, and can be most useful in determining the risk of collision.

In every case, mariners are to use all available means suited to existing circumstances, and avoid relying on "scanty information". The use of radar may well be necessary even in good visibility in a sector where traffic density is high.

A vessel required to keep out of the way of another vessel under Rules 14, and 15, in particular, must take action as soon as a risk of collision becomes apparent. The corollary is that the stand-on vessel is required to maintain its course and speed at the same time (Rule 17).

ACTION TO AVOID COLLISION

Rule 8 – Action to avoid Collision

- (a) Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- (c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.
- (d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
- (e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.
- (f) (i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or the safe passage of another vessel is not relieved of this latter obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this Part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this Part when the two vessels are approaching one another so as to involve risk of collision.”

In *Maloja II*, Sheen J. described the purpose of the rules as follows:

“The structure of the Collision Regulations is designed to ensure that, whenever possible, ships will not reach a close-quarters situation in which there is a risk of collision and in which decisions have to be taken without time for proper thought. Manoeuvres taken to avoid a close-quarters situation should be taken at a time when the responsible officer does not have to make a quick decision or a decision based on inadequate information. These manoeuvres should be such as to be readily apparent to the other ship.”²²

Action in Ample Time

The correct timing of a manoeuvre is to be determined by mariners on the basis of the circumstances. In every case, action is to be taken in ample time. The *Collision Regulations* are “designed to ensure that vessels do not reach a close-quarters situation in which there is a risk of collision, and in which decisions have to be taken without time for proper thought.”²³

Positive Action

A manoeuvre must be positive, effective and perceptible. It should be large enough to be apparent to the other vessel to remove any doubt as to whether action is being taken to avoid collision.

Steering and sailing manoeuvres

The choice of manoeuvre will depend on the circumstances. It may consist of an alteration of course or speed, or both. It may also consist of stopping the vessel to avoid a collision, or to allow more time in which to assess the situation. In some circumstances, a change in speed may not prove to be the appropriate manoeuvre. This would be the case, for example, if a reduction in speed led to numerous overtaking manoeuvres, given traffic density in a narrow channel.

Safe distance and checking the effectiveness of a manoeuvre

The manoeuvre to avoid a collision should result in a safe passing distance. The result should be checked in order to avoid creating another close-quarters situation.

²² [1993]1Lloyd's Rep.48; affd. [1994] 1 Lloyd's Rep.374, CA.

²³ idem

Obligation not to impede

Rule 8(f) regulates the conduct of a vessel required under the regulations not to impede the passage of another vessel. Rule 9(b) and Rule 10(j) create a similar obligation for vessels less than 20 metres in length and sailing vessels in a narrow channel or fairway, as do Rule 9(c) and Rule 10(i) for vessels engaged in fishing in a narrow channel or fairway. The expression “shall not impede the passage” is distinct from the expression “shall keep out of the way” as applied to the give-way vessel referred to in the steering and sailing rules regulating the conduct of vessels “in sight of one another”, particularly in Rules 12, 13, 15, 16, 17 and 18.

The concept of not impeding passage does not apply solely when vessels are in sight of one another. It applies in all conditions of visibility, whenever vessels find themselves in the situations listed above. A vessel required not to impede the passage of another vessel must also manoeuvre promptly in order to leave enough room for the other vessel to pass without hindrance. It is important to note that the obligation not to impede passage remains, even if the aspect each vessel presents to the other changes over time. Moreover, even if on approach to the vessel whose passage is not to be impeded, it appears that the latter is the give-way vessel within the meaning of the regulations, the vessel required not to impede is still obliged to manoeuvre. The vessel whose passage is not to be impeded is also required to comply with the regulations when two vessels are approaching one another and the risk of collision exists.

NARROW CHANNELS

Rule 9 – *Narrow Channels – International*

- (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
- (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
- (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
- (e) (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her

intention by sounding the appropriate signal prescribed in Rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(ii) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).

(ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.

- (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).
- (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

Narrow Channels – Canadian Modifications

- (h) Notwithstanding paragraph (d), in the waters of the Great Lakes Basin, a vessel that can safely navigate only within a narrow channel or fairway shall, if a crossing vessel impedes her passage, use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
- (i) Notwithstanding paragraph (e), in a narrow channel or fairway in the waters of the Great Lakes Basin, a vessel shall indicate its intention to overtake, or its agreement to being overtaken, as the case may be, by sounding the whistle signals prescribed in Rule 34(j).
- (j) In the Canadian waters of a narrow channel or fairway a barge or an inconspicuous, partly submerged vessel or object shall not be navigated, moored or anchored so as to impede the safe passage of any other vessel or object using those waters.
- (k) Notwithstanding paragraph (a) and Rule 14(a), in the Canadian waters of a narrow channel or fairway where there is a current or tidal stream and two power-driven vessels are meeting each other from opposite directions so as to involve risk of collision,
 - (i) the vessel proceeding with the current or tidal stream shall be the stand-on vessel and shall propose the place of passage and shall indicate the side on which she intends to pass by sounding the appropriate signal prescribed in Rule 34(a) or (g),
 - (ii) the vessel proceeding against the current or tidal stream shall keep out of the way of the vessel proceeding with the current or tidal stream and shall hold as necessary to permit safe passing,
 - (iii) the vessel proceeding against the current or tidal stream shall promptly reply to the signal referred to in subparagraph (i) with the same signal, if she is in agreement, and with the sound signal prescribed in Rule 34(d), if she is in doubt.”

The term “narrow channels” is not defined. The courts will take into account the evidence before them on how mariners navigate in a given sector. For example,

the waters of the St. Lawrence from Île Rouge, east of Quebec City, to Cape Vincent on Lake Ontario, the waters of the Welland Canal, and the Detroit, St. Clair and St. Mary's rivers are very definitely "narrow channels".

Meeting another vessel in a narrow channel constitutes one of the most dangerous situations. As the term implies, narrow channels provide limited space in which vessels can meet, so that they are constantly at close quarters and any deviation from the route will place them immediately in a dangerous situation. The narrowness of a channel may be combined with the interaction produced when two large vessels meet, the presence of cross-currents, and tight curves.

In view of these difficulties, vessels should keep to starboard, and stay as close as possible to the outer limits of the channel.

Rules 9(b) and (c) identify vessels required not to impede the passage of other vessels in a narrow channel: namely those less than 20 metres in length, sailing vessels and vessels engaged in fishing. Rule 9(d) states that vessels are not to cross a narrow channel or fairway if, by so doing, they impede the passage of a vessel under way. Rule 8(f) states that such vessels must "take early action".

One of the Canadian modifications to Rule 9 stipulates that when two power-driven vessels are meeting each other in a narrow channel where there is a current or tidal stream, the vessel proceeding with the current or tidal stream is the stand-on vessel and is to "propose the place of passage and... indicate the side on which she intends to pass."

Overtaking manoeuvres in a narrow channel, that can take place only if the vessel to be overtaken takes action to permit safe passing, can be carried out only when the overtaking vessel indicates its intention and the vessel to be overtaken signals its agreement. Vessels in such a situation must "navigate with particular alertness" and correctly anticipate the risks of loss of control caused by the hydrodynamic effects resulting from the passing at close quarters of two vessels underway.

TRAFFIC SEPARATION SCHEMES

Rule 10 reads in part as follows:

Rule 10 – Traffic Separation Schemes – International

- (a) This Rule applies to traffic separation schemes adopted by the Organization and does not relieve any vessel of her obligation under any other rule.
- (b) A vessel using a traffic separation scheme shall:
 - (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane,
 - (ii) so far as practicable keep clear of a traffic separation line or separation zone,

- (iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side shall do so at as small an angle to the general direction of traffic flow as practicable.
- (c) A vessel shall, so far as practicable, avoid crossing traffic lanes but, if obliged to do so, shall cross on a heading as nearly as practicable at right angles to the general direction of traffic flow...
- (g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations...
- (i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.
- (j) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane...

Traffic Separation Schemes – Canadian Modifications

- (m) Subject to paragraphs (q) and (r), paragraphs (b) to (i) apply to traffic separation schemes described in any current Notice to Mariners or Notice to Shipping.
- n) A vessel shall use the mandatory routing system, if any, required for its category or the cargo carried that is adopted by the Organization and is described in the publication entitled *Ships' Routing*, as amended from time to time, and shall conform to the relevant provisions in force.
- o) A power-driven vessel of more than 20 metres in length shall use a traffic separation scheme and the associated routing system, if any, by which it can safely proceed to its destination, that are adopted by the Organization as recommendations and that are in force and described in the publication *Ships' Routing*, as amended from time to time..."

The term "traffic separation scheme" is defined as follows in section 1(1) of the *Collision Regulations*:

"traffic separation scheme" means a routing measure that provides for the separation of opposing streams of traffic by appropriate means, and by the establishment of traffic lanes.²⁴

Several such schemes have been put in place in Canada.²⁵ Some are mandatory, while others are recommended. Thus, the schemes in place in the

²⁴ C.R.C., c.1416, art. 1.

bays of Chedabucto and Fundy and the Juan de Fuca, Haro, Boundary Pass and Georgia straits are mandatory. A vessel using one of these traffic separation schemes must obey the provisions of Rule 10. "Recommended" schemes are in place in other parts of Canada, such as Johnstone and Broughton straits, Vancouver and its approaches, Halifax and its approaches, Placentia Bay, Bull Arm Bay and the Gulf of St. Lawrence. Lastly, recommended schemes are also in place in some sectors of the Great Lakes.

All these schemes are marked on marine charts, and are put in place to ensure safe navigation. In the interests of navigational safety and the protection of the environment, the Coast Guard recommends that mariners strictly follow these routes. Consequently, the master of a vessel departing from these routes or contravening Rule 10 could be held responsible, even when the traffic separation scheme is not mandatory. Failure to follow the recommended routes could be contrary to good seamanship, and thus constitute negligence.

Rule 10 regulates the conduct of vessels in or near a traffic separation scheme. While it does contain some specific provisions, Rule 10 makes it clear that the other steering and sailing rules continue to apply. For example, a power-driven vessel navigating in a traffic lane is not relieved of its obligation to keep out of the way of a vessel to starboard whose route crosses its own so as to present a risk of collision.

The main obligations set out in Rule 10 are to proceed in the appropriate traffic lane and keep to the starboard side. A vessel involved in a collision while proceeding in the opposite direction in a traffic lane could thus face severe censure on that account. Vessels entering or leaving a traffic lane are to do so at as small an angle as practicable to the general direction of traffic flow. A vessel crossing a traffic lane must do so on a heading as nearly as practicable at right angles to the general direction of traffic flow.

Paragraphs (i) and (j) of Rule 10 require vessels engaged in fishing, vessels less than 20 metres in length and sailing vessels not to impede the passage of vessels following a traffic lane. In such circumstances, they are to comply with Rule 8(f) and take early action to allow sufficient sea room for the safe passage of the other vessel.

3.1.2.2 Conduct of vessels in sight of one another

Rules 12 to 18 apply to vessels in sight of one another. The expression is defined in Rule 3(k) as follows:

"(k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other."

²⁵ Édition Annuelle – *Avis aux Navigateurs N° 10*, Garde côtière canadienne, Pêches et Océans Canada. Avril 2014.

Generally, Rules 12 to 18 are designed to place the responsibility for acting to prevent a collision on the vessel in the best position to deviate from its course.

Before briefly discussing three relational situations vessels can be in – overtaking, head-on and crossing – it is important to recall the concept of stand-on and give-way vessels. The concept, and the requirements placed on vessels so described, are detailed in Rules 16, 17 and 18.

Give-way

Rule 16 – Action by Give-way Vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.”

In the *Collision Regulations*, the term “give-way vessel” is defined as follows:

“give-way vessel” means a vessel that is required by these Regulations to keep out of the way of another vessel.²⁶

The requirements placed on the give-way vessel should be read in conjunction with those set out in Rule 8 concerning action to avoid collisions. This may involve an alteration in course or speed, but in all cases, the action taken by the vessel required to keep out of the way of another vessel should be such as to allow it to pass at a safe distance.

Stand-on

Rule 17 – Action by Stand-on Vessel

- (a) (i) Where one of two vessels is to keep out of the way, the other shall keep her course and speed.
 - (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.
- (c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

²⁶ Supra note 2. art.1(1)

- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.”

The requirements placed on the give-way vessel find their corollary in those placed on the stand-on vessel. Thus, when the former is required to take action, the latter must initially keep its course and speed. This requirement is readily explained by the importance of not rendering ineffective the action the give-way vessel is required to take in order to comply with the rules and provide a safe passing distance.

The requirement placed on the stand-on vessel is subject to change, however. It may take action as soon as it becomes apparent that the vessel required to keep out of the way is not taking appropriate action. This permission to take action becomes an obligation as soon as a collision cannot be avoided by the action of the give-way vessel alone. At that point, the stand-on vessel must “take such action as will best aid to avoid collision.”

Rule 17(c) is a rarity in that it prohibits a specific manoeuvre: when two power-driven vessels are in a crossing situation, the stand-on vessel is not to alter course to port for a vessel on her own port side.

These manoeuvres must be made in compliance with the requirements set out in Rule 8 and referred to above, particularly with respect to alterations in course or speed, and safe passing distance.

Responsibilities between Vessels

Rule 18 – Responsibilities between Vessels

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
- (i) a vessel not under command,
 - (ii) a vessel restricted in her ability to manoeuvre,
 - (iii) a vessel engaged in fishing,
 - (iv) a sailing vessel.
- (b) A sailing vessel underway shall keep out of the way of:
- (i) a vessel not under command,
 - (ii) a vessel restricted in her ability to manoeuvre,
 - (iii) a vessel engaged in fishing.
- (c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:
- (i) a vessel not under command,

- (ii) a vessel restricted in her ability to manoeuvre.
- d) (i) Any vessel other than a vessel not under command or a vessel restricted in her ability to manoeuvre shall, if the circumstances of the case admit, avoid impeding the safe passage of a vessel constrained by her draught, exhibiting the signals in Rule 28.

(ii) A vessel constrained by her draught shall navigate with particular caution having full regard to her special condition..."

Rule 18 establishes a hierarchy for vessels, based on their means of propulsion, activities, characteristics or disabilities, placing the requirement to keep out of the way sometimes on one, and sometimes on another. However, the hierarchy is subordinate to the special provisions of Rule 9 (narrow channels), Rule 10 (traffic separation schemes) and Rule 13 (vessel overtaking).

Overtaking

Rule 13 – Overtaking – International

- (a) Notwithstanding anything contained in the Rules of Part B, Sections I and II, any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.
- (b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.
- (c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.
- (d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

Overtaking – Canadian Modification

- (e) Notwithstanding paragraph (b), in the waters of the Great Lakes Basin, a vessel shall be deemed to be overtaking if approaching another vessel from a direction more than 22.5° abaft her beam, that is, in such a position with reference to the vessel she is overtaking that at night she would not be able to see either of the sidelights of the other vessel but would be able to see
 - (i) the sternlight of the other vessel, or
 - (ii) in the case of a power-driven vessel lighted in accordance with Rule 23(d) or (f), the all-round white light or lights of the other vessel."

Rule 13 concerns the requirements placed on a vessel overtaking any other vessel. It is distinct from Rule 14 (power-driven vessels in a head-on situation) and Rule 15 (power-driven vessels in a crossing situation), since unlike those two, Rule 13 applies to all vessels, regardless of their means of propulsion.

Rule 13 applies whenever a vessel is approaching another vessel from astern or from a direction more than 2 points (22.5°) abaft her beam, or in such a position that at night, she would be able to see only the sternlight of the other vessel.

Responsibility for keeping clear is placed on the vessel overtaking, because it is moving faster and will likely be the first to observe the vessel being overtaken.

Subject to Rule 9(e) concerning navigation in a narrow channel, the vessel overtaking may choose to pass the other vessel to port or to starboard.

Rules 16 and 17 apply to the overtaking vessel. The vessel being overtaken is required to keep her course and speed, unless it becomes apparent to her that the overtaking vessel is not performing the manoeuvre prescribed by the regulations, in which case she can take action. However, the vessel being overtaken must take action as soon as it becomes apparent that the overtaking vessel will be unable to avoid a collision through its own action alone.

Collisions between vessels overtaking and being overtaken are often attributable to the loss of control caused by the effects of hydrodynamics and the interaction between vessels. When this occurs, both vessels are usually deprived of directional control and steerage.

Head-on Situation

Rule 14 – Head-on Situation

- (a) When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision, each shall alter her course to starboard so that each shall pass on the port side of the other.
- (b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
- (c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly."

Rule 14 applies to power-driven vessels that see the masts or masthead lights of the other in a line or nearly in a line, and thus on reciprocal courses and when there is a risk of collision. Despite the use of the term "*route*" in the French version of the regulations, it is the ship's head of the vessel that is to be considered in determining whether the situation developing is that of vessels on crossing courses, or vessels on reciprocal courses. Where there is doubt, Rule

14(c) states that it must be assumed to apply, and both vessels must “alter course to starboard so that each shall pass on the port side of the other.”

It will also be understood that in narrow or winding channels, the aspect presented by the other vessel, even if it appears to be in a crossing situation, will not prevent the application of Rules 9(a) and 14. In such circumstances, it is the general direction of the vessel that must be taken into consideration: is it ascending or descending the narrow channel?

Crossing Situation

Rule 15 – Crossing Situation – International

- (a) When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

Crossing Situation — Canadian Modification

- (b) Notwithstanding paragraph (a), in Canadian waters, a vessel crossing a river shall keep out of the way of a power-driven vessel ascending or descending the river, except on the St. Lawrence River seaward of Île Rouge.”

Rule 15 covers the conduct of power-driven vessels on crossing routes that involve a risk of collision. It is the vessel which has the other on her own starboard side that must keep out of the way. Since Rule 15 states that the vessel required to keep out of the way must avoid crossing ahead of the other vessel, it will be understood that it is required to alter course to starboard and pass astern of the other vessel, or reduce speed or come to a stop to allow the stand-on vessel to pass.

A Canadian modification made to Rule 15 provides that “a vessel crossing a river shall keep out of the way of a power-driven vessel ascending or descending the river.” The reference to “a vessel (*tout navire*)” suggests that this requirement applies regardless of a vessel’s means of propulsion.

3.1.2.3 Conduct of vessels in restricted visibility

Rule 19 – Conduct of Vessels in Restricted Visibility

- (a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.
- (b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate manoeuvre.
- (c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I of this Part.

- (d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing and/or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
 - (i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken,
 - (ii) an alteration of course towards a vessel abeam or abaft the beam.
- (e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can be kept on her course. She shall if necessary take all her way off and in any event navigate with extreme caution until danger of collision is over.”

The term “restricted visibility” is defined in Rule 3(*l*) as follows:

“(l) The term “restricted visibility” means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.”

The concept of stand-on and give-way vessels applicable when vessels are in sight of one another no longer applies when they are navigating in or near an area of restricted visibility.

Not only do Rules 5, 6, 7 and 8, discussed above, continue to apply, but they acquire their full importance when visibility is restricted.

The first requirement imposed by Rule 19 is to proceed at a safe speed. Rule 6 continues to apply, and a safe speed will be one that allows a vessel to take appropriate and effective action to avoid a collision or come to a stop. Excessive speed may prevent a vessel from taking the necessary action in time to avoid a collision when the proximity of another vessel is detected visually or by means of navigational aids.

Traffic density and the surrounding waters are factors a mariner must take into consideration in determining what constitutes a safe speed. In the open sea, with little or no traffic nearby, a relatively high speed may be appropriate as long as proper use is made of radar, and engines are ready for immediate manoeuvre. On the other hand, even a vessel with good stopping power and a well-developed radar system would not be justified in proceeding at high speed in thick fog or in waters with high traffic density.

Rule 19 applies to any vessel, regardless of its means of propulsion. However, it states that "A power-driven vessel shall have her engines ready for immediate manoeuvre."

Navigation in restricted visibility requires mariners to use all available means of keeping an effective look-out.

The wording of Rule 19 requires vessels to avoid close quarters. Rule 19(d) requires a vessel that detects by radar alone the presence of another vessel to determine whether there is a risk of collision, and whether a close quarters situation is developing. If there is a risk of collision, or a close quarters situation is developing, the vessel must promptly take avoiding action.

Rule 19(e) is imperative. Unless it has been determined that a risk of collision does not exist, as soon as a vessel hears apparently forward of her beam, the fog signal of another vessel, or cannot avoid a close quarters situation with another vessel forward of her beam, she must reduce her speed to the minimum at which she can be kept on course or, if necessary, take all away off. In any case, vessels must navigate with extreme caution. There can be no doubt that this Rule applies whenever vessels are navigating in restricted visibility in a narrow channel, since they are constantly in a close quarters situation.

4. CONCLUSION

Today, large vessels are equipped with sophisticated navigational instruments designed to preserve safety at sea. We need only think of Electronic Chart Display Information Systems (ECDIS) that can accurately indicate the position of the vessel and its distance from other vessels, and the Automatic Identification System (AIS) that can transmit information about vessels, such as their identity, position, course, length, width, type and draught, as well as information on dangerous cargoes, to other vessels, shore stations and radars. The corollary is that mariners must possess greater knowledge and skill in order to make effective use of such systems, while remaining aware of their limitations and the importance of not relying on a single source of information. Moreover, the task of processing the information and deciding what action to take still falls to the mariner. In short, sound judgment and good seamanship are still and always the most reliable factors in avoiding accidents. Older mariners often criticize the younger ones today for not looking outside, and focusing their attention on the electronic instruments on the bridge. There is some merit to such criticism. A visual look-out must indeed be maintained at all times in order to validate the information provided by navigational instruments.

The application of the steering and sailing rules constitutes both an art and a science. Mariners must use the technical knowledge that enables them to gather the information their navigational instruments can provide on the presence and conduct of nearby vessels, process and analyse that information, and apply the

regulations accordingly. A competent seaman must also anticipate situations and be prepared to take action.

A court called upon to decide an action for collision will itself be required to interpret the regulations in the light of the circumstances and conditions prevailing when the events occurred. These days, the evidence before it is sometimes more reliable than that based solely on testimony, because in many cases, it is based on more than one kind of reliable, accurate data supplied by the Voyage Data Recorder (VDR). The quantity and quality of information now available make it possible to recreate accurately the circumstances of a collision. As a result, the parties will generally seek to resolve between themselves the disputes that can arise after a collision. This leads to a reduction in the number of collision cases dealt with by the courts.