

The Canadian Maritime Law Association



L'Association Canadienne de Droit Maritime

Website: www.cmla.org

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February 18, 2009

PRESIDENT'S REPORT

To the Members of the Association:

My last report to CMLA members was dated November 27, 2008. This report refers to subsequent activities of the Association.

1. Directors' Meetings

A directors' meeting was held in Toronto on Friday, January 16, 2009. Approximately 16 people attended, including Peter Cullen, a past President of our Association. Thanks are due to Michael Smith and others at Borden Ladner Gervais LLP for making their boardroom available for the meeting.

The next scheduled Directors' Meeting will be held in Ottawa on Thursday, April 16, 2009, following the meeting with representatives of Transport Canada and other federal government departments.

2. Maritime Activities

I had the privilege of representing the Association at the Grunt Club dinner in Montreal on Friday, December 6, 2009. The Grunt Grunt Club has had a close association with CMLA for many years and a considerable number of its directors are CMLA members, including its President, Alan Loiseau, Darren McGuire, Jean-Francois Bilodeau and Victor de Marco.

I attended the Marine Club Dinner in Toronto on Friday, January 16, 2009, and the Marine Insurance Association dinner in Vancouver on Wednesday, January 28, 2009.

3. CMLA Membership

Prior to consideration of applications for membership at the Board meeting held in Toronto in January, CMLA had 15 Constituent members, 245 regular members and 5 student members, representing an increase of 12 regular members and 1 student member since the beginning of 2008. There were 11 applications for membership applications approved at the meeting, one of which was from the United States and the other from China.

Changes to the CMLA website allowing electronic applications for membership have made the application process much more user friendly and resulted in considerable interest from outside Canada.

As we are communicating with members by e-mail, should you have a change of firm or e-mail address, please remember to advise Jean-Francois Bilodeau and myself by e-mail of your new contact information, copying in our webmaster, David Jones, whose e-mail address is jones@bernardpartners.com so our records may be updated.

While we are pleased with the increase in membership over the past year, we welcome new members interested in Canadian maritime law. You may wish to refer prospective members to our website or having them contact one of our directors or a member of the executive.

4. Education and Open Meetings

(a) Open Meetings

William Sharpe, our Vice-President, Central, organized a very successful Open Meeting held in Oakville, Ontario on Friday, November 28, 2008. It was attended by 19 persons. The guest speakers included Serge Theoret and Frank Ritchie of Transport Canada who spoke on the subjects of Crewing Requirements and the Administrative Monetary Penalty System under the *Canada Shipping Act, 2001*. William Sharpe spoke on the problems in dealing with abandoned cargo.

John O'Connor, our Vice-President, Quebec arranged another successful Open Meeting held in Montreal on Thursday, January 22, 2009, in which Barry Oland was beamed in from Kelowna to Montreal by internet. He spoke on section 46 of the *Marine Liability Act* in conjunction with the Federal Court of Appeal decision in *Mitsui O. S. K. Lines, Ltd. v Mazda Canada Inc.* (the "Cougar Ace") for which the link may be found at <http://decisions.fca-caf.gc.ca/en/2008/2008fca219/2008fca219.html>. The Supreme Court of Canada refused leave to appeal in December, 2008 and in accordance with its practice did not provide reasons.

Barry Oland's paper, "*The Premature Demise of Section 46 or the Law Giveth and the Lords Taketh Away*" which he delivered at the Open Meeting will be posted on the CMLA website. We plan to use the internet video technology for future CMLA Open Meetings.

(b) Upcoming Open Meetings

Arrangements are being made for Open Meetings to be held in Toronto and Montreal in March on the *UNCITRAL Draft Convention on Contracts for the International Carriage of Goods wholly or partly by sea (the "Rotterdam Rules")*. Notices of the Open Meetings will be posted on the CMLA website and circulated to members. The Open Meeting in Montreal is being organized by John O'Connor and will be held on Thursday evening, March 26, 2009.

An Open Meeting is scheduled for Vancouver on Thursday, March 12, 2009, at the Terminal City Club. The Notice of Meeting is attached under cover of the e-mail by which this letter is being sent and will be posted on the CMLA website.

The Association has recently been accredited by the British Columbia Law Society as a Continuing Professional Development ("CPD") Provider and the Vancouver Open Meeting will qualify for 2 hours of CPD which is now mandatory for B. C. lawyers.

No Open Meeting is planned for Vancouver on the *Rotterdam Rules* as the Vancouver Maritime Arbitrators Association held an Open Meeting on January 21st in which our members Douglas Schmitt and Mark Sachs were speakers on the pros and cons of the Rotterdam Rules.

Members and guests, whether or not lawyers, are always welcome to attend the Open Meetings.

5. *Rotterdam Rules*

Attached to the e-mail by which this letter is being sent is the Information Paper of Transport Canada dated February, 2009 and the Interim report of the CMLA Committee on Issues of Transport Law (the "Committee") dated February 16, 2009. As you will note from the Information Paper and the Interim report, Transport Canada is seeking industry feedback on the *Rotterdam Rules* as more particularly set out in the Information Paper and whether or not Canada should sign the Convention at the Rotterdam Conference in September.

David Colford in the Interim report of the Committee states he would welcome the comments of any CMLA member to assist the Committee in making its recommendations to the CMLA Board of Directors. If any members or Constituent members have particular views, I would be grateful if you would forward them by e-mail to David Colford by Monday, March 9, 2009.

6. Legislation

The federal government recently introduced a number of Bills into the House of Commons for first reading which members may find of interest.

Arctic Waters Pollution Prevention Act Amendments

Bill C-3, *An Act to amend Arctic Waters Pollution Prevention Act*, was introduced in the House of Commons on December 3, 2008 for first reading. The definition of "arctic waters" in the *Arctic Waters Pollution Prevention Act* is amended to extend the geographic application of the Act to the outer limit of the exclusive economic zone of Canada north of the 60th parallel. The link to the Bill may be found at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3632475&file=4>

Marine Liability Act Amendments

Bill C-7, *An Act to amend the Marine Liability Act and the Federal Courts Act and to make consequential amendments to other Acts*, was introduced in the House of Commons on January 29, 2009 for first reading. The link to Bill C-7 is found at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3634222&file=4>.

On the pollution side, the amendments implement the *Supplementary Fund Protocol of 2003 to the 1992 international Oil Pollution Compensation Fund* and the *Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*. Adventure tourism is excluded from the application of the *Athens Convention and Protocol*, thereby enabling adventure tourism operators subject to various conditions to require waivers from liability. Bill C-7 also creates a maritime lien for ship suppliers over foreign vessels whereas existing law provides only a statutory lien. Another major change made by Bill C-7 is to establish a general 3 year limitation period for maritime claims where there is no specific period otherwise prescribed by federal legislation.

Transportation of Dangerous Goods Act Amendments

Bill C-9, *An Act to amend the Transportation of Dangerous Goods Act, 1992*, was introduced in the House of Commons on February 2, 2009. The link to Bill C-9 is at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3636464&file=4> It passed second reading on February 13, 2009 and has been referred to Committee. The Bill is similar to Bill C-56 introduced in the House of Commons in May, 2008 which died on the order paper. The amendments made by Bill C-9 pertain to security and safety during transport of dangerous goods.

Navigable Waters Protection Act Amendments

Bill C-10, Part 7, which amends the *Navigable Waters Protection Act*, was introduced in the House of Commons on Friday, February 6, 2009, for first reading. One of its main objects appears to be to streamline the approval process for certain works and exclude certain classes of works from the approval process. The link to Part 7 may be found at http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Parl=40&Ses=2&Mode=1&Pub=Bill&Doc=C-10_1&File=323

7. CMLA Directors dinner with Judges of the Federal Court and Federal Court of Appeal and Meeting with Government Officials – Ottawa, April 15 -16, 2009

Arrangements are presently being made for a dinner on Wednesday, April 15, 2009 with Judges of the Federal Court and Federal Court of Appeal and on Thursday morning for the 24th annual meeting between CMLA Directors and government officials in Ottawa. The program is presently being finalized with Tracy Chatman. It is expected the participants will include representatives of numerous federal departments such as Department of Justice, Transport Canada, Fisheries and Oceans and/or Environment Canada.

8. CMLA Seminar and Annual General Meeting June 15-16, 2009, Montreal

The CMLA Annual General Meeting will be held on Tuesday morning, June 16, 2009 at the University Club in Montreal. As was done in Vancouver last year, a CMLA Seminar will be held on Monday, June 15, 2009, at McGill University. A brochure with registration details will be posted on the website and circulated to members shortly. Remember to diarize the date.

9. Upcoming Events

Various upcoming events which are not CMLA events are posted on the website. However, members may wish to note the following:

February 21, 2009 – Chamber of Shipping of British Columbia Annual General Meeting, Vancouver


March 11–13, 2009 - Admiralty Law Institute Seminar, Tulane University, New Orleans

April 28–May 1, 2009 – Maritime Law Association of the United States Spring Meeting and Annual General Meeting, New York

May 20–21, 2009 - Canadian Board of Marine Underwriters Semi-Annual Meeting, Niagara Falls, Ontario

10. I expect the Association will have a very busy year, particularly in view of the *Rotterdam Rules* and the Bills recently introduced by the federal government. In this regard, I again thank the Executive, directors and Committee Chairs for their support and hard work as well as others who have assisted in the work of our Association.

Yours truly



Michael J. Bird
President