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**PRESIDENT'S REPORT  
TO THE ANNUAL GENERAL MEETING**

11 May 2012

In accordance with tradition, this report will review the significant events that have occurred since I succeeded Jeremy Bolger as President of our association on 3 June 2011.

At the outset I wish to express thanks and gratitude to our Secretary-Treasurer, Mr. Robert Wilkins. He is an extremely dedicated and hard working person and a great asset to the Canadian Maritime Law Association. My job would be many times more difficult were it not for his considerable assistance. I must also express my thanks to our Immediate Past-President, Jeremy Bolger, who has provided me with sage advice throughout my first year.

**CMLA Website ([www.cmla.org](http://www.cmla.org))**

Those of you who know me will not be surprised to learn that one of the first projects I have undertaken was to upgrade and modernize the CMLA's website. The first objective was to include more materials (papers, reports, submissions etc.) on the website in a searchable format. The second objective was to use the website not only as a means of conveying information but also as an administrative tool to keep track of membership, committees, CMLA documents and papers, news items and events. We believe that the new website has substantially accomplished those objectives, although it is still very much a work in progress.

Some of the features of the new website are:

- A fully searchable list of CMLA members with contact details;
- A fully searchable database of Papers and Presentations from CMLA sponsored seminars;
- A fully searchable database of recent AGM Reports and CMLA Submissions as well as full archives of past AGM Reports and CMLA submissions;
- A bulletin board for members of our association to share ideas and news;
- A page for each committee of CMLA with a list of members, committee documents and other information of interest or relevance to that committee;
- Up to date News and Events pages; and

- The ability for members to change their address, password or other profile items online.

I strongly encourage all of our members to visit the new website. You will hopefully be pleasantly surprised. But, please do remember that it is still a work in progress and we are very interested in hearing suggestions for ways of improving it.

## **CMLA Submissions to Government**

One of the more important functions of CMLA is to review and comment on government discussion papers and draft legislation/regulations. In the past year the CMLA has presented six submissions to Federal Government Departments relating to pending or proposed legislation or regulations. These are summarized below.

### **Marine Transport of Hazardous and Noxious Substances**

By letter dated 14 June 2011 we delivered the formal response of the CMLA to Transport Canada's discussion paper entitled "Marine Transport of Hazardous and Noxious Substances: Liability and Compensation". In summary, the letter indicated CMLA's support for the ratification of the HNS Convention by Canada and encouraged an amendment to the Marine Liability Act to implement the HNS Convention. A copy of the letter dated 14 June 2011 can be found on the website. The President expresses his thanks to Graham Walker, the then Chair of the Hazardous and Noxious Committee, for his work on this matter.

### **Repeal of s.45 of the Marine Liability Act**

At the Board of Directors Meeting held in Montreal on 17 October 2011, it was decided that CMLA would send a letter to Transport Canada opposing the automatic repeal of s.45 of the Marine Liability Act pursuant to the provisions of the Statutes Repeal Act. Mr. David Colford prepared a draft letter which was ultimately signed by the President and delivered to Transport Canada on 21 November 2011. That letter has been posted on the website. We understand that the Senate has passed a resolution opposing the automatic repeal of S. 45. The President expresses his thanks to David Colford, the Chair of the Carriage of Goods Committee, for his work on this matter.

### **New Transportation Safety Board Regulations**

At the Board of Directors Meeting held in Montreal on 17 October 2011, it was decided that CMLA would send a letter to the Transportation Safety Board expressing the concerns of the CMLA to the new TSB regulations promulgated in the Canada Gazette on 3 September 2011. The CMLA was concerned that the new regulations impair the right of a witness to independent and effective legal counsel and infringe the rights of the witness to have her or his evidence remain confidential. These concerns were forcefully expressed in a letter to the Transportation Safety Board dated 19 December 2011, a copy of which can be found on the website. Although we are told that we can expect a response, we do not expect that our letter will be favourably received as similar complaints were made about the proposed regulations in December of 2006 when the regulations were circulated in draft form. The President expresses his thanks to Jack Buchan, the Chair of the Transportation Safety Board Committee, for his work on this matter.

### **HNS Preparedness and Response**

In October 2011 Transport Canada issued a discussion paper entitled “Canada’s Ship-Source Hazardous and Noxious (HNS) Incident Preparedness and Response Regime”. The purpose of the paper was to seek the views of industry with the ultimate goal of establishing a national regime of preparedness and response to marine incidents involving HNS. The CMLA responded to the discussion paper by letter dated 16 January 2012, a copy of which is on the website. The CMLA generally endorsed the concept of a national regime similar to the one that is currently established for ship-source oil pollution incidents. The President expresses his gratitude to the co-chairs of the Marine Environment Committee, Graham Walker and John O’Connor, for their work on this matter.

### **Federal Court Rules**

The Federal Court is embarking upon a review of the Federal Courts Rules and to this end released a discussion paper entitled “Global Review of the Federal Courts Rules”. By letter dated 10 February 2012, a copy of which is on the website, the CMLA provided its position on the issues raised in the discussion paper. In general, CMLA expressed the view that the existing rules work reasonably well, strike the appropriate balance between a court-led and party-led process, accommodate the needs of foreign and domestic litigants and address issues of proportionality. The CMLA accepted that the Federal Court should be able to act on its own to control abuses of its process but cautioned that there must be due process. The CMLA also endorsed the idea of a proper index for the Federal Court Rules but otherwise opposed any extensive restructuring of the rules. The President expresses his sincere thanks to Jean-Marie Fontaine, the Chair of the Federal Courts Rules Committee, for his work in putting together the CMLA response.

### **IMO Legal Committee**

By letter dated 11 April 2012, a copy of which is on the website, the CMLA urged the Government of Canada to support the International Maritime Organization as the most appropriate body to consider the development of a treaty based international legal regime covering offshore petroleum units. The letter was prompted by concerns that other organizations with less experience and expertise might be asked to develop such a regime.

## **CMLA Responses to CMI Questionnaires**

The Comité Maritime International (CMI) periodically circulates questionnaires to its member associations. The purpose of these questionnaires is to identify possible areas of international maritime law needing reform and the possible reforms that might be made. These questionnaires can be found on the CMI website ([www.comitemaritime.org](http://www.comitemaritime.org)). They are important as they can be the precursors of significant changes to international maritime law. In the past year we have replied to three CMI questionnaires.

### **CMI 2<sup>nd</sup> Salvage Questionnaire**

At the Board of Directors Meeting held in Quebec City on 3 June 2011 the response of the CMLA to the CMI’s 2<sup>nd</sup> Salvage Questionnaire was debated and discussed in some detail. The final version was delivered to the CMI by email dated 19 July 2011. This document can be found on the CMLA website.

The President expresses his thanks to Cecily Strickland, Chair of the Salvage Committee, and William Sharpe for their work on this matter.

### **CMI 2<sup>nd</sup> Questionnaire on Member Consultation**

On 11 October 2011 we responded to a second Questionnaire issued by CMI in June 2010 to its member associations relating primarily to the CMI website. The questionnaire was issued so that CMI could have a better understanding of the needs of its member associations and whether it was meeting those needs. A copy of the response has been posted on the CMLA website.

### **CMI Mandatory Insurance Questionnaire**

In March of 2012 the CMLA responded to a CMI Questionnaire relating to the local implementation of mandatory insurance provisions found in various international conventions. The President expresses his thanks to Shelley Chapelski, the Chair of the Marine Insurance Committee, for her work on this questionnaire.

## **Hawaii - USA Canada Australia/New Zealand Joint Meeting**

The United States MLA, the CMLA and the Australia/New Zealand MLA held a joint meeting at Ko Olina, Hawaii, December 3-7, 2011. Such joint meetings are traditionally held every two or three or years and are a great opportunity to network and socialize with colleagues from other countries. 12 CMLA members attended the Hawaii meeting including Justice Marc Nadon and David McEwen who both participated in the education seminars and gave very well received talks.

One of the more significant aspects of the Hawaii meeting was the Ryder Cup style golf competition between the U.S.A. and "the World" (which normally means mostly Canada). This is usually a frustrating part of the joint meeting as we have always lost. But this year Canada (and the Rest of the World) defeated Team USA.

## **Miscellaneous But Important Matters**

### **Justice Johanne Gauthier Appointed to Federal Court of Appeal**

I am delighted to announce that The Honourable Johanne Gauthier was sworn in as a Judge of the Federal Court of Appeal on 4 November 2011. Justice Gauthier is a Past President and Honourary Life Member of this Association and a Vice-President of CMI. I sent a congratulatory letter to Justice Gauthier on behalf of CMLA and our Immediate Past President, Jeremy Bolger, attended her swearing in ceremony on behalf of CMLA.

### **Federal Courts Education Seminar**

The Federal Court and Federal Court of Appeal celebrated their 40<sup>th</sup> anniversary October 27 and 28, 2011 in Ottawa with an Education Seminar. John O'Connor, the National Vice-President, attended on behalf of CMLA and participated in a panel discussion at the seminar.

### **Directors meetings**

Your Board of Directors has had a normally busy year with Board meetings in Montreal (October 2012), Toronto (January 2012) and Ottawa (March 2012). The Ottawa meeting featured, as usual, a dinner with

Justices of the Federal Court and Federal Court of Appeal and a meeting and luncheon with Federal Government officials.

### **Attendances**

I was honoured to represent our Association at the annual Marine Club Dinner in Toronto in January of this year. I was also invited to attend the annual Grunt Club Dinner in Montreal but, unfortunately, the date of that event conflicted with the Hawaii meeting. I am grateful, however, to Robert Wilkins, who represented CMLA at the dinner. I was also very pleased to accept an invitation from our American friends who invited me to attend their AGM and annual dinner in New York City on 4 May 2012.

### **CMI Beijing 2012**

Finally, the 40<sup>th</sup> Conference of CMI will be held in Beijing 14-19 October 2012 with an additional seminar to be held in Shanghai 20-22 October 2012. The conference website is at [www.cmi2012beijing.org](http://www.cmi2012beijing.org). We strongly encourage as many as possible to attend the conference. We would like to see a strong contingent from CMLA there. If you are thinking of attending, please register on the CMLA website so we can keep you advised of our preparations for the conference and, hopefully, get you involved.

The CMLA is a strong and vital association. It has done, is doing and will continue to do good works and deeds to promote the advancement of effective and uniform maritime laws. I wish to express my sincere thanks and deepest appreciation to the membership of this association for allowing me to serve as President.

Yours Truly,



Christopher J. Giaschi  
**President**  
**The Canadian Maritime Law Association**