

## GENERAL – PART 4 - ENFORCEMENT PROVISIONS

Part 4 of the *Canada Marine Act* (CMA) which deals with enforcement, provides for traditional maritime remedies such as vessel and cargo seizures through the courts.

### Background

The enforcement provisions set out in the CMA consists primarily of court based mechanisms complemented by a few alternatives to court proceedings and prosecutions.

Increasingly modern federal legislation contains an array of “alternatives”, often administered by government officials and delegates, as opposed to the courts. These alternatives are meant to address instances of non-compliance with “regulatory” offences, as opposed to true criminal offences for which criminal prosecutions continue to be appropriate.

Another characteristic of modern legislation includes promoting consistent treatment within a piece of legislation as well as consistency between statutes that impact the same stakeholders. Consistent treatment is especially important when dealing with enforcement provisions.

Both the St. Lawrence Seaway Management Corporation (SLSMC) and its users have suggested that the current CMA enforcement provisions need to be revised. The existing mechanisms can be very expensive for both the SLSMC and vessel owners and may involve lengthy delays for vessels as claims are processed through the court system.

In the case of minor violations, alternative enforcement mechanisms (instead of using the courts system) such as an administrative monetary penalty regime would offer a more

efficient and cost effective way for both the enforcement officers and users to respond to with enforcement issues, while utilizing a recognized independent review and appeal mechanism.

### Proposed Change

Proposed changes to the CMA include:

- introducing an alternative to current enforcement processes (courts) providing for a security deposit in the amount of \$100,000 as a precondition to obtaining a clearance for a ship that has been detained;
- expanding the scope of application of the offence and defence provisions from “persons” to “persons and ships”; and
- introducing an administrative monetary penalty regime, including regulation-making authority for the Governor in Council.

The first proposed change would facilitate the release of ships in a timely fashion and better harmonize Canada’s ship detention regime with the one in the United States. The amendment also promotes consistency with other Canadian ship detention regimes by adopting elements from the regime under the *Canada Shipping Act*.

The second proposed change would promote consistency in the Act itself as well as with the compliance regime under the *Canada Shipping Act*, and would also facilitate detention and release of ships.

The third proposed change would allow for the creation/amendment of regulations that incorporate an administrative monetary penalty regime for minor offences at Canada Port Authorities or in the Seaway that is streamlined, efficient and consistent with regimes that exist in other Acts like the

*Aeronautics Act, the Canada Shipping Act and the International Bridges and Tunnels Act.*

**Recommendations by the CMA Review  
Panel – 6.2**

*Part 4 of the CMA should be re-examined to ensure that it contains more economically viable and efficient provisions for detention, guarantees and release of ships accused of offences under the CMA.*

**Stakeholder Views**

The stakeholders who raised concerns about the enforcement provisions in the CMA were all supportive of providing an alternative mechanism, such as the existing Memorandum of Understanding (MOU) between the SLSMC and the majority of its users, including key shipping associations. No stakeholders expressed opposition to this recommendation.

Signatories of the MOU managed by the SLSMC have requested that it be maintained.