Legislative Summary **LS-627E**

BILL C-7: AN ACT TO AMEND THE MARINE LIABILITY ACT AND THE FEDERAL COURTS ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

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LEGISLATIVE HISTORY OF BILL C-7

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	29 January 2009	First Reading:	14 May 2009
Second Reading:	30 March 2009	Second Reading:	**3 June 2009**
Committee Report:	8 May 2009	Committee Report:	**18 June 2009**
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Statutes of Canada **2009, c. 21**

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print.**

Legislative history by Michel Bédard

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BILL C-7: AN ACT TO AMEND THE MARINE LIABILITY ACT AND THE FEDERAL COURTS ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS*

BACKGROUND

On 29 January 2009, 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 by the Honourable Leona Aglukkaq, Minister of Health, on behalf of the Honourable John Baird, Minister of Transport, Infrastructure and Communities.

The current *Marine Liability Act*, which has been in force since August 2001, is the principal legislation dealing with the liability of shipowners and ship operators in relation to passengers, cargo, pollution and property damage. The intent of the legislation, according to Transport Canada officials, is to set limits of liability and establish uniformity by balancing the interests of shipowners and other parties.

The proposed amendments to the *Marine Liability Act* contained in Bill C-7 result largely from the *Maritime Law Reform Discussion Paper* released by Transport Canada in May 2005(1) and the subsequent consultations that took place with many stakeholders in all sectors of the marine community.

A. Highlights

The highlights of the bill are these:

- It amends current parts 3 and 4 of the *Marine Liability Act* to clarify certain rules concerning the limitation of shipowners' liability for maritime claims and liability for the carriage of passengers, particularly in the marine adventure tourism sector.

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

(1) Transport Canada, *Maritime Law Reform Discussion Paper*, TP 14370E, May 2005, http://www.tc.gc.ca/pol/en/report/tp14370/1-0.htm.

- It repeals all of current Part 6 of the Act (concerning liability and compensation for marine pollution), restructuring it into a new Part 6, which is broken down into three divisions: Division 1 incorporates by reference and gives force of law to four international conventions (set out in proposed schedules 5 to 8) that cover liability and compensation for oil and bunker oil pollution damage from ships (two of those conventions had previously been ratified and are already being applied in Canada); Division 2 covers the liability of shipowners for pollution damage not covered by the international conventions referred to in Division 1; and Division 3 includes general provisions applicable to all of Part 6.

- It re-enacts and amends the sections of the repealed Part 6 of the Act that create and govern the Ship-source Oil Pollution Fund and places them in proposed Part 7, taking into account the new structure of Part 6, as well as the implementation of the conventions included in proposed schedules 7 and 8, and enhancing the governance of the fund.

- It provides for new enforcement provisions with regard to the obligations to issue certificates of issuance or financial security under two international conventions as well as new enforcement measures for regulations to be developed for passenger vessels.

- It includes general provisions in proposed Part 8 that relate to the administration and enforcement of offences under the Act.

- It creates a maritime lien against foreign vessels for Canadian ship suppliers as security for unpaid invoices.

- It establishes a limitation period of three years for all proceedings under Canadian maritime law that are not already covered by a limitation period in a federal statute.

DESCRIPTION AND ANALYSIS

A. Amendments to Part 3 – Limitation of Liability for Maritime Claims (clauses 1–6)

Clause 1 moves the definitions of “passenger” and “unit of account” that are currently contained in sections 29(4) and (5) to section 24. The definition of a “passenger” is modified to include a participant in a marine adventure tourism activity, a person carried on board a vessel propelled manually by paddles or oars **and operated for a commercial or public purpose**, and a sail trainee.

Clause 2 amends section 26 (which becomes section 26(1)) by giving force of law to Article 18 of the *Convention on Limitation of Liability for Maritime Claims, 1976* and articles 8 and 9 of the Protocol of 1996 amending it. The relevant portion of the convention and protocol amending it are set out in Part 2 of Schedule 1 to the *Marine Liability Act*. Sections 26(2) and (3) are also added. Section 26(2) permits the Governor in Council to amend, by regulation, Part 3 of Schedule 1 to add or delete a reservation made by Canada under

Article 18 of the convention. Section 26(3) provides that Part 3 does not apply to a claim that is the subject of a reservation made by Canada. A reservation was made when Canada recently ratified the convention as amended by its protocol in May 2008.

Clause 3 replaces section 28 with a new provision clarifying the maximum liability for maritime claims regarding the loss of life or personal injuries to passengers of ships of less than 300 gross tonnage (section 28(1)) and for passengers with no contracts of carriage on ships of less than 300 gross tonnage (section 28(2)). The exceptions from the application of section 28(2) set out in section 28(3) are extended to include **shipwrecked or distressed** persons carried on board a ship and others of a class prescribed by regulation. **The House of Commons Standing Committee on Transport, Infrastructure and Communities added an additional exception: a stowaway, trespasser or any other person who boards a ship without the consent or knowledge of the master or owner.**

Clause 3 also replaces section 29 with a new provision clarifying the maximum liability for maritime claims other than those referred to in section 28 and involving ships of less than 300 gross tonnage.

As well, clause 3 moves the current section 28(2) regarding the calculation of gross tonnage to section 29.1 and makes it applicable both to section 28 and to section 29.

Clause 4 replaces section 30(2) to require that, for the purposes of section 30, gross tonnage be calculated in accordance with proposed section 29.1.

Clause 5 amends section 31 to permit the Governor in Council to amend, by regulation, the convention set out in Schedule 1 to implement a change to the limits of liability set out therein and also the limits of liability set out in sections 28–30 of the *Marine Liability Act*. This permits the limits of liability in the convention set out in Schedule 1 to be kept up to date without requiring amending legislation.

Clause 6 adds section 34.1 to give the Governor in Council the power to make regulations prescribing the classes of persons excluded from the application of section 28 and for generally carrying out the provisions of Part 3 of the Act.

B. Amendments to Part 4 – Liability for Carriage of Passengers by Water (clauses 7–10)

Clause 7 amends the definition of a “ship” in section 36(1) to exclude a vessel propelled manually by paddles or oars and also adds section 36(3) to clarify that in the event of an inconsistency between the *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974* as amended by the Protocol of 1990 (set out in Schedule 2 to the Act), and the sections contained in Part 4 of the Act, those sections prevail.

Clause 8 amends section 37 to **also exclude shipwrecked or distressed persons on board a ship** from the application of the above convention. According to departmental officials, this is being done in order to bring the section in line with the *Canada Shipping Act, 2001*. **The House of Commons Standing Committee on Transport, Infrastructure and Communities added stowaways, trespassers or other persons who board a ship without the consent or knowledge of the master or owner to the list of persons excluded from the application of the Convention.**

Clause 9 addresses a primary area of concern – the liability of shipowners and operators involved in the marine adventure tourism industry. It adds section 37.1 to exclude the application of Part 4 of the Act to a marine adventure tourism activity that meets certain conditions as well as sail trainees and persons of a class of persons prescribed under section 39(*d*).

Departmental officials point out that before and during the consultations on proposed amendments to the *Marine Liability Act* that took place in 2005–2006, industry stakeholders raised many concerns about the liability regime introduced in 2001, which applied equally to commercial passenger vessels and marine tourism enterprises and operators. The regime also provided that waivers of liability, often used in adventure tourism, would no longer be valid. The loss of this standard risk management practice, combined with new limits of liability introduced in 2001, made insurance unaffordable or commercially unavailable to tourism operators. The proposed amendment would accordingly place the marine adventure tourism industry in the position it occupied prior to 2001. This would enable operators to purchase adequate insurance against the limits of liability that had always applied to them in Part 3 of the *Marine Liability Act* and would allow them to use liability waivers with the same flexibility employed in the past.

Clause 10 replaces section 39, clarifying the power of the Governor in Council to make regulations respecting insurance to be maintained in respect of classes of carriage, ships or persons to cover liability to passengers under Part 4. Regulation-making powers are also added respecting 1) the form and manner of proof or insurance, 2) the prescribing of conditions for the exclusion of a marine adventure tourism activity, 3) the prescribing of excluded classes of persons, and 4) generally for carrying out the provisions of Part 4.

Clause 10 also amends section 40 to permit the Governor in Council to amend, by regulation, the convention set out in Schedule 2 in order to implement a change to the limits of liability in accordance with the convention. This permits updating of the limits of liability set out in Schedule 2 without requiring amending legislation.

C. Proposed Part 6 – Liability and Compensation for Pollution
(clause 11; proposed sections 47–90)

Clause 11 repeals all of the current Part 6 of the *Marine Liability Act* and creates a new Part 6 that includes Divisions 1, 2 and 3 as described below. (Clause 11 also repeals current parts 7 and 8 of the Act and introduces new parts 7 and 8.)

1. Division 1 – International Conventions
(clause 11; proposed sections 47–74)

Division 1 of the restructured Part 6 creates a number of provisions (and in some cases re-enacts certain current provisions) to incorporate by reference and give force of law to four international conventions on pollution liability and compensation. They are as follows:

- *International Convention on Civil Liability for Oil Pollution Damage, 1992*, as amended by the Resolution of 2000 (Civil Liability Convention, set out in proposed Schedule 5).
- *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992*, as amended by the Resolution of 2000 (Fund Convention, set out in proposed Schedule 6).
- Protocol of 2003 to the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992* (Supplementary Fund Protocol, set out in proposed Schedule 7).
- *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* (Bunkers Convention, set out in proposed Schedule 8).

The first two of the above conventions on marine oil pollution, the Civil Liability Convention and the Fund Convention, had previously been implemented and ratified by Canada and are already referred to and applied in the *Marine Liability Act*, although they are not currently included in the schedules to the Act. The latter two, the Supplementary Fund Protocol and the Bunkers Convention, will be ratified and applied in Canada once Bill C-7 has been enacted to amend the *Marine Liability Act*.

Proposed section 47 provides definitions for terms that are used in Division 1 (International Conventions) of Part 6.

a. Civil Liability Convention
(clause 11; proposed sections 48–56)

Proposed section 48 gives the force of law in Canada to the articles of the Civil Liability Convention set out in proposed Schedule 5. Proposed section 49 applies the convention to Canada as a contracting state and makes the Minister of Transport the appropriate authority for purposes of Article VII of the convention.

Proposed section 50 gives the Governor in Council the power to amend, by regulation, proposed Schedule 5 to implement a change to the liability limits set out in and in accordance with the convention. This results in the set limits of liability being kept up to date without the need to enact amending legislation each time they are changed.

Proposed section 51 re-enacts current section 51 and also provides for the liability of the owner of a ship in relation to preventive measures provided for in the convention.

Proposed section 52 gives the Admiralty Court exclusive jurisdiction in relation to any matter relating to the constitution and distribution of a limitation fund under the Civil Liability Convention. It also establishes the procedure for limiting liability under the convention.

Proposed section 53 re-enacts the current powers and procedures of the Admiralty Court (current section 58(5)) with regard to a limitation fund established under the Civil Liability Convention.

Proposed section 54 creates an obligation on the person constituting the limitation fund to provide appropriate notices.

Proposed section 55 re-enacts and updates the current provision (section 60) that implements the requirements under Article VII of the Civil Liability Convention for ships carrying oil in bulk to carry and produce a certificate of insurance or financial security.

Proposed section 56 re-enacts the current provision (section 61) concerning the issuance of a certificate of insurance or financial security and the power of the minister to refuse to issue a certificate. It also adds a power for the minister to revoke a certificate.

b. Fund Convention
(clause 11; proposed sections 57–62)

Proposed section 57 gives the force of law in Canada to the articles of the Fund Convention set out in proposed Schedule 6. Proposed section 58 applies the Fund Convention to Canada as a Contracting State.

Proposed section 59 allows the Governor in Council to amend, by regulation, the limits of liability set out in the convention. This precludes the need for amending legislation to keep the limits of liability up to date.

Proposed section 60 re-enacts the current provision (section 76(7)) regarding the meaning of "associated persons" for purposes of the Fund Convention.

Proposed section 61 re-enacts the current provision (section 72) that implements the requirement for Contracting States to give legal capacity to the International Fund and its Director.

Proposed section 62 re-enacts the current provision (section 73) that makes the International Fund a party to proceedings and establishes the method of service of documents on the International Fund.

c. Supplementary Fund Protocol (clause 11; proposed sections 63–68)

The Supplementary Fund Protocol provides an additional tier of compensation for damages resulting from the spill of persistent oil (mainly crude oil) from tankers, to the International Oil Pollution Compensation Fund, of which Canada has been a member since 1989. According to Transport Canada officials, acceding to this convention will increase the current level of compensation for oil pollution damage caused by tankers in Canada from about $405 million to $1.5 billion per incident.

Proposed section 63 gives the force of law in Canada to the articles of the Supplementary Fund Protocol set out in proposed Schedule 7. Proposed section 64 makes Canada a contracting state for purposes of the Supplementary Fund Protocol.

Proposed section 65 enables the Governor in Council to amend, by regulation, proposed Schedule 7 to effect a change in the limits of liability in accordance with the Supplementary Fund Protocol. This keeps the limits of liability set out in the proposed schedule up to date without requiring amending legislation.

Proposed section 66 re-enacts the current provision (section 76(7)) that clarifies the meaning of "associated persons" for purposes of the Supplementary Fund Protocol.

Proposed section 67 re-enacts the current provision (section 72) that implements the requirement for contracting states to give legal capacity to the Supplementary Fund and its director.

Proposed section 68 re-enacts the current provision (section 73) that makes the Supplementary Fund a party to proceedings and establishes the method by which documents may be served on the Supplementary Fund.

d. Bunkers Convention
(clause 11; proposed sections 69–73)

The Bunkers Convention deals with oil pollution from the bunkers of all ships other than tankers. Bunker fuel is considered to be any fuel used in the propulsion and operation of the ship and is carried on all motorized vessels. As a result, it is more frequently involved in pollution incidents than spills from oil tankers. Departmental officials point out that ratification of this convention will enable Canada to rely on the compulsory insurance provisions introduced in the convention as a means of ensuring that the shipowner has the necessary coverage in the event of a bunker oil spill.

Proposed section 69 gives the force of law in Canada to the articles of the Bunkers Convention as set out in proposed Schedule 8. Proposed section 70 makes Canada a state party for purposes of the convention and makes the minister of Transport the appropriate authority for the issuance of certificates in accordance with Article 7 of the convention.

Proposed section 71 provides for the liability of the owner of the ship in relation to preventive measures covered by the convention.

Proposed section 72 applies Part 3 of the Act to all claims arising under the Bunkers Convention.

Proposed section 73 implements the requirement under Article 7 of the Bunkers Convention for ships having 1,000 gross tonnage or more to carry and produce a certificate of insurance or financial security.

Proposed section 74 implements the Bunkers Convention in Canada in terms of the issuance and refusal to issue certificates of insurance or financial security. It also permits the minister to revoke a certificate should the owner of the ship no longer meet obligations to maintain the appropriate amount of insurance or financial security. In addition, it provides for the designation of a person who can act in the name of the minister.

2. Division 2 – Liability Not Covered by Division 1
(clause 11; proposed sections 75–78)

Proposed section 75 defines a number of terms for the purposes of Division 2 of proposed Part 6, for example, “discharge,” “oil pollution damage,” and “pollutant.”

Proposed section 76 re-enacts the current geographical application of pollution damage (currently section 48(1)) but limits the application of Division 2 to those types of pollution damage not covered by Division 1 (i.e., International Conventions).

Proposed section 77 re-enacts current section 51 regarding the liability of the owner of a ship covered by Division 2.

Proposed section 78 applies Part 3 of the Act to all claims arising under Division 2.

3. Division 3 – General Provisions
(clause 11; proposed sections 79–90)

Division 3 of proposed Part 6 generally re-enacts, with appropriate modifications, a number of provisions currently found in the *Marine Liability Act*, as shown in Table 1:

Table 1 – Proposed Sections in Proposed Part 6, Division 3, of the *Marine Liability Act* and Equivalent Sections in the Current Act

Proposed Section	Current Section Equivalent
79	52
80	63
81 This new provision sets out the circumstances under which foreign judgments would apply.	–
82	64
83	65
84	66
85	67
86	68
87	69
88	70
89	71
90 Proposed section 90 enumerates a number of matters in respect of which regulations may be made.	102

D. Proposed Part 7 – Ship-source Oil Pollution Fund
(clause 11; proposed sections 91–125)

Clause 11 repeals all of the current Part 7 of the *Marine Liability Act* and replaces it with a new Part 7 that re-enacts the current provisions of Part 6 creating and governing the Ship-source Oil Pollution Fund. The relevant sections are also amended to take into account the new structure of proposed Part 6 as well as the implementation of the Supplementary Fund Protocol (proposed Schedule 7) and the Bunkers Convention (proposed Schedule 8). A number of other amendments are also made to enhance the governance of the Ship-source Oil Pollution Fund.

Table 2 contains references to the proposed sections in Part 7 and those which they are generally re-enacting (i.e., current section equivalent), along with notations regarding notable modifications that are being made.

Table 2 – Proposed Sections in Proposed Part 7 of the *Marine Liability Act* and Equivalent Sections in the Current Act

Proposed Section	Current Section Equivalent
91	47
92	77
93	78
94 Proposed section 94 re-enacts current section 79 but with a provision added with respect to the continuation in office of the Ship-source Oil Pollution Fund administrator.	79
95	83
96 This new provision sets out the resignation process for the administrator and the deputy administrator.	–
97 Proposed section 97 re-enacts current section 80 but extends its application to include the deputy administrator.	80
98 Proposed section 98 re-enacts current section 82 but extends its application to include the deputy administrator.	82
99 Proposed section 99 re-enacts current section 83(3) but with the addition of a new provision that allows the administrator to assign duties and functions to the deputy administrator.	83(3)
100	81

Proposed Section	Current Section Equivalent
101 Proposed section 101 re-enacts the provision that establishes the liability of the Ship-source Oil Pollution Fund but adds appropriate references to proposed Part 6 and the international conventions.	84, 49(2), 49(3)
102 Proposed section 102 re-enacts current section 53 but modifies it, with appropriate references to the sections in proposed Part 6 and the international conventions.	53
103 Proposed section 103 re-enacts current section 85 but modifies it, with the appropriate references to the sections in proposed Part 6 and the international conventions.	85
104 Proposed section 104 re-enacts certain provisions in current section 48 but with modifications to exclude claims outside Canada.	48(2), 48(3)
105	86
106 Proposed section 106 re-enacts current section 87 but modifies it, with the appropriate references to the sections in proposed Part 6 and the international conventions.	87
107	88
108	89
109 Proposed section 109 re-enacts current section 90 but modifies it, with the appropriate references to the sections in proposed Part 6 and the international conventions.	90
110	91
111	92
112 Proposed section 112 re-enacts current section 93 but amends it to reflect the inclusion of the Supplementary Fund Protocol, imposing levies on shipments of oil in bulk and stipulating when they are payable.	93
113	94
114	95
115	99
116 Proposed section 116 re-enacts current section 101 but modifies it, with appropriate references to the sections in proposed Part 6 and the international conventions.	101

Proposed Section	Current Section Equivalent
117 Proposed section 117 re-enacts current section 76 but also amends it to add certain requirements with regard to the Supplementary Fund and a requirement for the administrator to file a report with the minister.	76
118	97
119	98
120 This new provision imposes responsibilities on the administrator to maintain books of accounts and also to safeguard the assets of the Ship-source Oil Pollution Fund.	–
121 Proposed section 121 re-enacts current section 100 but adds a requirement that the annual report be submitted to the minister no later than three months after the end of the fiscal year; it further adds a requirement for the report to contain audited financial statements.	100
122 This new provision imposes an obligation on the administrator to cause a special examination of the operations of the Ship-source Oil Pollution Fund to take place at least once every five years based on a plan developed by an appointed independent examiner. As well, either the Governor in Council or the minister may require an examination at any time.	–
123 This new provision sets out the process for the report by the examiner who conducted the special examination.	–
124 This new provision sets out the rights of the examiner to information.	–
125 Proposed section 125 re-enacts the regulation-making powers of the Governor in Council currently set out in section 96 respecting the Ship-source Oil Pollution Fund and adds a reference to the administrator in paragraph (*c*).	96

E. Proposed Part 8 – General Provisions (clauses 11–13; proposed sections 126–142)

1. Administration and Enforcement (clause 11; proposed sections 126–130)

Clause 11 repeals the current Part 8 of the *Marine Liability Act* and introduces a new Part 8. Proposed section 126 authorizes the minister to designate officers who are responsible for the administration of the Act and provides that designated officers are not personally liable for anything they do or omit to do in good faith under the Act.

Proposed section 127 sets out the liability of the Crown in certain cases.

Proposed section 128 sets out the powers of a designated officer and imposes a duty on the master of the ship and other persons on board to assist.

Proposed section 129 sets out the powers of a designated officer to issue a detention order and the procedure to be followed with respect to a ship that he or she believes, on reasonable grounds, has not complied with the requisite insurance or financial guarantee requirements. It describes the serving of the notice of detention, the contents of the notice, a revocation of a detention order, the duty of persons empowered to give clearance, the prohibition against moving a detained ship, the liability for expenses, and the return of security.

Proposed section 130 permits the movement of a detained ship upon application to the minister.

2. Offences (clause 11; proposed sections 131–138)

Proposed section 131 re-enacts current section 103 and also provides for a fine of up to $100,000 for designated offences under the Act that are listed in the provision.

Proposed section 132 re-enacts current section 104 and sets out a number of offences relating to the Ship-source Oil Pollution Fund.

Proposed section 133 re-enacts section 105, setting out the jurisdiction of courts in Canada in relation to offences under the Act.

Proposed section 134 sets out the requisite proof to establish that a ship has committed an offence under the Act. Proposed section 135 sets out the limitation period for prosecuting offences under the Act.

Proposed section 136 sets out the requirements in order for the minister to apply to a court of competent jurisdiction for an order authorizing him or her to sell a ship that has been detained under proposed section 129. Proposed section 137 sets out the procedure to be followed by the minister in selling the ship, and proposed section 138 specifies how the proceeds of the sale are to be applied to satisfy claims.

3. Maritime Lien
(clause 12; proposed section 139)

Proposed section 139 creates a maritime lien[2] against foreign vessels as security for unpaid invoices to ship suppliers operating in Canada. Departmental sources point out that maritime liens currently exist in Canada with respect to crew wages, collisions, salvage and port charges but not for ship suppliers. They note that this is contrary to the situation in the United States, where legislation specifically grants a US-based ship supplier a maritime lien on a vessel for unpaid bills, thereby giving an advantage to US ship suppliers over their Canadian competitors who may be supplying the same vessel when it calls at a Canadian port. Under the current arrangement, a US lien would be recognized in Canadian courts ahead of any mortgages or similar claims by Canadian ship suppliers, who are treated as unsecured creditors.

Under proposed section 139(2), a person carrying on business in Canada has a maritime lien against a foreign vessel for claims that arise:

- **in respect of goods, materials or services wherever supplied to a foreign vessel for its operation or maintenance, including stevedoring and lighterage (proposed section 139(2)(*a*)); or**
- **out of a contract relating to the repair or equipping of a foreign vessel (proposed section 139(2)(*b*)).**

The House of Commons Standing Committee on Transport, Infrastructure and Communities added proposed section 139(2.1) to the Act. This section provides that, subject to section 251 of the *Canada Shipping Act, 2001* (regarding an action *in rem* for a claim in respect of stevedoring for a bare-boat charterer), for the purposes of section 139(2)(*a*), with respect to stevedoring or lighterage, the services must have been provided at the request of the owner of the foreign vessel or a person acting on the owner's behalf.

(2) A maritime lien is a secured claim against a ship in respect of services provided to the vessel or damages done by it. It arises without notice, registration or other formalities, at the time the services are rendered or damages are done. It travels with the ship, encumbering the title of subsequent owners or possessors and surviving the sale of the ship.

4. Limitation Period
(clause 12; proposed section 140)

Proposed section 140 creates a general limitation period of three years for all proceedings under Canadian maritime law that are not already covered by a limitation period in a federal statute.

5. Inconsistency
(clause 13; proposed section 141)

Proposed section 141 re-enacts current section 50, which provides that in the event of an inconsistency between the *Marine Liability Act* and the *Arctic Waters Pollution Prevention Act*, the provisions of the *Marine Liability Act* prevail.

6. Coming Into Force of Proposed Section 45
(clause 13; proposed section 142)

Proposed section 142 provides that section 45 (concerning the Hamburg Rules[3]) comes into force on a day to be fixed by order of the Governor in Council.

F. Amendments to the Schedules
(clauses 14–17)

Clause 14 amends Schedule 1 by amending the sections referenced after the initial heading, and clause 15 adds Part 3 to Schedule 1. Clause 16 amends Schedule 2 by amending the sections referenced after the initial heading. Clause 17 adds proposed schedules 5 to 8 to the Act.

G. Amendment to the *Federal Courts Act*
(clause 18)

Clause 18 modifies the English version of section 43(8) of the *Federal Courts Act* to harmonize it with the French version to clarify that a legal action against one ship may be taken against a second ship if it is owned by the same beneficial owner.

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(3) The Hamburg Rules are the rules set out in the United Nations *Convention on the Carriage of Goods by Sea, 1978*, as presented in Schedule 4 of the *Marine Liability Act*.

H. Transitional Provisions and Consequential Amendments (clauses 19–23)

The bill provides for a couple of transitional provisions (clauses 19 and 20), a consequential amendment to the *Arctic Waters Pollution Prevention Act* and a couple of consequential amendments to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*.

I. Coming Into Force (clause 24)

Clause 24 provides for the coming into force of the bill.

COMMENTARY

It appears that, to date, there have been no comments about the bill in the press.

The Standing Senate Committee on Transport and Communications reported the bill back to the Senate without amendments, but with observations. The committee noted that some stakeholders were quite concerned with the provisions in Bill C-7 respecting maritime liens against foreign vessels (clause 12) and marine adventure tourism activities (clause 9). Stakeholders recommended that the maritime lien provisions require a contract between a Canadian ship supplier and the foreign shipowner or a person authorized by the shipowner. With respect to marine adventure tourism activities, a common recommendation from representatives of the legal community was that, in order for an operator to be excluded from Part 4 of the *Marine Liability Act*, the operator should be required to provide a seaworthy vessel, properly crewed, at the commencement of the voyage. Representatives of the legal community believed that adding this condition to the legislation would prevent operators of unsafe vessels from using a waiver to eliminate their liability to passengers in cases of an accident. Having heard these concerns, the committee stated that it would monitor the impact of these provisions and be prepared to seek an order of reference to review provisions relating to maritime lien and marine adventure tourism activities, should it be necessary.