

THE CANADIAN MARITIME LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DE DROIT MARITIME

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**Submissions of the Canadian Maritime Law Association Respecting
The Proposed Repeal of s.45 of the Marine Liability Act**

THE CANADIAN MARITIME LAW ASSOCIATION

The Canadian Maritime Law Association (CMLA) was founded in 1951 by Canadians interested in Canadian and international maritime law. Our mandate is to promote effective modern maritime laws within Canada and internationally. CMLA is Canada's representative association to the Comité Maritime International, known as CMI, a private non-governmental international organization founded in Belgium in 1897, whose main purpose is the promotion of effective and uniform international maritime law.

CMLA has two groups of members - individuals and constituent. Our individual members represent all facets of the Canadian Marine industry including maritime lawyers, members of the marine insurance community, marine average adjusters, ship operators and suppliers and others. Our constituent members are associations with particular but varying interests in maritime matters. They include: The Association of Average Adjusters of Canada, The Association of Maritime Arbitrators of Canada, The Canadian Bar Association, The Canadian Board of Marine Underwriters, Canadian International Freight Forwarders Association Inc., The Canadian Merchant Service Guild, the Canadian Shipowners Association, Chamber of Shipping of British Columbia, Marine Insurance Association of British Columbia, The Company of Master Mariners of Canada and The Shipping Federation of Canada.

CMLA has a very broad constituency. It is not a lobby group for any particular interests.

Executive Summary

The CMLA urges Transport Canada to recommend to the Government, through the Minister of Transport, to cause Parliament, either in the House of Commons or in the Senate, to adopt a Resolution that s.45 of the Marine Liability Act not be repealed pursuant to the Statutes Repeal Act. The automatic repeal of s.45 of the Marine Liability Act would cause interpretation difficulties with respect to other parts of the Act and would undermine s.44 of the Act which helps to ensure Canadian laws in relation to carriage of goods by water are current and effective.

Submission

In June of 2008, Parliament enacted the Statutes Repeal Act, (S.C.2008, c.20) which causes the automatic repeal of any statutory provision not brought into force within nine years of receiving Royal assent. This Act also provides that the Minister of Justice is to report to Parliament every calendar year listing the provisions that have not been brought into force within the previous nine years. Those provisions are automatically repealed unless the House of Commons or the Senate adopts a resolution otherwise.

The Marine Liability Act (S.C.2001, c.6) (the “MLA”) was enacted to codify various regimes of marine liability in relation to personal injury and fatalities, carriage of passengers, carriage of goods, and marine pollution. Part 5 of the Act governs carriage of goods by water both internationally and domestically. In relation to carriage of goods by water, section 43 of the MLA enacts the “International Convention for the Unification of Certain Rules of Law relating to Bills of Lading” concluded in 1924 and amended in 1968 (called the “Hague-Visby Rules”). This is a comprehensive set of rules governing the responsibilities and liabilities of parties to a contract of carriage by water. A notable and unique aspect of Part 5 of the MLA is that sections 44 and 45 contemplate the possible future replacement of the “Hague-Visby Rules” with the “United Nations Convention on the Carriage of Goods by Sea” (the “Hamburg Rules”) which was concluded in 1978. Section 44 of the MLA requires that the Minister of Transport report to Parliament every five years with a recommendation as to whether the Hague-Visby Rules should be replaced by the Hamburg Rules. Section 45, which is the provision subject to automatic repeal pursuant to the Statutes Repeal Act, would enact the Hamburg Rules if it was in force.

The MLA also contains references to the Hamburg Rules in section 41, which contains definitions, and section 46, which addresses jurisdiction and arbitration clauses. Additionally, the Hamburg Rules are attached as Schedule 4 to the MLA.

We are concerned that the automatic repeal of section 45 of the MLA will cause difficulties in interpreting and understanding the Act. At the present time, with the inclusion of section 45, Part 5 of the MLA is clear and unambiguous and the references to the Hamburg Rules in other parts of the Act cause no interpretation difficulties. However, if s.45 is repealed and thereby removed from the MLA there is an immediate issue as to the meaning and purpose of the references to the Hamburg Rules in other parts of the Act. For this reason, s.45 should not be allowed to be automatically repealed.

Further, repeal of s.45 would undermine and remove the purpose of s.44 of the MLA but it would not remove the statutory obligation on the Minister of Transport to report to Parliament and advise whether the Hague-Visby Rules should be replaced by the Hamburg Rules. If section 45 is automatically repealed, pursuant to section 44, the Minister of Transport will still be required to make a report and recommendation to Parliament in 2015 on the replacement of the Hague-Visby Rules. There would, however, be no purpose to this report and recommendation if s.45 is repealed.

Section 44 of the MLA serves a useful purpose in that it ensures Canadian laws relating to the carriage of goods by water are current and effective. This is reflected in the report of the Minister of Transport dated December 2010 where it is stated:

“Prior to the 2015 review, Transport Canada, in consultation with interested stakeholders, will undertake a thorough analysis of the complete body of law pertaining to the carriage of goods by water in Canada and make recommendations to modernize it with a view of maintaining Canada’s commitment to uniformity of international law, in particular with the law of our major trading partners as it may develop in the future during the next review period.”

Accordingly, the Canadian Maritime Law Association submits that s.45 of the Marine Liability Act should not be allowed to be automatically repealed pursuant to the provisions of the Statutes Repeal Act. We further urge the Minister of Transport to take the appropriate steps to have enacted a resolution to prevent the automatic repeal of s.45 of the Marine Liability Act.

Respectfully submitted this 21st day of November 2011

CANADIAN MARITIME LAW ASSOCIATION



Christopher J. Giaschi

President