

## **SELECT ISSUES RELATING TO PLEASURE CRAFT**

### **Certification, Licencing and Limitation of Liability**

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Presented to

The Marine Insurance Association of British Columbia  
at Vancouver, British Columbia

December 10, 2002

#### **PLEASURE CRAFT - CERTIFICATION AND LICENCING**

##### **What Constitutes a "Pleasure Craft"**

The Canada Shipping Act differentiates between commercial vessels and pleasure craft. Generally, commercial vessels have to satisfy a much more rigorous regulatory process in relation to construction, inspection and operation than do pleasure craft. It is therefore important to distinguish between pleasure craft and other vessels. The definition of pleasure craft in the Canada Shipping Act provides some help in making this distinction. Pleasure craft is defined as "a vessel used by an individual for pleasure and not for a commercial purpose". The obvious and most important aspect of this definition is that it is purposive in nature. The classification of a vessel does not depend upon objective characteristics such as size or horsepower rather it depends simply on the purpose for which the vessel is used.

This general definition presents problems of interpretation and, for this reason, Transport Canada has provided guidelines to clarify what types of vessels will be considered pleasure craft. Specifically, Ship Safety Bulletin 14/2000, dated 20 November 2000 states that a pleasure vessel is "a vessel used by individuals for their pleasure, recreational or sporting use and not for any commercial purpose...such as carrying passengers". Bulletin 14/2000 also provides various situational examples which the Department considers to be pleasure use. These include rented vessels used for recreational purposes and vessels used in power boat or sailing schools. Additionally, the Department considers the following examples to be pleasure use:

- a) Boat used to transport person or goods as a favour (no remuneration and no commercial purpose whatsoever).
- b) Boat used as an essential means of transportation for one person/persons (no remuneration).
- c) Boats provided with a rented cottage.
- d) Boat used for subsistence activities, e.g. fishing and hunting.
- e) Safety craft operated by yacht club with skipper and "spotter", e.g. club launch and standby vessels for races.
- f) Privately-owned and used recreational craft.
- g) Privately-owned yacht used to entertain owner's guests.

- h) Outboard motorboat used exclusively for pleasure at a cottage.
- i) Cabin cruiser, occasionally rented out by owner to third parties for them to use for weekend or weeks to cruise on their own.
- j) Pontoon houseboat rented out by owner for "U-Drive" cruising/camping vacations.
- k) Sailboat, bareboat (no crew) chartered/rented for a period of time.
- l) Any vessel converted to private/personal use without commercial component.
- m) "U-drive" rentals that are operated/navigated by individuals renting the vessels.

Marine Safety Bulletin TP13699E entitled "Guidelines on Non-Passenger Bare-Boat Charter Parties" is also of some assistance in identifying whether a vessel is being used for pleasure. In this Bulletin Transport Canada makes it clear that if the owner is receiving any form of remuneration from persons being carried on board the vessel then the persons being carried are "passengers" and the vessel is not being used for pleasure. The Department allows, however, that a simple sharing of expenses will not convert a pleasure purpose to a commercial purpose.

### **Competency Requirements**

The Competency of Operators of Pleasure Craft Regulations, SOR 99-53, passed pursuant to the Canada Shipping Act establish the certification requirements for operators of motorized pleasure craft. Prior to the implementation of these regulations there were no certification requirements and, for this reason, these certification requirements are being phased in over a ten year period. The table below summarizes the effect of the regulations.

Operators	Date by which certification required
All operators born after April 1, 1983	September 15, 1999
All operators of craft under 4 m in length, including personal watercraft	September 15, 2002
All operators	September 15, 2009

These certification requirements apply in all areas except the Northwest and Nunavut Territories. They also apply to non-residents of Canada whose pleasure craft remain in Canada for more than 45 consecutive days. Such non-residents can satisfy the certification requirement by providing proof they hold an equivalent certificate issued by their own state.

It should be noted that the way in the certification regulations are implemented over time has a rather bizarre result in that as of 15 September 2002 all operators of pleasure craft under 4 metres must have certificates whereas operators of larger (and arguably more complicated and

dangerous) pleasure craft will not require certificates until 15 September 2009. This means, for example, that the owner of a large yacht will not require a certificate to operate his/her yacht but will require certificates to operate any motorized dinghy they may have. Such a result is difficult to understand.

### **Rented Vessels**

The regulations provide for special rules in respect of rented vessels. A pleasure craft can be rented to a person who does not hold a certificate provided there is included in a "rental boat safety checklist" a statement that the renter has been given information relating to the operation of the craft, the principal boating safety rules, and the geographic features and hazards in the area. The Coast Guard has published a "Rental Boat Safety Checklist Standard", which is available on-line, to assist boat rental companies in preparing an appropriate "rental boat safety checklist".

### **Crewing Requirements**

The Crewing Regulations under the Canada Shipping Act establish special crewing requirements for pleasure craft of 20 metres or more in length. Pursuant to s. 59 of these regulations, such pleasure craft shall have on board and employ both a master and a person in charge of the deck watch who holds a radio operators certificate. In addition, where the pleasure craft is more than 100 tons, the person in charge of the deck watch must also hold a first mate limited certificate.

### **Age Restrictions**

The Boating Restriction Regulations legislate various age restrictions to the operation of pleasure craft. The restrictions are as follows:

Operator	Restrictions
Under 12 years of age and unsupervised	Cannot operate a vessel over 10 hp.
Between 12 and under 16 years of age and unsupervised	Cannot operate a vessel over 40hp.
Under 16 years of age	Cannot operate Personal Water Craft (ie. Jet ski)
16 years of age or over	No restrictions

### **Licensing and Registration**

Pursuant to the Small Vessel Regulations all vessels of less than 15 gross tons and powered by an engine of 10 hp or more must be licenced and the licence number must be displayed on the

vessel. All vessels of more than 15 gross tons must be registered under the Canada Shipping Act, a significantly more complex process than licencing.

### **PLEASURE CRAFT - LIMITATION OF LIABILITY**

Limitation of liability is governed by Part 3 of the Marine Liabilities Act ("MLA") which implements the 1976 International Convention on Limitation of Liability for Maritime Claims and the 1996 Protocol but with Canadian amendments and limits. These provisions originally became part of Canadian law on August 10, 1998 when they were enacted as amendments to Part IX of the Canada Shipping Act. Their appearance in the MLA does not signal any change in the law. These provisions were moved to the MLA for purposes of convenience, ie. so that all provisions relating to liability would be in one statute.

The limitation of liability provisions contained in Part 3 of the MLA apply to all vessels, including pleasure craft.

#### **Persons Entitled to Limit**

The persons entitled to limit liability are prescribed by Article 1 of the Convention. They are: the owner, charterer, manager and operator of seagoing ships and salvors. Article 1(4) extends the right to limit to employees and agents of such persons. Article 1(6) extends the benefits to liability insurers of persons entitled to limit.

The MLA further extends the list of persons entitled to limit their liability beyond that allowed in the Convention. Section 25(1)(b) of the MLA extends the right to limit to owners, charterers, managers and operators of all ships and not just "seagoing" ships and further to any person with an interest in or possession of a ship. With these amendments the right to limit applies to pleasure craft on lakes and rivers as well as "seagoing" ships.

#### **Claims Subject to Limitation**

Article 2 of the Convention sets out the claims that are subject to limitation of liability. The list of claims in article 2 is very broad and includes: claims for loss of life or personal injury, claims for loss of or damage to property, claims for consequential losses, claims for delay in the carriage of cargo, and passengers and various other claims.

Article 3 sets out the claims excepted from limitation. The excepted claims are: claims for salvage, claims for oil pollution damage governed by the 1969 Convention on Civil Liability for Oil Pollution, claims for nuclear damage, and claims by employees if the applicable law does not permit limitation. Ordinarily, none of these would apply to pleasure craft with the possible exception of claims for salvage.

#### **Conduct Barring Limitation**

Article 4 sets out the circumstances under which a person will lose their right to limit. These circumstances are very limited. In order to prevent a defendant from limiting his liability the plaintiff must prove that the loss resulted from the personal act or omission of the defendant "committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". This is a very strict test and is often referred to as establishing an

"unbreakable limitation". To the knowledge of the author, there has never been a case where Article 4 has successfully been invoked and the shipowner has lost the right to limit.

However, this does not mean that the limits cannot be broken. Particularly in the pleasure craft context, it is not difficult to imagine a scenario that might result in the breaking of the limitation. For example, an owner/operator of a pleasure craft who operates his/her vessel while intoxicated and causes damage thereby may well find that a court considers such conduct meets the test necessary to break limitation.

### The Limits

The general limits of liability are established by Article 6 of the Convention and by section 28 of the MLA. Section 28 of the MLA sets out special Canadian limits for vessels of less than 300 gross tons, which would include almost all pleasure craft. The limits are \$1 million for claims for loss of life or personal injury and \$500,000.00 for all other claims.

For vessels of more than 300 gross tons the limitation amount is governed by the Convention. The table below summarizes the limits applicable to all claims with the exception of claims by passengers on vessels operated for a commercial or public purpose.

### Limitation Amounts

(SDR amounts are converted to Canadian dollars at a rate of 1 SDR= C\$2)

<b>Ship's Gross Tonnage</b>	<b>Claims For Loss of Life or Personal Injury (except passengers or persons carried on a ship operated for a commercial or public purpose)</b>	<b>Other Claims (except passengers or persons carried on a ship operated for a commercial or public purpose)</b>
Less than 300	C\$1 million	C\$500,000
300 - 2,000	2,000,000 SDR (approx. C\$4,000,000)	1,000,000 SDR (C\$2,000,000)
2001 - 30,000	2 million SDR (C\$4 million) plus 800 SDR (C\$1,600) for each ton over 2000	1 million SDR (C\$2 million) plus 400 SDR (C\$800) for each ton over 2000
30,001 - 70,000	24,400,000 SDR (C\$48,800,000) plus 600 SDR (C\$1,200) for each ton over 30,000	12,200,000 SDR (C\$24,400,000) plus 300 SDR (C\$600) for each ton over 30,000
over 70,000	48,400,000 SDR (C\$96,800,000) plus	24,200,000 SDR (C\$48,400,000) plus

	400 SDR (C\$800) for each ton over 70,000	200 SDR (C\$400) for each ton over 70,000
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The above limitations apply to the aggregate of all claims arising on any distinct occasion.

It should be noted that pursuant to Article 6(2) where the limitation amount applicable to personal injury claims is insufficient to satisfy all such claims the amount applicable to property damage claims shall be made available to satisfy the personal injury claims.

Pursuant to Article 6(4) the limits of liability applicable to a salvor not operating from a ship are to be calculated according to a tonnage of 1,500 tons.

### **Limits of Liability for Fatalities and Personal Injuries to Passengers**

Pursuant to Article 7 of the Convention and section 29 of the MLA there are special limits of liability for:

- claims by passengers carried under a contract of carriage;
- passengers accompanying goods that are carried under a contract of carriage; and
- persons carried on board ships that are operated for a commercial or public purpose.

In such cases the limitation amount is the greater of 2,000,000 SDR (C\$4,000,000) and 175,000 SDR (C\$350,000) multiplied by the number of passengers on board the ship. However, these limits do not apply to vessels operated solely for pleasure purposes.