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Important Changes to Canada's Transportation Safety Board Regulations (the "Regulations")

The Government of Canada recently published new *Regulations* dealing with the mandatory reporting and investigations of marine "occurrences" in Canada or involving a vessel registered or licensed in Canada.

Part 1 – Reporting of Occurrences (coming into force on July 1, 2014)

Marine occurrences that must be reported to the Canadian authorities include death or serious injury sustained as a result of boarding, being onboard, falling overboard or coming into direct contact with ship, persons overboard, sinking, collision or risk of collision, foulings, shifting of cargo or cargo overboard, or a release of dangerous goods.

Marine occurrences must be reported as soon as possible and by the quickest means available by the operator of the ship with direct knowledge of the occurrence, whether they are the owner, master, pilot, crew member or harbour master. Operators also include the operator (whether that is the owner or master) of a ship being towed.

Reports must contain the information set out in the *Regulations* including but not limited to vessel identification details, the technical specifications of the vessel and a description of the incident. Importantly, if the vessel is equipped with a voyage data recorder or a simplified voyage data recorder that the report must set out the type of recorder, including its make and model and any action taken or planned to be taken to save the recorder's data.

Part 2 – Investigations of Occurrences (in force as of March 12, 2014)

Canadian law allows an investigator to require that a person give a statement under oath or solemn affirmation. The *Regulations* now set out how interviews by Canadian authorities are to be conducted and that they are to be held in private and are to be recorded. The person being interviewed can choose one person to accompany them during the interview, as long as this individual is also not a witness. Although the *Regulations* provide that the accompanying person can be excluded if they disrupt the interview, legal counsel can assist the witness by ensuring that he or she is treated fairly, that the interviewer's questions are clear, that only questions relevant to the investigation are asked, that any answers are also clear and that any ambiguities are dealt with before the interview is concluded. Legal counsel also ensures that the witness is fully informed of his or her obligations and rights in providing evidence.

Although Canadian law provides that such statements are privileged, and cannot be produced to third parties, the privilege provided is not absolute. In larger, more serious marine occurrences Canadian authorities have attempted to obtain statements in the conduct of their investigations by seeking a court order for production of the same, without notice to the interviewee.

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