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Canada's Ship-source Oil Pollution Fund (SOPF)

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Introduction

New oil spill legislation became Part XX of the Canada Shipping Act (CSA), which was passed by the House of Commons on March 1, 1971, by the Senate on March 30, 1971, and, with one exception, became part of Canadian Law on June 30, 1971.

Predating the entry into force of the 1969 Civil Liability Convention by more than four years, and of the 1971 Fund Convention by more than seven years, the new Part XX was one of the first national comprehensive regimes for oil spill liability in the western world.

The principle elements of the new Part XX were as follows:

- Establishing the liability of shipowners to be responsible for costs and damages for a discharge of oil.
- Allowing the shipowner, in certain circumstances, to limit his liability.
- Creating a new fund, the Maritime Pollution Claims Fund (MPCF), to be available for claims in excess of the shipowner's limit of liability.
- Giving the Minister of Transport the power to move or to dispose of any ship and cargo discharging or likely to discharge oil.

To finance the MPCF, a levy of 15 cents per metric ton on all oil shipments by sea entering Canada as well as movements of oil by water within Canada were paid into the fund and became payable for the first time on February 15, 1972. Payers into the MPCF included oil companies, power generating authorities, pulp and paper manufacturers, chemical plants and other heavy industries. The collection of the levy was suspended on September 1, 1976, when it was decided that there was sufficient money in the fund to meet any foreseeable claims. The MPCF was a special account in the Consolidated Revenue Fund of Canada and the Canadian Minister of Finance continued to credit interest to the fund at a rate fixed by the Governor-in-Council.

Canadian Compensation Regime

The SOPF came into force on April 24, 1989, by amendments to the *CSA*. The SOPF succeeded the MPCF. In 1989, the accumulated amount of \$149,618,850.24 in the MPCF was transferred to the SOPF.

The SOPF is a special account established in the accounts of Canada upon which interest is presently credited monthly by the Minister of Finance.

During the fiscal year commencing April 1, 2001, the Minister of Transport has the statutory power to impose a levy of 40.07 cents per metric tonne of “contributing oil” imported into or shipped from a place in Canada in bulk as cargo on a ship. The levy is indexed annually to the consumer price index.

No levy has been imposed since 1976.

The SOPF is liable to pay claims for oil pollution damage or anticipated damage at any place in Canada, or in Canadian waters including the exclusive economic zone of Canada, caused by the discharge of oil from a ship.

The SOPF is intended to pay claims regarding oil spills from all classes of ships. The SOPF is not limited to sea-going tankers or persistent oil, as is the 1992 IOPC Fund.

The SOPF is also intended to be available to provide additional compensation (a third layer) in the event that funds under the 1992 Civil Liability Convention (CLC) and the 1992 IOPC Fund Convention, with respect to spills in Canada from oil tankers, are insufficient to meet all established claims for compensation. (See Figure 1.)

During the fiscal year commencing April 1, 2001, the maximum liability of the SOPF is \$133,608,938.80 for all claims from one oil spill. This amount is indexed annually.

The classes of claims for which the SOPF may be liable include the following:

- claims for oil pollution damage;
- claims for costs and expenses of oil spill clean-up including the cost of preventive measures; and
- claims for oil pollution damage and clean-up costs where the identity of the ship that caused the discharge cannot be established (mystery spills).

A widely defined class of persons in the Canadian fishing industry may claim for loss of income caused by an oil spill from a ship.

The present statutory claims regime of Part 6 of the Marine Liability Act (MLA) – formerly in the CSA - on the principle that the **polluter should pay**, has as its cornerstones:

- all costs and expenses must be reasonable;
- all clean-up measures taken must be reasonable measures; and
- all costs and expenses must have actually been incurred.

SOPF: A Fund of Last Resort

The MLA makes the shipowner strictly liable for oil pollution damage caused by his ship, and for costs and expenses incurred by the Minister of Fisheries and Oceans and any other person in Canada for clean-up and preventive measures.

As provided in the MLA, in the first instance, a claimant can take action against a shipowner. The Administrator of the SOPF is a party by statute to any litigation in the Canadian courts commenced by a claimant against the shipowner, its guarantor, or the 1992 IOPC Fund. In such event, the extent of the SOPF's liability as a last resort is stipulated in Section 84 MLA.

The Administrator also has the power and authority to participate in any settlement of such litigation, and may make payments out of the SOPF as may be required by the terms of the settlement.

A response organization (RO) as defined in the CSA has no direct claim against the SOPF, but it can assert a claim for unsatisfied costs and expenses after exhausting its right of recovery against the shipowner.

SOPF: A Fund of First Resort

The SOPF can also be a fund of first resort for claimants, including the Federal Government.

As provided in the MLA, any person may file a claim with the Administrator of the SOPF respecting oil pollution loss or damage or costs and expenses, with one exception.

An RO, established under the CSA, has no direct claim against the SOPF.

The Administrator, as an independent authority, has a duty to investigate and assess claims filed against the SOPF. For these purposes, he has powers to summon witnesses and obtain documents.

The Administrator may either make an offer of compensation or decline the claim. An unsatisfied claimant may appeal the Administrator's decision to the Federal Court of Canada within 60 days.

When the Administrator pays a claim, he is subrogated to the rights of the claimant and is obligated to take all reasonable measures to recover the amount of compensation paid to claimants from the shipowner or any other person liable. As a consequence, the Administrator is empowered to commence an action *in rem* against the ship (or against the proceeds of sale, if the ship has been sold) to obtain security to protect the SOPF in the event that no other security is provided. The Administrator is entitled to obtain security either prior to or after receiving a claim, but the action can only be continued after the Administrator has paid claims and has become subrogated to the rights of the claimant.

As indicated above, the Administrator has a duty to take reasonable measures to recover from the owner of the ship, the IOPC Fund, or any other person, the compensation paid to claimants from the SOPF. This includes the right to prove a claim against the Shipowners' Limitation Fund set up under the 1992 CLC.

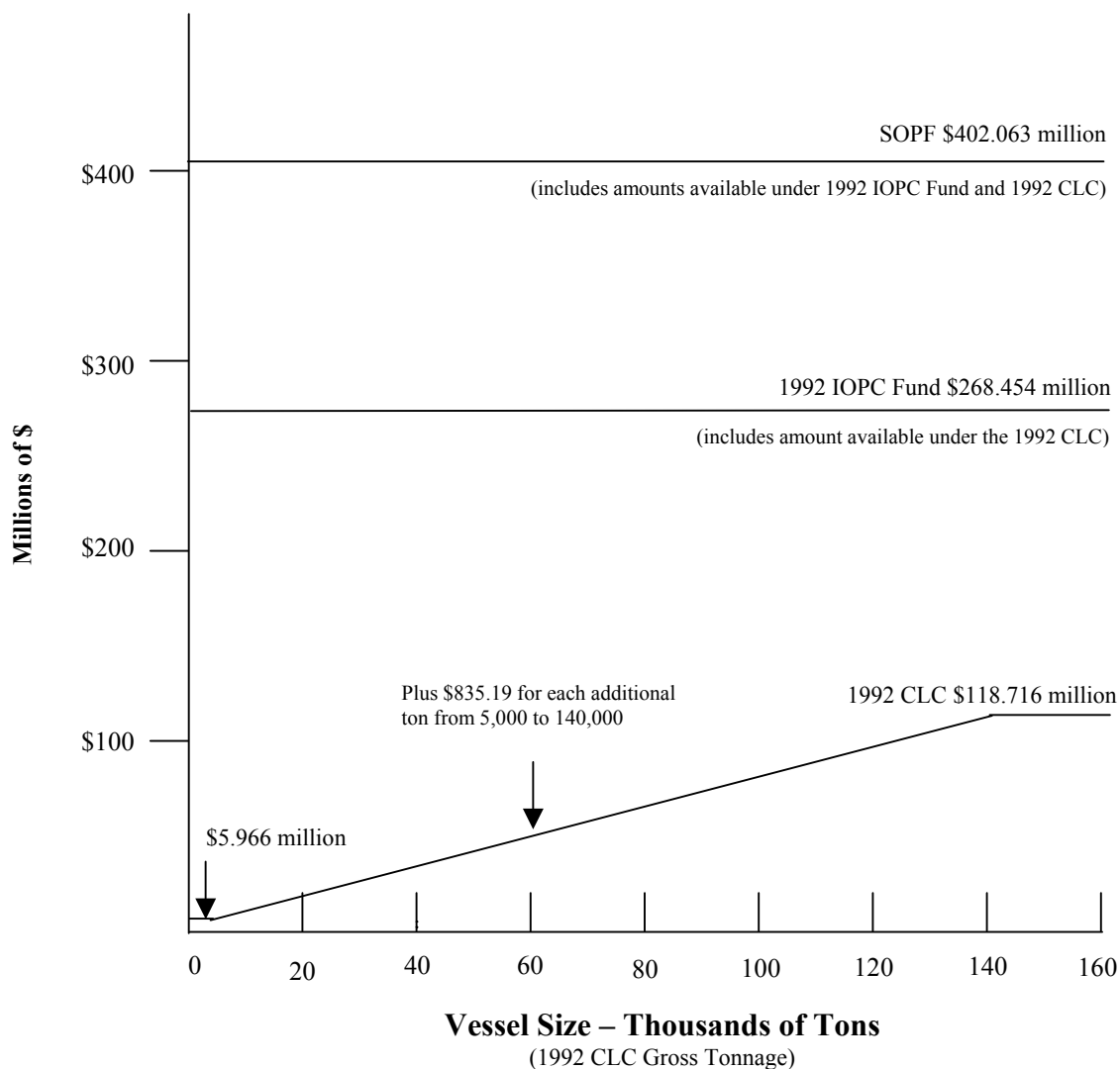
Responsibilities and Duties of the Administrator

The Administrator, appointed by the Cabinet:

- holds office during good behaviour and, as an independent authority, must investigate and assess all claims filed against the Ship-source Oil Pollution Fund (SOPF), subject to appeal to the Federal Court of Canada;
- prepares an annual report on the operations of the SOPF, which is laid before Parliament by the Minister of Transport;

- has the powers of a Commissioner under Part 1 of the Inquiries Act;
- may take recourse action against third parties to recover the amount paid out of the SOPF to a claimant and may also take action to obtain security, either prior to or after receiving a claim;
- becomes a party by statute to any proceedings commenced by a claimant against the owner of a ship, its insurer, or the International Oil Pollution Compensation (IOPC) Funds, as the case may be;
- has the responsibility under the MLA to direct payments out of the SOPF for all Canadian contributions to the IOPC Funds (such contributions are based on oil receipts in Canada reported by the Administrator to the Director of the IOPC Funds); and
- heads the Canadian delegation to meetings of the Executive Committee and the Assembly of the IOPC Funds.

Current Limits of Liability and Compensation for Oil Tanker Spills in Canada Based on the value of the SDR⁽¹⁾ at April 1, 2001



⁽¹⁾ The value of the SDR at April 1, 2001, was approximately \$1.98855. This actual value is reflected in Figure 1 above and in Appendix D. Elsewhere in the report, for convenience, calculations are based on the SDR having a nominal value of \$2.

Figure 1

Figure 1 shows the current limits of liability and compensation available under the 1992 CLC, the 1992 IOPC Fund Convention, and the SOPF for oil spills from oil tankers in Canada, including the territorial sea and the exclusive economic zone. Because of the SOPF, Canada has the extra cover over and above that available under the international Conventions.

Revision

N.B.: The above aggregate amount available under the 1992 CLC and 1992 IOPC Fund (\$268.454 million) should increase by approximately 50% (to 402.68 million) effective November 1, 2003. The SOPF amount of approximately \$134 million on top of that, would result in \$536.68 million being available for a tanker spill in Canada after November 1, 2003.