



# More than just big spills from tankers

**Anne Legars**  
Administrator, Ship-source Oil Pollution Fund

Being careful not to give the impression that it's an "open bar" on Ship-source Oil Pollution Fund (SOPF or the Fund) access, Anne Legars would like Canadians — especially those in the maritime industry and coastal communities — to know that the Fund is there for them when they need it. "As we approach the 30<sup>th</sup> anniversary of the SOPF, we want to highlight the relevancy of the Fund and help potential claimants understand the process of seeking compensation for a ship-source oil spill," said Legars, further noting that recent amendments stemming from Bill C-86 have clarified and strengthened a number of the Fund's capabilities. And, as Legars explains, "the Fund is for more than just big spills from tankers."

**BCSN:** *Anne, how did you come to be the Administrator for the SOPF? What sort of training do you have and what are some of the lessons you've learned during your career that you can apply to your current role?*

**AL:** Over the past 25 years, I have worked extensively on maritime, transportation, environment and trade files, issues and policies as a lawyer, a trade association representative, and head of organizations. I am a member of the Quebec Bar and a Certified Association Executive.

During the seven years I was a lawyer in private practice, I learned a number of lessons that I have used throughout the rest of my career. The experience I gained on the litigation side and moving through the court system has been invaluable. It taught me of the need to be rigorous and organized. Once you've been in the litigation system, you understand the 'black box of justice' and it becomes easier to work with it.

However, it is when I joined the Shipping Federation of Canada in 2000 that I

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discovered the true essence of maritime law. I gained a 360-degree view — from the development of international conventions, to their translation into domestic law and regulations, to compliance and enforcement, to the people on the ground who are just trying to understand what they have to do.

Another lesson I've learned throughout my career has been how necessary it is for the whole system to work together — to be as strong and supportive as you can be to allow for a well-functioning system.

All of these lessons learned inform my current position, from the recourse to the court system, to Canada's contribution to the work of the International Oil Pollution Compensation Funds (IOPC Funds) and their relevancy to my daily claims assessment work, to the need to develop easy-to-use tools for the claimants, to stronger collaboration with the Fund's partners and stakeholders.

**BCSN:** *Could you provide the broad strokes of the purpose of the SOPF?*

**AL:** The SOPF is a special-purpose account continued under Part 7 of the *Marine Liability Act* to facilitate the indemnification of claims for ship-source oil pollution in Canadian waters while protecting the taxpayer. Canada's compensation regime is based on the fundamental principle that the ship owner is primarily liable for oil pollution damage caused by the ship — that is, the polluter pays principle. It is available to pay for claims for oil pollution damage, clean-up operations or

other preventative measures caused by the discharge or anticipated discharge of persistent or non-persistent oil from all classes of ships on inland or coastal waters, and up to the limit of the Exclusive Economic Zone of Canada. Once compensation is paid to a claimant, the Administrator is obligated to take all reasonable measures to recover that payment from the ship owner or any other responsible party.

The Canadian Coast Guard has been the main claimant of the Fund but many people are unaware that the Fund is available to everyone involved in clean-up operations or preventative measures for an imminent threat of pollution. Claims can also be made by municipalities, provinces, marinas, fishermen, recreational boaters and even waterfront businesses. The Fund is not just about big spills from tankers or million-dollar claims; there are many smaller spills of persistent or non-persistent oils that require thousands of dollars in clean-up costs or caused property damage or losses of income which are eligible for compensation.

It's important for potential claimants to remember however, to keep track of relevant information and documentation in order for the Fund to process their claim.

**BCSN:** *Given that this is the 30<sup>th</sup> anniversary, could you provide some background on the evolution of the Fund?*

**AL:** The predecessor to the SOPF was the Maritime Pollution Claims Fund (MPCF) that was established in 1973 and was strictly

a domestic fund. The money in the original MPCF — collected by levies on oil imported into or shipped from a place in Canada — was transferred to the new SOPF in 1989 when we aligned our regime with that of international conventions. At that time, Canada ratified the 1969 Civil Liability Convention and the 1971 International Fund Convention. Since then, subsequent conventions have been incorporated into Canadian legislation at the same pace as the international arena — for example, the 1992 Civil Liability Convention, the International Oil Pollution Compensation (IOPC) Funds and the Bunkers Convention.

It's relevant to note that Canada has been a very strong international player in terms of incorporating new conventions into Canadian legislation. The international orientation of the Canadian liability and compensation regime helps victims of a spill gain access to a full range of remedies, including mandatory insurance in a number of cases covered by these conventions with direct access to the insurer and access to the international funds for tankers.

A good example of Canada's support for international conventions can be found with the Hazardous and Noxious Substances Convention. While the convention is not yet in force, we have already incorporated it into Canadian legislation. So, once the international community has ratified it, our regulatory regime will already be in place.

**BCSN:** *Once the HNS Convention is in place, how will that affect the SOPF?*

**AL:** The HNS Convention will cover any damage that would result from an HNS incident — i.e., not only pollution-related damage, but also injuries, etc., and accidents from any hazardous and noxious substance, not only oil. There will be mandatory insurance for ship owners and a specialized international fund for HNS damages.

The only thing that will change is that there will be additional payers involved (mandatory insurance for ship owners and the International HNS Fund) from which the claimant can seek compensation or from which the SOPF will seek reimbursement. The SOPF will pay the Canadian contribution to the International HNS Fund's oil accounts and the Administrator will receive the annual reports of Canada's oil shippers in order to provide the data necessary for the International HNS Fund to determine Canada's annual contribution for these oil accounts.

**BCSN:** *Has Canada ever made a claim against the IOPC?*

**AL:** Yes, once in 1989 after the sinking of the *Rio Orinoco* off Anticosti Island in the St. Lawrence River, the IOPC Funds paid around \$12 million. We also currently have a court case in B.C. related to the *Nathan E. Stewart* incident. While the action has been brought against the owner and their insurer, the claim raises the question about whether the international fund should be liable. This is still making its way through the courts.

**BCSN:** *Do you ever interact with the U.S. on claims?*

**AL:** The U.S. has their own fund and compensation scheme under the *Oil Pollution Act* (OPA) and is not part of the international conventions. Given that Canada and the U.S. have two different indemnification regimes, we are working with our U.S. counterparts to make sure

there are no gaps in compensation if a spill occurs at the border. We do find it useful to hold workshops to discuss common issues. The last workshop was in 2017 and another is planned for later this year.

**BCSN:** *Could you explain the process of accessing the SOPF?*

**AL:** Based on the polluter pays principle, when the source of the pollution is identified, the claimant should approach the ship owner or the ship's insurer first. However, they are still allowed to file their claim with the SOPF at the same time. In most cases, the ship owner or insurer will settle the claim directly but if there are issues, the Fund is able to pay the claimant and then work to reclaim the funds from the polluter.

If the source of the spill is unidentified or if the ship owner is insolvent or reluctant, we'll work directly with the claimant to ensure they have access to compensation.



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Steven Mo, Vice-President ([steven.mo@td.com](mailto:steven.mo@td.com))

Andrew Kostiw, Director ([andrew.kostiw@td.com](mailto:andrew.kostiw@td.com))



## Ship-source Oil Pollution Fund

### COMPENSATING VICTIMS OF OIL POLLUTION DAMAGE FROM SHIPS

400 Claims received since 1989

May be used as a fund of last resort, or a fund of first resort

Established under Part 7 of the *Marine Liability Act*

The SOPF is located in Ottawa, Ontario

#### WHAT TYPES OF DAMAGES DOES SOPF COMPENSATE?



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When assessing the claim, we want to be reasonably satisfied that the spill has come from a ship and that the claim is reasonable — that is, that damages arose from the incident and that the amount claimed is reasonable. In most cases, we require the same information and documentation as would the ship owner or insurer. If we are unable to recoup the funds from the ship owner or insurer, we absorb the cost.

Another factor that claimants must keep in mind is the limitation period on claims. Claims with the SOPF should be generally filed within two years from the date pollution damage occurred, but no more than five years from the date of the incident. The Fund then has an additional year to start an action against the owners/insurers to recover the amount paid to claimants. Many claimants will file with us while still negotiating with the owner or insurer to ensure their rights to claim with the SOPF are secured if the negotiations with the ship owner or insurer fail.

**BCSN:** *You mentioned that Bill C-86 brought in a number of amendments. Could you describe those?*

**AL:** The most significant ones include the removal of the Fund's per-occurrence limit of liability (which was \$174 million); the alignment with international conventions of the Fund's liability for economic losses (notably losses of revenue) caused by oil pollution; the Fund's liability for the costs and expenses incurred by the Minister of Fisheries and Oceans in respect of preventive measures even if the occurrence has not yet created a grave and imminent threat of oil pollution damage; and an expedited, simplified process for small claims (up to \$35,000) to the Fund.



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The amendments greatly clarified an ongoing legal debate around claims for pure economic loss. It has now been clarified that such losses are covered under the domestic regime as they have been under the international regime.

Another area that is a significant change relates to “preventative measures.” The amendments clarify that the ship owner is only liable for preventive measures taken by, for example, the CCG, if there is a “grave and imminent” threat of pollution. The SOPF, however, will absorb the CCG costs even if there is no “grave and imminent” threat but a threat nevertheless exists.

**BCSN:** *Last year, the Federal Government allocated additional funds to the CCG to address derelict vessels through the Oceans Protection Plan (OPP). Which fund would they access first?*

**AL:** If the issue is clearly related to oil, they should come to the SOPF first. Because we now have no cap on costs, we would likely be a better route to go — provided the source of the pollution or threat of pollution is oil and costs of the measure are reasonable — for example, we don’t compensate for



Anne sits with Deputy Administrator Mark Gauthier surrounded by staff of the SOPF.

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## INDUSTRY INSIGHT

the deconstruction of the vessel unless we are satisfied that it was a reasonable measure to prevent oil pollution at a reasonable cost. If you just wanted to remove the vessel because it's an eye sore or a navigational hazard, it would fall under the OPP specific funds rather than the SOPF.

**BCSN:** *Could you tell me about the types of claims you receive?*

**AL:** The Canadian Coast Guard makes up the majority of the claims (23 of the 32 claims made in the 2017/18 fiscal year) and these claims are for clean-up costs or preventive measures; other claims come mostly from ports and municipalities. The 32 claims totalled just over \$7 million. The average value per claim was just over \$225,000. However, two-thirds of the claims received were below \$50,000 and three claims were over one million dollars each. The highest

claim received in 2017/2018 was for over \$2.4 million. I should further note that, as of March 2018, the balance of the Fund is just over \$405 million.

As for the types of claims, we've had very few cases of persistent oil — usually it is related to diesel spills from fuel tanks. In the case of derelict vessels, there are all kinds of fuel and lubricant oils on board and is not necessarily from the tank but rather can be found throughout the piping system.

**BCSN:** *What are your priorities for the coming years?*

**AL:** For this year, our priorities are communications and developing material that shows the relevance of the Fund as well as easy-to-read guidelines for making claims.

Another area that requires specific attention is on the needs of Indigenous claimants. We noticed that they are very often in the

background — i.e., are in the vicinity of spills — yet we haven't had any claims from them. We are looking at how the claims process can be made more relevant to them. We do know that more often than not, Indigenous communities will make a claim through Indigenous Services Canada (ISC) whatever the type and source of damage incurred, therefore we are looking at various ways to provide access to compensation after an oil spill — either directly or indirectly through ISC as a subrogated claimant.

We are also working on scenarios of how to manage claims in the case of a very large spill. To give you an example, one incident in Korea generated 127,000 claims. We need to ensure that we're able to leverage our network and expertise in the event that a similar incident happened in Canada.

**BCSN**

### About Anne Legars

Anne Legars obtained her Bachelor's Degree in Political Science from Institut d'Études Politiques de Grenoble, France, as well as a Bachelor, a Master and a Post-graduate Degree in Law from Université de Grenoble II, France, and a Bachelor in Law equivalency and a LL.M. from Université de Montréal. In addition to being a member of the Quebec Bar, she is also a member of the Canadian Society of Association Executives.



Following seven years in private practice at Langlois Gaudreau, Anne joined the Shipping Federation of Canada as Director, Policy and Government Affairs and was subsequently promoted to Vice President. Following her time with the Shipping Federation, she returned to private practice before joining the Ship-source Oil Pollution Fund (SOPF) in the role of Administrator. She has served as the Administrator since May 2016, and was reappointed to a five-year term, beginning March 26, 2018. Since August 2016, she has also been the Administrator for the Fund for Railway Accidents Involving Designated Goods.

Anne has been an active member of the maritime community through her participation as a Board Member of the Canadian Maritime Law Association and Chair of the Committee on the Ratification of International Conventions; a Board Member of Innovation Maritime; and President of the Women in Shipping and Trading Association's Canadian Chapter.

### About the Ship-source Oil Pollution Fund

Under the *Marine Liability Act*, the Ship-source Oil Pollution Fund (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, caused by the discharge of oil from a ship. It is Canada's national Fund.

The SOPF is intended to pay claims regarding oil spills from ships of all classes and is not limited to sea-going vessels or tankers. In addition to persistent oil, it covers petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes.

The SOPF is also available to provide additional compensation (a third layer) in the event that compensation under the international funds, with respect to spills in Canada from oil tankers, is insufficient to meet all established claims for compensation.

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, preventive measures and monitoring; loss of income and pure economic loss; and loss of subsistence fishing and hunting (marine mammals). Such claims can be filed even where the cause of the oil pollution damage is unknown, when the Administrator of the SOPF has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship.



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