

CMI MARINE INSURANCE QUESTIONNAIRE  
ANSWERS BY THE CANADIAN MARITIME LAW ASSOCIATION

The following is the response by The Canadian Maritime Law Association to questions posed by the CMI Questionnaire sent to members April 8, 1999. The answers will be given in the same order as the questions.

1. Canada is a Federal country with division of powers between the Federal Government in Ottawa and the ten Provincial Governments. Legislatures in seven of Canada's ten Provinces have enacted The Marine Insurance Act of 1906 of the United Kingdom in identical terms. Until fairly recently it was felt that marine insurance could be regulated by both the Federal Government of Canada and by the Provinces. As a result of decisions of The Supreme Court of Canada it is now felt that marine insurance must be regulated by the Federal Government. To accomplish Federal regulation, the Parliament of Canada, on May 6, 1993, enacted a new Federal Marine Insurance Act, copy enclosed. The new Marine Insurance Act was designed to enact the Marine Insurance Act of 1906, but in modern language. We enclose a copy of The Federal Marine Insurance Act.
2. The rules on marine insurance in Canada are contained in The Federal Marine Insurance Act described above. Because seven Provinces in Canada had enacted The Marine Insurance Act of 1906 of the U.K., Canadian court decisions follow very closely on those of the U.K. Access to U.K. marine insurance decisions would give clear understanding of the law of Canada.
3. The Federal Marine Insurance Act and The Provincial Marine Insurance Acts apply to both hull insurance and cargo insurance.
4. Canada's national law is contained in The Federal Marine Insurance Act and appropriate common law court decisions. There are no obligatory rules in the sense of Public Order provision with the possible exception of Article 7.1 (insurable interest) and Article 18 (gaming contracts).
5. Marine insurance markets in Canada often use the London Institute Hull and Cargo Clauses. American Clauses are also widely used. There are also particular Canadian Clauses including the Great Lakes Hull Clauses and Clauses in use in British Columbia.
6. The answers to questions 6.1 - 6.11 will refer to The Marine Insurance Act of Canada, which is the Federal Statute.
  - 6.1 - yes (Article 7 of M.I.A.) - can be at later stage(7.1) - 8.2 interest can be legal or equitable.
  - 6.2 - yes and yes (Articles 39(2) and 39(1). Article 39(2) discharges the insurer from liability for any loss occurring after the breach. Policy wordings frequently provide for automatic coverage at a.p. for breach of warranty. Notwithstanding the provisions of Article 39 it can be said that Canadian courts are moving away from a strict definition of warranty in order

to do equity to a claimant.

6.3 - yes, by Article 21(1) - before the contract is concluded every material circumstance must be disclosed. Under Articles 21(7) and 22(8) the insurer may avoid the contract if failure to disclose or material misrepresentation is made by insured or agent.

6.4 - Article 80 imposes a duty of insured and his agents to take reasonable measures to avert or diminish losses. Articles 42, 43 and 44 deal with change of voyage, deviation and unreasonable delay which can void the policy. The M.I.A. does not actually contain a provision dealing with "misconduct".

6.5 - Article 21(1) makes the insured subject to sanctions is non-disclosure of material circumstance by an agent. Article 80 imposes a duty upon the insured and agents to avert and minimize loss.

6.6 - Article 20, the insurance contract is based on utmost good faith by both parties. Extent of duties of both parties are defined by case law.

6.7 - Article 19 defines insurable value in the absence of express provisions - almost always modified by insuring conditions of the policy. Generally agreed value.

6.8 - No specific Articles dealing with increase of risk, but Articles 42, 43 and 44 deal with change of voyage, deviation and unreasonable delay which would be principle sources of increased risk. Again, policy wordings usually provide for automatic coverage, subject to additional premium for deviation, change of voyage or delay.

6.9 - M.I.A. does not deal with these specifics. Standard forms exclude Articles 6.9.1 to 6.9.4. 6.9.5 are risks not generally excluded. (Note: M.I.A. Articles 37(1) - 37(5) dealing with implied seaworthiness warranties). "Ordinary leakage and wear and tear" are excluded under the M.I.A.

6.9.7 - Standard forms provide for automatic termination of coverage and are silent on 6.9.8

6.10 - Always provided in policies by way of "General Average" and "Sue and Labour" clauses. M.I.A. Articles 65 and 72 provide for general average expenses to be recovered under a policy. Article 79 provides for sue and labour expense recovery when the clause is contained in the policy.

6.11 - Article 81 of M.I.A. provides for automatic subrogation.

7. The M.I.A. does not provide a limitation provision for commencement of action. Limitation matters would be dealt with by the law of each Province.