

SEAFARER SUBJECT GUIDE

ABANDONMENT IN CANADA

This Guide deals with the situation where seafarers are abandoned in a port in Canada as well as where seafarers are abandoned on a Canadian flagged vessel in a port outside Canada. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in Canada.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

- 1. When is a seafarer considered abandoned according to national case law or legislation? Is there any special legislation concerning abandoned crew?**
 - 1.1 Abandoned seafarers are usually seafarers who have arrived in Canada aboard a foreign flagged vessel, or who are entering Canada by other transportation means to join a foreign flagged vessel as crew members. Where the shipowners/charterers of a foreign flagged vessel are insolvent, they may abandon the ship and the crew. Others having an interest therein, such as mortgagees or creditors, may arrest the vessel in accordance with *in rem* proceedings in a Canadian court.
 - 1.2 If the shipowner/charterer is insolvent, unable, or unwilling to fulfill its contractual obligations to the crew, the crew will be considered abandoned unless another party interested in the ship steps forward to assume the obligations of the shipowner/charterer. It is usual that some party, such as a mortgagee, will apply to the court for the protection and maintenance of the vessel pending a judicial sale. A labour organization may apply on behalf of the abandoned seafarers for a declaration of entitlement to a maritime lien against the vessel for wages, benefits and repatriation expenses due and owing to the crew. A court having jurisdiction over the vessel in *in rem* proceedings may, upon application of an interested party, make a determination as to the status of the crew and how they will be provided for.
 - 1.3 The Canada Shipping Act 2001 ('CSA 2001') lists in Schedule 1 the international conventions, protocols and resolutions that Canada has signed that relate to matters that are within the scope of CSA 2001, and that the Minister of Transport has determined should be brought into force, in whole or in part, in Canada by regulation. The international conventions, protocols and resolutions that may be relevant to abandonment of seafarers which have been ratified by Canada are the Unemployment Indemnity (Shipwreck) Convention 1920, the Seamen's Articles of Agreement Convention 1926 and the Maritime Labour Convention 2006.

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- 1.4 CSA 2001 places an obligation on the authorized representatives of Canadian flagged vessels to pay all expenses of returning crew members to an agreed place and the Minister of Transport may act in place of an authorized representative of a Canadian flagged vessel and any expenses incurred in repatriating the crew become a debt due to the Government of Canada.

2. What is the immigration status of abandoned seafarers?

- 2.1 The most common situation in which seafarers are abandoned in Canada would be where a foreign vessel enters Canadian waters with a crew aboard and the vessel is arrested by parties claiming against the vessel, that is a mortgagee, creditors, or other parties interested in the vessel, or where the vessel is detained by port state authorities in Canada.
- 2.2 If the crew members are abandoned in Canada, they may be deemed temporary residents in Canada if they have a valid passport, a visa to enter Canada, and a valid seafarer's identity document. The documentation will determine the conditions and the period authorized for their stay. Non-compliance with the conditions of staying in Canada can result in loss of status and removal.
- 2.3 A seafarer seeking to enter Canada as a member of a crew must hold a seafarer's identity document issued under the International Labour Organization Conventions and be a member of the crew of the vessel that carries them to Canada. This is an exception to the general rule that a foreign national from a non-visa exempt country seeking to enter Canada must hold a passport or a travel document issued by the country of which the foreign national is a citizen and which does not prohibit travel to Canada and a visa if required for nationals of that country.

3. Can an abandoned seafarer get shore leave?

- 3.1 The availability of shore leave to an abandoned seafarer will be dependent on the immigration authorities who are required to approve the entry of the seafarer on Canadian soil.

4. Is abandonment of seafarers considered a crime?

- 4.1 There are no provisions in the Criminal Code of Canada dealing with the abandonment of seafarers.
- 4.2 CSA 2001 sets forth the requirements of the authorized representative of a Canadian flagged vessel to ensure that arrangements are made to return crew members to the place where they first came on board or another place to which they have agreed to

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be returned and to pay the expenses of returning the crew member as well as all expenses, including medical expenses the crew member reasonably incurs before being returned. There is provision in CSA 2001 that if the authorized representative does not comply with s. 94(1), the Minister of Transport may act in place of the authorized representative and any expenses incurred by the Minister constitute a debt due to her Majesty in right of Canada by the authorized representative and may be recovered in a court of competent jurisdiction.

- 4.3 Persons who provide crew members to a Canadian vessel, if different from the authorized representative or the master, also become liable to pay all the crew expenses.
- 4.4 It is an offence to contravene the provisions of s. 94(1) and s. 98(e) of CSA 2001 pursuant to s. 102(1) of CSA 2001. These offences are punishable on summary conviction by a fine of not more than CAD\$100,000.00 or imprisonment for term of not more than one year, or to both.

5. What entities and/or persons may be involved with or assist an abandoned crew?

5.1 Various entities and/or persons may be involved with or assist an abandoned crew.

5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

https://www.seafarersrights.org/seafarers_subjects/using_lawyers/

5.3 ITF Inspectors and union officials

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

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5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.