

CONDITIONS¹

- 1) The ship and its agent must comply with the Canada Marine Act (CMA) and Port Authorities Operations Regulations (SOR/2000-55). Copies of the Act and Regulations can be found on the following website:
<http://www.tc.gc.ca/eng/acts-regulations/acts-1998c10.htm>
- 2) Notably, paragraph 1(d) of article 58 of the CMA specifies that the person designated by the Port Authority can direct a ship, at a specified time or between specified times,
 - (i) to leave a dock, berth or other port facility,
 - (ii) to leave or refrain from entering any area, or
 - (iii) to proceed to or remain at a specified location.
- 3) The person designated may direct a ship to do or refrain from doing anything described in paragraph (2) only if the person believes on reasonable grounds that any of the following circumstances exist:
 - a) the non-availability of a berth required for the ship;
 - b) pollution or a reasonable apprehension of pollution in the traffic control zone;
 - c) the proximity of animals whose well-being could be endangered by the movement of the ship;
 - d) an obstruction to navigation in the traffic control zone;
 - e) the proximity of a ship in apparent difficulty or presenting a pollution threat or other hazard to life or property;
 - f) the proximity of a ship navigating in an unsafe manner or with improperly functioning navigation equipment or radio equipment, or without charts or publications required by regulations made under paragraph 120(1)(b) of the Canada Shipping Act, 2001;
 - g) vessel traffic congestion that constitutes an unacceptable risk to shipping, navigation, the public or the environment; or
 - h) the efficiency of port operations could be compromised.
- 4) Article 33 of the Regulations (SOR/2000-55) stipulate that:
 - (1) If a ship is waiting for another ship to load, unload or transfer cargo to get a berth or anchorage, the owner or the person in charge of the other ship shall ensure that, regardless of whether working around the clock is necessary or overtime charges are incurred,
 - a) the loading, unloading or transfer operations are conducted with dispatch; and
 - b) the cargo is moved with dispatch from the immediate vicinity of the berth or anchorage to enable the waiting ship to load, unload or transfer its cargo.
 - (2) If the loading, unloading or transfer operations of the ship, or the movement of its cargo, are not conducted with dispatch, the port authority may instruct the owner or the person in charge of the ship to move
 - a) the ship from the berth or anchorage to allow the waiting ship to berth or to anchor and begin its loading, unloading or transfer operations; or
 - b) the cargo from the immediate vicinity of the berth or anchorage
 - (3) If, to allow a waiting ship to berth or to anchor promptly, the loading, unloading or transfer operations of a ship, or the movement of its cargo, are conducted around the clock or the ship or cargo is moved on the instructions of the port authority, the owner or person in charge of the waiting ship shall ensure that, regardless of whether working around the clock is necessary or overtime charges are incurred,
 - a) the loading, unloading or transfer operations of the waiting ship are conducted with dispatch; and
 - b) the cargo of the waiting ship is moved with dispatch from the immediate vicinity of the berth or anchorage.

¹ *In the event of any inconsistency between these statements and applicable law, the law will prevail.*