

Vancouver Sun

Our free and democratic society ships out

Mon Jun 1 2009
Page: A1 / FRONT
Section: News
Byline: Ian Mulgrew
Column: Ian Mulgrew
Source: Vancouver Sun

The world's shipping industry says Canada is losing business because of a draconian environmental law that strips seafarers of the presumption of innocence.

For the west coast, the effects are already being felt as shipping firms move personnel elsewhere, companies decide against setting up here and recruitment for the boardroom and the bridge slows.

"Who wants to take a job where you run the risk of being put in jail if you can't prove your innocence?" asked Peter Lahay, coordinator with the International Transport Workers Federation.

"This allows seafarers to be essentially taken hostage."

"That risk goes right up to the directors," added Robert Ho, vice-chair of the International Chamber of Shipping in London whose company, the Magsaysay group, is the largest employer on the high seas.

On this issue, maritime labour and ownership are aligned.

Both say Canada is violating international conventions by allowing the summary imprisonment of crews, executives or owners unless they can prove due diligence after an incident of pollution.

The industry says that since the law was adopted in 2005, two Japanese companies decided against establishing offices in Vancouver because of it and Canada has been "blacklisted as a jurisdiction."

At a time when we are spending billions on infrastructure to make this province the Pacific Gateway, isn't this completely counterproductive?

Bill C-16, the environmental enforcement act, which modifies environmental protection laws, is slated for second reading in the Senate on Tuesday and looks as if it will sail through Parliament without modification.

It changes some of the country's environmental regulatory framework but will leave in place controversial provisions adopted in 2005 that global shipowners and unions say rob them of rights.

They insist this bill offers a perfect opportunity to correct the mistake they've been impotently raging against for the last four years.

There is little question the reverse onus sections of the environmental law seem unlikely to survive a constitutional court challenge -- the industry has filed persuasive legal analyses supporting its position, including one from William Bernardino, the special prosecutor in the BC

Rail influence-peddling trial.

The only judge on the Supreme Court of Canada who has directly addressed the reverse-onus issue, Chief Justice Beverley McLachlin, said imprisonment under such circumstances cannot be "demonstrably justified in a free and democratic society."

But no one wants to be in a position of waging that expensive legal battle after a crew member or director has been wrongly jailed.

Premier Gordon Campbell and his administration agree there is a problem with the current legislation.

Still, environmental lobbyists won the ear of the former Liberal administration, which wrote the law, and now the Conservative government, both of whom were eager to look as if they were getting tough on polluters. This approach, though, was overkill.

Ships are worth from about \$2.5 million to more than \$200 million. The asset-seizure provisions and the proposed fines (up to \$12 million a day under certain circumstances) are stiff enough without going one step farther and allowing seamen or executives to be stripped of their rights.

"We support strong environmental enforcement laws and the principle 'the polluter pays,' " insists Kaity Arsoniadis Stein, president and secretary-general of the Vancouver-based International Ship-Owners Alliance of Canada Inc., which represents 80 per cent of the world's fleet.

"We do not oppose the fines that are proposed on a strict liability basis. We do

not oppose the sanction of imprisonment. We do oppose the loss of the presumption of innocence where imprisonment is the sanction. Serious deprivation of liberty should be proved beyond a reasonable doubt."

That should be obvious. We can protect the environment without trampling on human rights.

imulgrew@vancouver.sun.com

© 2009 Postmedia Network Inc. All rights reserved.