

COMPENSATION HANDBOOK

FOR MUNICIPAL, LOCAL AND
INDIGENOUS GOVERNMENTS

OCTOBER 2024
EDITION



**Ship and Rail
Compensation Canada**
Ship Fund

Note: The information contained in this handbook does not constitute legal advice and does not substitute any provision in the *Marine Liability Act*, its regulations, or any other applicable laws of Canada.

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First edition

Visit us at: www.ship-rail.gc.ca

TABLE OF CONTENTS

Introduction	1
What types of damages and losses are covered?	2
How does the claims process work?	5
Questions and answers from your sector	7
Who pays for an oil spill from a ship or boat?	9
Appendix: Summary of claims from municipal, local and Indigenous governments	10



Source: Canadian Coast Guard

The Ship Fund paid almost \$400,000 to the County of Prince Edward, ON, as a result of the sinking of the barge *Pitts Carillon* in 2017. To date, this is the highest amount the Ship Fund has ever paid to a municipal government.

INTRODUCTION

Did you know that there is a federal Fund that compensates anyone affected by oil spills from ships or boats anywhere in Canadian waters?

Municipal, local and Indigenous governments can benefit from the Ship and Rail Compensation Canada – Ship Fund.

However, since 1989, we have received a low number of claims from these sectors. In fact, they represent less than 3% of all claims. We are therefore increasing our outreach efforts to make sure you are not missing out!

This handbook provides general information for cities, towns, villages, districts, band councils, including elected officials, employees, and their citizens.

We are committed to supporting access to justice. Our goal is to provide fair and timely compensation. Claimants who come to us don't need to hire a lawyer or go to court.

You may find this handbook especially useful if your municipal, local or Indigenous government owns, manages or is in proximity of:

- A marina, wharf or other docking area;
- A coastal park, trail or beach;
- A water treatment plant near marine traffic;
- Any navigable lake, river, canal, or ocean.

Whether you are located on the coast, on a lake or a river, both on salt water and fresh water, we are here to help you or your organization recover financially!

We also strive to make the polluter pay. Once we pay a claim, we take all reasonable steps to recover the costs from the shipowner and any other person responsible.

If you have any questions about the claims process, we are here to help you!



WHAT TYPES OF DAMAGES AND LOSSES ARE COVERED?

WE COVER MOST DAMAGES AND LOSSES RESULTING FROM A SHIP OR BOAT OIL SPILL. WE'VE PROVIDED BELOW EXAMPLES SPECIFIC TO MUNICIPAL, LOCAL AND INDIGENOUS GOVERNMENTS.



For all damages and losses, we can only reimburse reasonable costs and expenses. Oil doesn't necessarily need to be spilled. The threat of a spill is sufficient.



Response and clean-up costs

Costs of measures taken to prevent, monitor, repair, remedy, or minimize contamination, including the disposal of contaminated materials, such as sorbents and boom.



We cannot compensate for equipment purchased to prepare for an eventual spill. However, we pay for the replacement of equipment deployed in a response if it is no longer usable.

Examples for municipal, local and Indigenous governments:

- Measures taken to safeguard property, water supply, or other infrastructures;
 - This includes shutting down a water treatment plant to prevent contamination and using an alternative water supply.
- Removal, transportation, and disposal of oily waste;
- Wages and overtime of employees carrying out preventative measures or monitoring efforts, such as:
 - City council staff;
 - Emergency services, and first responders;
 - Waste management services.
- Costs to inform the population about public safety concerns, such as:
 - closures of contaminated beaches;
 - drinking water advisory;
 - other preventive measures to mitigate the risks associated with the spill.

Examples for the local population:

- Usage of oil boom, absorbent pads, or spill kits to protect their property.



Property damage

Any physical damage to property, including costs of cleaning, repairing, or replacing oil-contaminated property.

Examples for municipal, local and Indigenous governments:

- Costs of cleaning or replacing soiled municipal docks, marinas, and beaches;
- Costs of repairing or replacing parts of municipal water treatment plants including soiled filters.

Examples for the local population:

- Costs of cleaning a contaminated private waterfront property.



Economic loss

Lost wages or profits.

- ! We can compensate economic loss that continues to occur long after an incident and after a claim has been submitted to us.

Examples for municipal, local and Indigenous governments:

- Inability to collect berthage fees due to a municipal port or marina closure.

Examples for the local population:

- Economic downturns, closures or cancellations to coastal resorts, hotels or other tourism and hospitality businesses.



Environmental measures

Costs of measures taken to accelerate the recovery of the environment after an oil spill, including environmental impact studies.

Examples for municipal, local and Indigenous governments:

- Shoreline restoration;
- Repopulating species of fish, plants, or animals.

Loss of subsistence living and some cultural losses



Subsistence, cultural, recreational, and ceremonial losses, as well as lost access to traditional resources.

Examples for municipal, local and Indigenous governments:

- Costs incurred by a local or Indigenous government to arrange transportation to another site for a ceremonial gathering.

Examples for the local population:

- Inability to fish for subsistence, and the associated cost for the replacement of fish or animal skins.

Costs to put your claim together



Administrative, accounting, legal or other professional services used to help you prepare your claim.



Did you know?

The Ship Fund has received 16 claims from municipal, local and Indigenous governments. We paid over \$1 million for these claims.



Did you know?

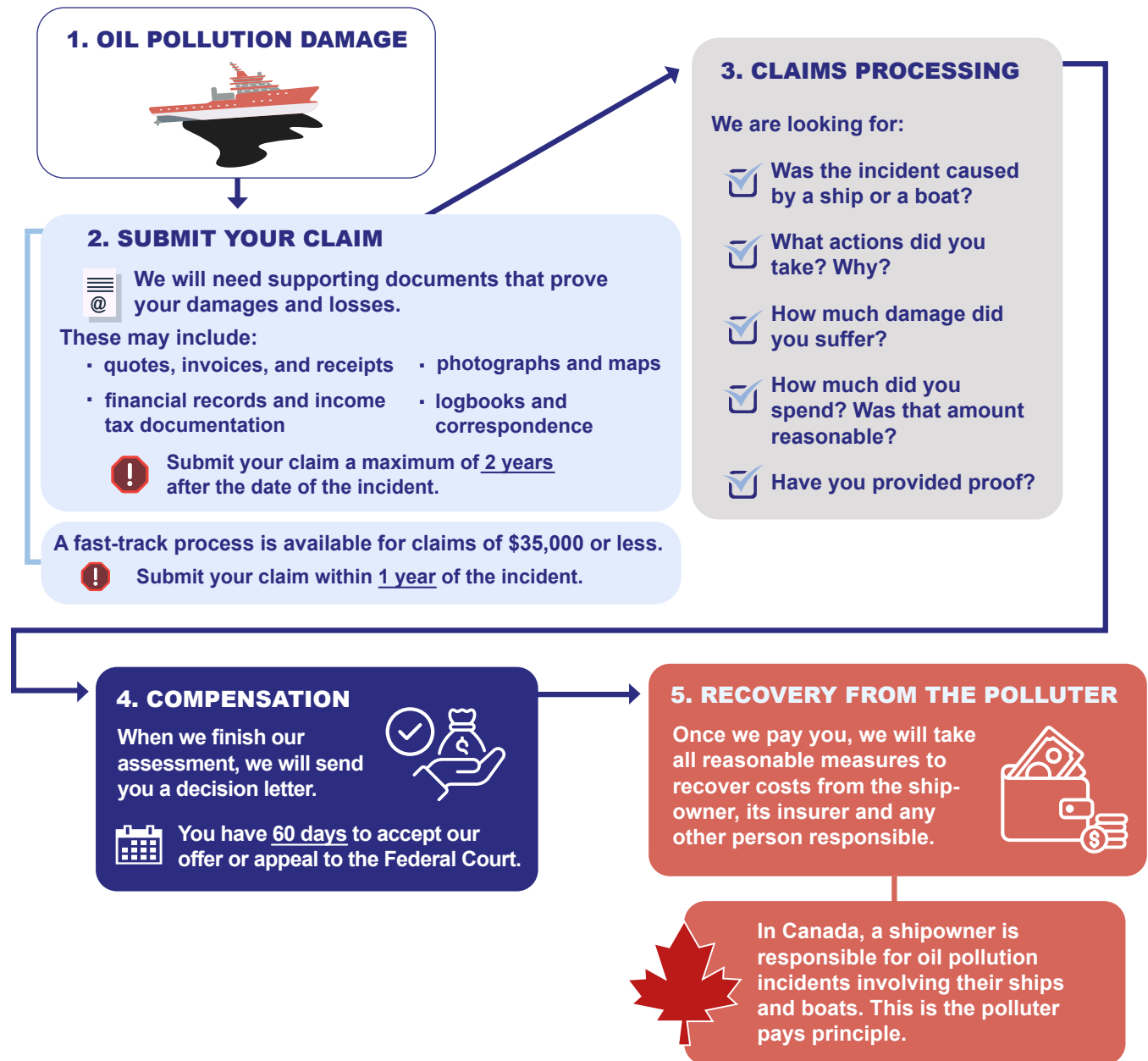
We can also pay compensation in the case of mystery spills. In other words, when the ship or boat that caused the spill cannot be identified.



However, we cannot pay compensation if the evidence shows that a spill came either from:

- a land-based source; or
- a structure in the water that is not a ship or boat.

HOW DOES THE CLAIMS PROCESS WORK?



For more tools, forms, and resources, visit the “Submit a Claim to the Ship Fund” tab on our website at www.ship-rail.gc.ca.

You have **two years** from the date of the incident to submit a claim.

- For the Expedited Process for Small Claims, the submission deadline is **one year** after the incident.



We recommend that you submit your claim as soon as possible after damage has been suffered, as there are numerous benefits in doing so, such as:

- Supporting documentation is fresher and more readily available;
- There is less risk of missing the submission deadline;
- Compensation is received more promptly;
- Other potential claimants can be identified and contacted by us;
- Recovery efforts can start earlier.

If you missed the submission deadline, we cannot compensate your claim.



Did you know?

No maximum or minimum to compensation:

- There is no limit to how much compensation we can provide to claimants.
- There is no minimum amount: the smallest claim ever received was for just over \$200.
- For claims of \$35,000 or less, an expedited option is available.

CAN YOU GO DIRECTLY TO THE SHIPOWNER?

It is your choice. You have two options.

Option 1: Submit your claim directly to us

This is easy, fast, and inexpensive. You do not need to hire a lawyer or go to court.

We provide claims forms and manuals to guide you:

- Most claims go through our General claims process.
- If you have a claim of \$35,000 or less, you may be able to use our Expedited Process for Small Claims.

Option 2: Negotiate with or sue the shipowner

If you decide to sue the shipowner in court, this is what we call an indirect claim.

- In this case, we will not be able to support you in your legal actions. You may need to use legal services if you do this.

We will be added to the lawsuit while you pursue recovery from the shipowner.

QUESTIONS AND ANSWERS FROM YOUR SECTOR

TYPES OF DAMAGES

QUESTION 1

Is compensation available if a coastal park, beach or a marina owned by the local government is damaged?

- Yes, costs of repair and restoration, including clean-up costs, are compensable.

QUESTION 2

Is compensation available if a water treatment plant is shut down to avoid or to clean up contamination?

- Yes, as this may result in economic loss. For example, it may include the costs of supplying an alternative water source and communicating the shutdown to citizens.

QUESTION 3

Can the Ship Fund compensate for the costs of responding to an abandoned vessel spilling or threatening to spill oil?

- Yes, if the cost is directly related to responding to an oil spill. A response could include pumping out oil and deploying absorbent pads. In specific circumstances, it may be reasonable to deconstruct the vessel.



In many cases, the costs of dealing with a nuisance vessel are not linked to an oil pollution incident and are therefore not eligible for compensation.

QUESTION 4

Is advance funding available for spill preparedness?

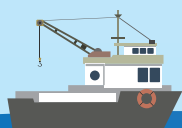
- We can only reimburse response costs after an incident occurs.

CLAIMS PROCESSING

QUESTION 1

Is it possible for people suffering similar losses from the same incident to bundle their claims in a single package?

- Yes, and by doing so, you might save time and money.
 - However, we will pay claimants individually based on their specific damages.



QUESTION
2

What proof of damages do you need to submit a claim?

- Submit the best evidence available to you, including a detailed description of the incident and your damages.
 - Visit our website under “Submit a claim to the Ship Fund” for more tools and forms to help you submit your claim.
- We know that some of you already prepare incident reports. In many cases, these reports will be the most important evidence you submit.
 - Depending on the damages you suffer, employee timesheets, notes, invoices, photos, and videos will also be very useful.

QUESTION
3

What is a common compensation shortfall for claimants in your sector?

- In the past, claimants have often suffered reductions when there is duplication of effort in the oil spill response.
 - When we process a claim, we look at the overall actions taken by each organization involved. We also look at their respective mandate and delegation of tasks. Where we notice duplication of efforts, we often must apply reductions to the amount claimed.



By duplication of efforts, we mean, when two or more claimants conduct similar tasks.

QUESTION
4

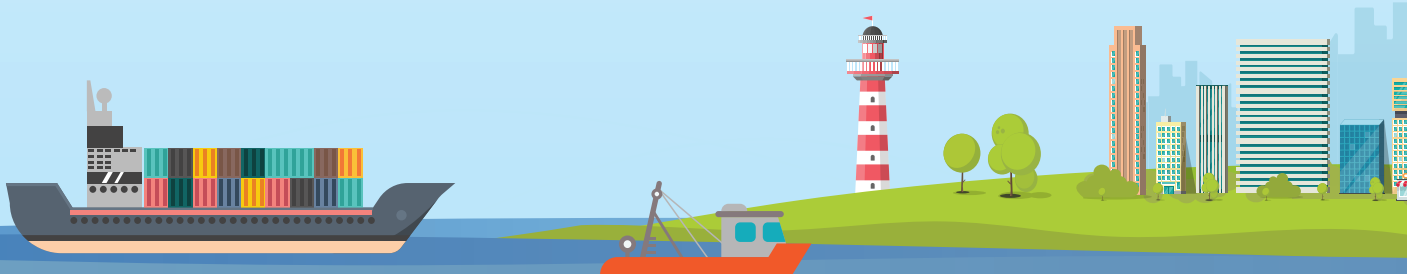
How long does it take the Ship Fund to process a claim?

- Our goal is to provide fair and timely compensation. Most claimants receive payment within six months.
 - If you qualify for the Expedited Process for Small Claims, you will receive payment within 60 days.

QUESTION
5

How difficult is it to submit a claim? Can you get assistance in submitting a claim?

- Our claims manuals and forms are easy to use. We are also here to help you through your compensation journey. Don't hesitate to reach out to our claims office.
- Most claimants can submit their claims without the need for professional help. However, with large or complex claims, it may be helpful to obtain the advice or assistance of a lawyer or other professional. If it is reasonable, the cost for these services may be compensated.



WHO PAYS FOR AN OIL SPILL FROM A SHIP OR BOAT?

In Canada, a shipowner is responsible for oil pollution incidents involving their ships and boats. Fault or negligence doesn't have to be proven. This is the polluter pays principle.

- Liability and compensation are set out in the *Marine Liability Act*.

RECOVERY EFFORTS

Once we pay a claimant, we take all reasonable steps to recover the costs from the shipowner and any other person responsible. All funds that we recover through settlements and lawsuits go back into the Ship Fund for future claims.

We use many strategies to recover from shipowners, including settlements, lawsuits or arresting ships.



We are always ready to discuss settlement rather than going to court. However, we sometimes start a lawsuit, notably when the shipowner does not engage with us. Lawsuits are also used to preserve our legal rights, allowing settlement discussions to happen, sometimes as part of judicial mediation sessions. In some cases, we choose to seek judgment because it may give us leverage.



In 2019, the Ship Fund obtained a judgment in the Federal Court for over \$800,000 against the owner of the derelict vessel *Farley Mowat*. The vessel had caused three separate oil pollution incidents at Shelburne, NS, resulting in four claims including from the town of Shelburne.

APPENDIX: SUMMARY OF CLAIMS FROM MUNICIPAL, LOCAL AND INDIGENOUS GOVERNMENTS

NOTE: If you are interested in reading the full summaries of these and other incidents, visit the "Claims and Decisions" page on our website.

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Nova Scotia		
Farley Mowat 2015-06-24 Shelburne Former research ship Oily mixture	\$47,599 2017-06-23 Town of Shelburne	\$44,818 (94%)
Quebec		
Gordon C Leitch 1999-03-23 Saint-Pierre Harbour Bulk carrier Heavy fuel oil	\$539,559 2002-03-22 Conseil des Innus de Ekuanitshit et tous les membres de la Première Nation Ekuanitshit	\$10,000 (2%)
L'Ance L'Eau 2001-07-16 Tadoussac Pleasure craft Gasoline	\$2,195 2001-12-07 Municipality of Tadoussac	\$0
Mystery Spill 2013-11-16 Baie St-François	\$104,151 2014-03-24 Ville de Salaberry de Valleyfield	\$45,000 (43%)
Ontario		
Mystery Spill 2009-07-17 Big Sound Marina	\$6,987 2009-09-03 Town of Parry Sound	\$7,065 (101%)

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant	DECISION Amount offered with interest (\$) (% offered vs. claimed)
Portofino 46 2012-09-03 Port Dalhousie Harbour Pleasure craft Diesel fuel and lubricating oil	\$37,575 2014-05-08 City of St Catharines	\$11,560 (31%)
Warren L. II 2015-12-07 Killarney Channel Tug and barge Fuel oil	\$270,286 2017-08-21 Municipality of Killarney	\$225,095 (83%)
Pitts Carillon 2017-03-24 Picton Bay Spud barge Residual oil	\$597,397 2018-05-08 County of Prince Edward	\$394,111 (66%)
British Columbia		
Black Dragon – (Heung Ryong) 2003-10-26 Barkley Sound Chinese flag fishing vessel Diesel	\$167,665 2005-01-05 Toquaht First Nation	\$0 The file was closed due to a lack of documentation from the claimant.
Elf 2014-01-14 Squamish Harbour Tug Diesel, hydraulic and lube oil	\$3,464 2014-11-03 District of Squamish	\$3,580 (103%)
Marathassa 2015-04-08 English Bay Bulk carrier Fuel oil	\$569,053 2017-04-10 City of Vancouver	\$266,015 (47%)
No Name 2016-09-25 Paddlewheel Park Pleasure craft	\$2,012 2017-04-03 City of Vernon	\$1,626 (81%)

INCIDENT Ship name Date of incident Location Ship type Spilled oil (if applicable, and type of spill, if available)	CLAIMS SUBMITTED Amount claimed Date of submission Name of claimant	DECISION Amount offered with interest (\$) (% offered vs. claimed)
<i>Nathan E. Stewart</i> 2016-10-13 Seaforth Channel, Bella Bella Tug Diesel fuel and lube oils	Pending ¹ 2019-10-11 Heiltsuk Tribal Council	Ongoing
<i>Zodiac Light</i> 2018-02-14 Kitamaat Village Fishing vessel Diesel	\$14,028 2020-02-12 Haisla Nation Council	\$15,196 (108%)
<i>Autumn Winds</i> 2021-07-15 Discovery Passage Commercial fishing vessel	\$9,267 2021-12-09 Nanwakolas Council Society	\$9,400 (101%)
<i>Santa Rita</i> 2022-06-28 Goldstream Marina Tug Diesel	\$3,225 2022-07-12 Pauquachin First Nation	\$3,247 (101%)

¹ The matter is currently in court, and the Ship Fund has also received a direct submission.