

Purchasing a Private Vessel: What You Should Know

Finance | Litigation | Litigation & Dispute Resolution | Transportation and Logistics

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The purchase of a private vessel can be a major commitment that requires careful consideration. Before entering into any purchase transaction, many aspects of vessel ownership and operation must be considered. The reference to a “private vessel” is a vessel that is under 15 tons and is used for pleasure purposes. Commercial vessels and vessels used for public purposes are subject to some of the same considerations but also many different factors and issues.

Gardiner Roberts LLP offers the following checklist, which presents the issues relevant to purchasing a private vessel. The checklist refers to considerations including pre-purchase inspections, sea trials, liens, maintenance, deck logs and engine logs, and insurance.

1. Budget

Decide how much you are willing to spend. The purchase price of a private vessel and applicable taxes are obvious costs. You must also include operating costs such as docking fees, launch fees, haul-out fees for winter (if applicable), maintenance costs, fuel, insurance, and the cost of replacement parts.

2. Cost-Sharing/Partnership

Provided that usage requirements are complementary and liability concerns can be addressed, vessel partnership could be considered to share the costs associated with buying a private vessel. Have an agreement in place with your partner(s) that deals with usage, withdrawal from the partnership, sale of the shares, etc. Gardiner Roberts LLP can assist with drafting such an agreement.

3. Financing

If the purchase price is to be financed, compare the interest rates offered by different finance companies. Vessel financing is not the same as financing a car. The main factors in financing the purchase of a vessel are the amount being financed, the age of the vessel and the security that can be provided. Note that many finance companies will not finance older vessels.

4. Pre-Qualifying for Financing

Financing pre-approval offers flexibility and the ability to act quickly on good opportunities.

5. Importing a Vessel From the U.S or Other Country

If you are importing a vessel from the U.S. or another country, consider whether you will have to pay duty or GST or both. Provincial tax may be payable depending on the provincial rules in place. Also consider whether the vessel meets regulatory requirements under the *Canada Shipping Act, 2001* and regulations for operating in Canadian waters.

6. Registration or Licensing?

Vessels in Canada can be registered or licensed if under 15 tons. Registration involves having the vessel surveyed and accepted by an approved marine surveyor. The vessel is registered under the *Canada Shipping Act, 2001* in the Canadian Register of Vessels and given a “blue book”. Mortgages and liens can be recorded in the register. It is evidence of good “title” and ownership of the vessel. A less formal regime exists for pleasure craft under 15 tons. Any pleasure craft that is equipped, even temporarily, with one or more engines whose total power is at least 10 horsepower (7.5 kW) or more must have a Pleasure Craft Licence before it can be operated in Canada unless it is registered in the Canadian Register of Vessels. A pleasure craft licence is a document with a unique number displayed on both

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

sides of the bow of the pleasure craft. The pleasure craft licence is like a licence plate on your car. This number allows police and search and rescue personnel to access important information in an emergency. It is not evidence of ownership or title to the vessel.

7. Operator License

In Canada, if you operate a vessel with a motor and use it for recreation, you need proof of competency — something that shows you have a basic understanding of how to operate your vessel safely and know what to do in an emergency. Proof of competency is required with all motor types (including electric trolling motors) and even when the motor is not in use (such as when sailing). A variety of documents serve as proof of competency. It can be a Pleasure Craft Operator Card, a completed rental boat safety checklist, or for a visitor to Canada, an operator card or other document that meets the requirements of his or her home state or country. To obtain a Pleasure Craft Operator Card you must pass a boating safety test after taking a boating safety course delivered by a course provider accredited by Transport Canada.

Ensure your private vessel is only operated by experienced and licensed individuals. Canadian regulations specify minimum age requirements and operator restrictions. You will need proof of competency to operate a vessel in Canada. In addition, some ports will require a license to operate in a port. For example, operating a motorized vessel in the Toronto Harbour requires a harbour license, separate from a Canadian operator's license.

8. New VS. Used Vessels

Despite lower purchase prices, used vessel may not be such a great deal when considering insurance and operational costs.

New vessels generally come with a lengthy warranty and most (but not all) expenses are covered under the warranty. Used vessels with expired warranties force the buyer to incur costs to cover parts that fail through normal wear and tear.

Obtaining insurance may be difficult if the vessel is more than ten years old and does not have an up -to-date marine condition and evaluation survey.

9. Vessel Type

Consider what type of vessel you want. Sailing vessel without a motor, sailing vessel with a motor, or motor yacht. Do you have experience sailing? What model and make to get? Do some research. Does it have a sleeping cabin? Cooking stove? Air conditioning? Washroom? Where will you dock the vessel? Does the marina have space or a slip for the vessel? Where is the nearest gas dock? Where is the nearest repair facility?

10. Fuel Efficiency and Operating Costs

Consider variations in fuel efficiency and operating costs when comparing private vessels, be they sailing vessels or motor yachts.

11. Vessel Consultants and Brokers

Consult with experienced advisers to assist with your purchase of a private vessel. Experts knowledgeable in brokering, taxes, and technical subjects related to the ownership and operation of a private vessel should be considered. Gardiner Roberts LLP can assist you in finding such advisers.

12. Legal Counsel

Tax planning and marine regulatory issues should be considered when purchasing a private vessel.

You will need legal counsel familiar with maritime law, tax law, and insurance. Gardiner Roberts LLP can assist with legal issues relating to your purchase (or sale) of a private vessel.

13. Insurance

An experienced marine insurance agent will be knowledgeable about the coverage you may need and any minimum insurance requirements. Check the reputation of any company you consult with.

Hull and vessel liability insurance is reasonably priced for pleasure craft usage. The cost depends on the age, model, and value of the vessel. You may need a marine condition and valuation survey if the vessel is over ten years of age. Check insurance rates before buying the vessel. Remember if you use the vessel for any commercial or public purpose it can void your insurance policy.

14. Marine Vessel Operation Restrictions

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There are a number of regulations which govern vessel operations in Canada including speeds, motor restrictions, lock restrictions. Gardiner Roberts LLP will assist in determining any restrictions for your area of operation.

15. Purchase Agreement

Gardiner Roberts LLP will assist in the preparation of a vessel purchase (or sale) agreement detailing the terms and conditions of the vessel purchase and sale transaction.

16. Due Diligence

Following execution of the vessel purchase agreement, Gardiner Roberts LLP can assist with the due diligence of the vessel, the vessel seller, liens and mortgages, etc.

17. Vessel Records

Review the vessel's records – ask to see any deck and engine logs (if they were kept). Get maintenance records and marina storage records. Find out where the vessel has been operated in. Gardiner Roberts LLP will search for maritime liens in the areas of operation.

Are there warranties on the vessel and the equipment? Are they transferrable if you are buying a used vessel?

Confirm the engine hours and life expectancy of the engine.

18. Pre-Purchase Inspection

Get a full marine condition and evaluation survey by a qualified inspector. Conduct a sea trial. Consider having the vessel hauled out of the water to have the below water hull inspected.

19. Vessel Interior

The interior of the vessel should be checked for proper fit and condition. Your marine surveyor will do this.

Examine the vessel's electronics and ensure that all systems are operating.

20. Vessel Maintenance and Replacement Parts

Older, modified, or out-of-production vessels may cause problems when requiring spare parts. Additionally, mechanics may be unwilling to perform maintenance on old or modified engines.

21. Clear Title

Gardiner Roberts LLP can assist with verifying the seller's authority to sell the vessel. Gardiner Roberts LLP will conduct the appropriate title searches, lien searches and examine historical documentation (bill of sale, manufacturing certificates etc.) to establish chain of title and to confirm if any title issues exist.

22. Ownership Considerations

A registered vessel must be owned by a Canadian resident. A registered vessel must have an authorized representative appointed under the *Canada Shipping Act, 2001* who is responsible with respect to all matters relating to the vessel.

23. Final Inspection

Inspect the vessel prior to taking possession to ensure there has been no damage since the pre-purchase inspection and sea trial. At this time, Gardiner Roberts LLP will ensure all conditions (per the vessel purchase agreement) have been fulfilled.

24. Bill of Sale/Closing Documents

Gardiner Roberts LLP will ensure that the seller has executed and delivered a Bill of Sale on the closing date, together with a vessel delivery receipt, and other relevant closing documents (mortgage discharges, lien discharges etc.) A PDF version is available for download [here](#).

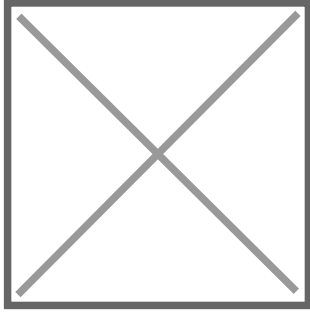
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Author



Rui M. Fernandes

Partner and Co-Chair, Transportation and Logistics Group

416.203.9505

rfernandes@grllp.com