

The Canada Marine Act— Creating Canada Port Authorities

The Canada Marine Act (CMA) brings sweeping changes to our national marine transportation system.

In 1994, the federal government announced a new comprehensive strategy aimed at improving the transportation system, based on the principles of deregulation, subsidy reduction, commercialization, and continued safety.

The new marine policy was announced in December, 1995. This set the stage for the developments: introduction of the CMA (1996); commercialization of the St. Lawrence Seaway system; and identification of pilotage reforms. For ports, the policy launched a process to place Canada's several hundred ports into one of three categories: National Ports System (NPS) ports; regional/local ports; and remote

NPS ports are those deemed vital to domestic and international trade; these are being restructured as Canada Port Authorities (CPAs). The many regional and local ports are being transferred to local interests which are in a better position to manage them efficiently and respond to local needs (a transfer process occurring independently of CMA passage). Remote ports are those serving communities which rely on marine transportation; the federal government will continue to support them.

The CMA is designed to place CPAs under one management regime with clear, consistent criteria

applied coast to coast. It will allow ports to operate on a more commercial basis, removing the federal government from direct port operations, and promising to give users greater say in how ports work. The focus of the new regime, and consequently this briefing, is on CPAs, ports which are to include 10 of the 14 Canada Ports Corporation ports and 8 of the 9 Harbour Commissions.

The CMA received Royal Assent in June, 1998 and the sections relating to ports were to have been implemented by 1, 1999. However, the "one size fits all" approach created some difficulties mainly in finalizing the letters patent. The CPAs were formed March 1, 1999 (Vancouver, Montreal, Halifax) and the remaining 15 are expected to be in place later this year.

This briefing highlights the features of the new regime compared to the old regime. It also gives some early views about the Act regarding the CPAs, based on interviews with senior representatives of selected western Canadian ports, government officials and users.

Some see the new environment as a major step forward because it permits CPAs to be more innovative and responsive to market opportunities. Others anticipate higher port operating costs and greater uncertainties about the use of federal lands under CPA management. Another view is that more consideration should be given to expanding the discussion of port efficiencies beyond the impact of government's continued involvement in port management.



Differences between the old and the new regime¹ affect ports, the St. Lawrence Seaway system, and pilotage.

Under the old rules:

Ports
<p>Control through the <i>Canada Ports Corporation Act</i>; <i>Public Harbours and Port Facilities Act</i>; <i>Harbour Commissions Act</i></p> <ul style="list-style-type: none"> • CPC ports governed by federally-appointed Board of Directors (7-person); Harbour Commissions had smaller boards. • For CPCs, government approval needed to develop and implement projects over \$10 million or to award service contracts over \$1 million; Harbour Commissions could develop projects if funds available. • Ports have received government subsidies for infrastructure development, some receiving more than others (there has been little funding since 1983). Some Harbour Commissions provided their own funding. • CPCs paid dividends to the federal government; Harbour Commissions did not remit surpluses.
Seaway
<p>Control through the <i>St. Lawrence Seaway Authority Act</i></p> <ul style="list-style-type: none"> • Operated by the St. Lawrence Seaway Authority as a federal Crown Corporation.
Pilotage
<p>Control through the <i>Pilotage Act</i></p> <ul style="list-style-type: none"> • Federal government covered deficits; however, most regions have been self sufficient.

Under the CMA:

Ports
<p>Control through the <i>Canada Marine Act</i> (creates not-for-profit organizations with powers/responsibilities similar to those of corporations established under the <i>Canada Business Corporations Act</i>; ports are mandated to operate with full commercial discipline)</p> <ul style="list-style-type: none"> • Letters patent stipulate Board of 7 to 9 members, with a majority chosen by the government in consultation with port users. • Increased freedom for CPAs to develop contracts and leases with interested parties to operate ports (with rail carriers and/or service providers, for road easements, licences for utilities, services and/or access). May also set tariffs and fees in respect of: ships/vehicles/aircraft/persons coming into or using the port; goods loaded/unloaded/transhipped by water within the limits of the port; and any services provided by the port authority (e.g., wharfage, berthage, harbour dues). Both core and non-core activities subject to pre-approval in letters patent. • Government funding/guaranteed loans not available for CPAs. Free to pursue private sector capital to finance port projects. Limit on borrowing capacity set by the federal government in the letters patent. • CPAs pay stipends to the Crown to maintain letters patent and provide a fair return on investments made by taxpayers in ports infrastructure in the past. Stipends will apply only to CPAs, calculated as a proportion of gross income. Harbour Commissions will pay grants in lieu of taxes to municipalities.
Seaway
<p>Control through the <i>Canada Marine Act</i></p> <ul style="list-style-type: none"> • The St. Lawrence Seaway Management Corporation (SLSMC) handles day-to-day business of the facilities through a management agreement with the government. The government continues to own the infrastructure and assumes any risk on revenues. The SLSMC is committed to meet new reduced cost targets and increase tolls in 1999 and 2000 by 2%.
Pilotage
<p>Control through an amended <i>Pilotage Act</i></p> <ul style="list-style-type: none"> • Deficits incurred by pilotage authorities no longer covered by the federal government: cost recovery for pilotage services are to be 100%. • The CMA provides for a full review of the <i>Pilotage Act</i> to ensure that the efficiency, viability and safety of the system meets user expectations. The Canadian Transportation Agency has been appointed to conduct the review and is to report to the Minister by September 1, 1999.

¹. The CMA brings the port regulatory environment under one Act by repealing: the *Canada Ports Corporation Act*; the *Public Harbours and Port Facilities Act*; the *Harbour Commissions Act*; the *Hamilton Harbour Commissioners' Act*; the *Toronto Harbour Commissioners' Act*; and the *St. Lawrence Seaway Authority Act*. The *Pilotage Act* is to be amended.

There are outstanding concerns which affect different ports to varying degrees.

Federal government involvement in port business

Under the CMA, the federal, provincial and municipal governments will each appoint a representative to the Board of Directors. The CMA requires that a majority of the Board (total of 7 to 9) be nominated by the Minister and appointed by the Governor-in-Council, and that port users be consulted in the nomination process to promote commercial orientation. This is partly designed to protect the public's investment in port infrastructure.

Some feel that although the CMA lessens government involvement, the Board composition and selection process gives government too much control. There is also concern that there is no provision for consultation on initial letters patent. Others think the new environment will enable ports to be more innovative and competitive because of greater independence and the ability to respond more quickly than previously to business opportunities.

Cost increases

All CPAs will now be required to pay an annual stipend to the federal government based on a percentage of gross revenue. Some ports are concerned that added costs could make them less competitive. Some shippers are concerned that these added costs might be passed on to them. Others feel the CMA doesn't go far enough in providing the ports with the financial tools required to compete efficiently with foreign ports (such as the ability to levy taxes and issue bonds).

Some Harbour Commissions believe they were better off under the old regime and will now face the prospect of higher operating costs and uncertainties over the use of port lands. Thunder Bay expects higher costs because of the requirement to pay stipends. Fraser Port estimates new costs of about \$3 million because of the combined effects of stipends, grants in lieu of taxes to municipalities (previously Harbour Commissions did not pay grants in lieu of taxes and CPC ports did) and anticipated higher administrative costs. The impacts of this change will vary by port.

Other concerns arise over possible new administrative costs because of legislation which did not previously apply to some ports:

- Access to information: CPAs must now establish a greater transparency of operations in order to increase their accountability to users and the public.
- Environmental assessment panels (EAPs): All CPAs will now incur the costs associated with any EAP study and recommendations; previously some did not pay such costs.

- *Official Languages Act*: The need for ports to comply with these rules may not affect major ports since they likely already comply. However, smaller CPAs may incur added costs.

Deficits incurred by pilotage authorities will no longer be covered by the federal government. This has some shippers concerned that pilotage rates could increase when the rates are already felt to be too high.

Allowable activities on port land

Non-core activities are those not directly related to shipping, navigation, the transportation of passengers and goods, and the handling and storage of goods. The letters patent set out the specific core and non-core activities which can be undertaken by a port authority and its subsidiaries. The CMA establishes clear rules regarding federal real property and fixtures entrusted to the management of a port authority.

Some CPAs say they will be restricted in their ability to exchange real property under their management because such transfers are still subject to federal authorization under supplementary letters patent. Another concern is that exchanges of property must be for other property of comparable market value; some believe this will be difficult to put into practice. They say these factors will prevent ports from responding quickly to market opportunities under a law intended to provide more commercial freedom.

Reduced government financial support

The CPAs will no longer have access to federal funds to discharge any obligation or liability. Further, they will not be allowed to claim federal real property as collateral when borrowing funds. However, they may claim port assets (e.g., fixtures such as cranes or non-federal property held in the name of the CPA) as collateral but only when those funds are used to acquire, repair or maintain the asset. Revenues derived from federal property may also be pledged as collateral.

One Act for all CPAs

There are concerns about the ability of a single Act to serve the needs of every CPA. The CMA requires complex documentation (letters patent) for each CPA which has already delayed implementation.

Canada Port Authorities (CPAs)

CPAs are managed independently from the federal government and are part of the National Ports System (NPS). To qualify for CPA status a port must be: vital to domestic and international trade; financially self-sufficient; serve large and diversified markets; and have links with major rail lines or highways. Vancouver, Montreal and Halifax are the first established CPAs. Another 15 ports and harbour commissions, including Prince Rupert, Fraser River and Thunder Bay, will become CPAs later this year pending completion of the letters patent process.

Regional/Local Ports

These are ports that have already been, or remain to be, transferred to local authorities (e.g., provincial or municipal governments, private sector interests). They may apply for CPA status if they meet the above criteria. There are some 150 regional and local ports which are currently under the administration of Transport Canada. The port of Churchill has been transferred to private ownership under Hudson Bay Port Corporation.

Remote Ports

These are isolated ports that rely on marine transportation; existing Transport Canada facilities will continue to be provided by the federal government. There are 34 remote ports under

Concerns about US Ports

In many cases, US ports compete directly with Canadian ports and differences in the rules governing the operation of ports are a concern.

US ports are federally regulated but not federally owned. State and municipal governments own many ports and provide financial assistance to them. US ports are responsible to finance their own capital development programs and to generate revenues needed to cover operating costs and earn adequate returns.

A concern of Canadian ports and users is the greater range of financing methods available to US ports, including the fact that US ports can collect taxes (e.g., Seattle/Tacoma/Portland collect a combined US \$50 million each year). Apart from port revenues, several options exist²: GO bonds, revenue bonds, loans, grants and "other sources" (state transportation trust funds, state and local appropriations, taxes and lease revenue). In 1997, the use of revenue bonds accounted for more than 47% of all US port revenues, followed by revenues from port services (30%), GO bonds (10%) and loans and grants (8%). The percentage of revenues from all other sources including the levying of taxes was less than 4%.

In Canada, there are strong concerns that a comprehensive review of port taxation by federal, provincial and municipal governments is needed to ensure the level of taxation does not threaten the viability and competitiveness of our ports.

² Source: USMaritime Administration (MARAD), 1997 survey.

Existing and Planned CPAs

