

## SHORT TITLE

1. This Act may be cited as the *Canada Marine Act*.

## INTERPRETATION

2. (1) The definitions in this subsection apply in this Act.

"Agency" means the Canadian Transportation Agency continued by subsection 7(1) of the *Canada Transportation Act*.

"federal immovable" has the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*;

"federal real property" has the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*;

"fees" includes harbour dues, berthage and wharfage, as well as duties, tolls, rates and other charges, but does not include payments made under a lease or licence agreement.

"goods" includes all personal property and movables other than ships.

"Minister" means the Minister of Transport.

"owner" includes

(a) in the case of a ship, the agent, charterer by demise or master of the ship; and

(b) in the case of goods, the agent, sender, consignee or bailee of the goods, as well as the carrier of the goods to, on, over or from any real property or immovables to which this Act applies. ~~under the administration or jurisdiction of a port authority or the Minister.~~

"person" includes a partnership, an association and a body corporate.

"port authority" means a port authority incorporated or continued ~~established~~ under this Act section 8.

"port facility" means a wharf, pier, breakwater, terminal, warehouse or other building or work located in, on or adjacent to navigable waters that is used in connection with navigation or shipping, ~~and includes all land incidental to its use, and any land adjacent to navigable waters that is used in connection with navigation or shipping.~~

"public port" means a port designated as a public port under section 65.

"public port facility" means a port facility designated as a public port facility under section 65.

"Seaway" means the deep waterway between the port of Montreal and the Great Lakes that is constructed and maintained pursuant to the Agreement between Canada and the United States providing for the development of navigation and power in the Great Lakes-St. Lawrence Basin, dated March 19, 1941, including the locks, canals and facilities between the port of Montreal and Lake Erie and generally known as the St. Lawrence Seaway.

"ship" means every description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation, whether self-propelled or not and without regard to the method of propulsion, and includes a sea-plane and a raft or boom of logs or lumber.

(2) Unless a contrary intention appears, words and expressions used in this Act have the same meaning as in the *Canada Business Corporations Act*.

### **ABORIGINAL RIGHTS**

3. For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the application of section 35 of the *Constitution Act, 1982* to existing aboriginal or treaty rights of the aboriginal peoples of Canada.

### **NATIONAL MARINE POLICY PURPOSE**

4. ~~It is hereby declared that the objective of this Act is to~~ In recognition of the significance of marine transportation to Canada and its contribution to the Canadian economy, the purpose of this Act is to

(a) ~~implement a National Marine Policy~~ that provides Canada with the marine infrastructure that it needs and that offers effective support for the achievement of local, regional and national national, regional and local social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;

(a.1) promote the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy;

(b) base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada's major trading partners in order to foster harmonization of standards among jurisdictions;

(c) ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;

(d) provide for a high level of safety and environmental protection;

(e) provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;

(f) manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located;

(g) provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and

(h) promote coordination and integration of ~~coordinate with other~~ marine activities and surface and air transportation systems.

## **PART 1**

### **CANADA PORT AUTHORITIES**

#### **Interpretation**

5. The definitions in this section apply in this Part.

"airport"

"airport" means an airport situated in a port.

"letters patent"

"letters patent" means letters patent as amended by supplementary letters patent, if any.

"port"

"port" means the navigable waters under the jurisdiction of a port authority and the real property and immovables that the port authority manages, holds or occupies as set out in the letters patent.

"user"

"user", in respect of a port, means a person that makes commercial use of, or provides services at, the port.

## Application

6. (1) This Part applies to every port authority set out in the schedule and to every port authority for which letters patent of incorporation are issued or that has been continued under this Part and that has not been dissolved.

(2) The Minister may, by regulation order, amend the schedule, ~~by adding to Part 2 of it the names of new port authorities or by removing from the schedule the names of port authorities that are dissolved.~~

## Agent of Her Majesty

7. (1) Subject to subsection (3), a port authority is an agent of Her Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a).

(2) A wholly-owned subsidiary of a port authority is not an agent of Her Majesty in right of Canada unless, subject to subsection (3),

*a)* it was an agent of Her Majesty in right of Canada on June 10, 1996; and

*b)* it is an agent of Her Majesty in right of Canada under an enactment other than this Act.

(3) A port authority or a wholly-owned subsidiary of a port authority may not borrow money as an agent of Her Majesty in right of Canada.

## Incorporation

8. (1) The Minister may issue letters patent that take effect on the date stated in them ~~incorporating or incorporation that take effect on the date stated in them~~ for a port authority without share capital for the purpose of operating a particular port in Canada if the Minister is satisfied that the port

*(a)* is, and is likely to remain, financially self-sufficient;

*(b)* is of strategic significance to Canada's trade;

*(c)* is linked to a major rail line or a major highway infrastructure; and

*(d)* has diversified traffic.

(2) The letters patent shall set out the following ~~information~~:

*(a)* the corporate name of the port authority;

- (b) the place where the registered office of the port authority is located;
- (c) the navigable waters that are within the port authority's jurisdiction;
- (d) the federal real property and federal immovables under the management of the port authority;
- (e) the real property and immovables, other than the federal real property and federal immovables, held or occupied by the port authority;
- (f) the number of directors, between seven and eleven, to be appointed under section 14, to be chosen as follows:
- (i) one individual nominated by the Minister,
  - (ii) one individual appointed by the municipalities mentioned in the letters patent,
  - (iii) one individual appointed by the province in which the port is situated, and, in the case of the port wholly or partially located in of Vancouver, another individual appointed by the Provinces of Alberta, Saskatchewan and Manitoba acting together, and
  - (iv) the remaining individuals nominated by the Minister in consultation with the users selected by the Minister or the classes of users mentioned in the letters patent;
- (g) a code of conduct governing the conduct of the directors and officers of the port authority;
- (h) the charge on the gross revenues of the port authority, or the formula for calculating it, that the port authority shall pay each year to the Minister on the day fixed by the Minister to maintain its letters patent in good standing;
- (i) the extent to which the port authority and a wholly-owned subsidiary of the port authority may undertake port activities referred to in paragraph 28(2)(a) and other activities referred to in paragraph 28(2)(b);
- (j) the maximum term of a lease or licence of federal real property or federal immovables under the management of the port authority;
- (k) the limits on the authority of the port authority to contract as agent for Her Majesty;

(l) the limits on the power of the port authority to borrow money on the credit of the port authority for port purposes or a code governing that power, as the case may be; and

(m) any other provision that the Minister considers appropriate to include in the letters patent and that is not inconsistent with this Act.

(3) Letters patent are not regulations within the meaning of the *Statutory Instruments Act*, but shall be published in the *Canada Gazette* and are valid with respect to third parties as of the date of publication.

(4) Any provisions of letters patent relating to the extent to which a port authority may undertake activities referred to in paragraph 28(2)(b) shall be approved by the President of the Treasury Board and the Minister of Finance before the letters patent are issued.

(5) Any provisions of letters patent relating to limits on the power of a port authority to borrow money on the credit of the port authority for port purposes shall be approved by the Governor in Council before the letters patent are issued.

9. (1) ~~The Minister may, either on the Minister's own initiative and after giving notice of the proposed changes to consulting with the board of directors, or when the board of directors has by resolution, requested it, or at the request of the board of directors,~~ issue supplementary letters patent amending the letters patent of a port authority if the Minister is satisfied that the amendment is consistent with this Act, and the supplementary letters patent take effect on the date stated in them.

(2) Notice must be given in writing and set out a time limit within which the board of directors may comment to the Minister regarding the proposed changes.

### **Continuance of Harbour Commissions**

10. (1) If the Minister is satisfied that the criteria set out in subsection 8(1) are met, the Minister may issue in respect of one or more harbour commissions established under pursuant to the *Harbour Commissions Act*, *The Hamilton Harbour Commissioners' Act* or *The Toronto Harbour Commissioners' Act, 1911*, letters patent continuing the harbour commission of continuance as a port authority that set out the information required by subsection 8(2).

(2) On the day date on which the letters patent of continuance are issued, the harbour commission becomes a port authority and the *Harbour Commissions Act* ceases to apply.

~~(a) the harbour commission becomes a port authority;~~

~~(b) the letters patent of continuance are deemed to be the letters patent of incorporation of the port authority;~~

~~(c) the port authority is deemed to have been incorporated under section 8; and~~

~~(d) the following Acts cease to apply, namely:~~

~~(i) in respect of the Hamilton Port Authority, *The Hamilton Harbour Commissioners' Act, The Hamilton Harbour Commissioners Act, 1951 and The Hamilton Harbour Commissioners Act, 1957,*~~

~~(ii) in respect of the Toronto Port Authority, *The Toronto Harbour Commissioners' Act, 1911 and the Toronto Harbour Commissioners' Act, 1985,* and~~

~~(iii) in respect of any other port authority that was one or more harbour commissions, the *Harbour Commissions Act.*~~

(3) The rights and obligations of a port authority that was one or more harbour commissions immediately before letters patent of continuance were issued are as follows:

(a) the corporate name of the port authority is substituted for that of the harbour commission in every contract, collective agreement, lease, licence, permit or other document entered into or granted by the harbour commission with regard to the port;

b) the management of the federal real property and federal immovables set out in the letters patent, and any rights related to them, is conferred on the port authority;

(c) the real property and immovables, other than federal real property and federal immovables, that the harbour commission occupied or the title to which it held, whether or not in its own name, and that are set out in the letters patent, and any rights related to them, become the interest, property and rights of the port authority, as the case may be;

(d) the personal property, or movable, and any rights related to it the property, that the harbour commission manages, or the title to which it holds, on behalf of Her Majesty in right of Canada, whether or not in its own name, become the property and rights of the port authority;

(e) an existing cause of action, proceeding or claim by or against the harbour commission or a liability or other obligation of the harbour commission is unaffected except that any judgment or order is to be satisfied first by the port authority;

(f) a civil, criminal or administrative action or proceeding pending by or against the harbour commission may be continued only by or against the port authority; and

(g) subject to paragraph (e), a conviction against, or a ruling, order or judgment in favour of or against, the harbour commission may be enforced only by or against the port authority.

11. The commissioners of a harbour commission continued under subsection 10(1) cease to hold office on the day referred to in section 18 and have no right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent of Her Majesty for ceasing to hold office by virtue of this Part.

### **Initial Port Authorities**

12. (1) A port authority set out in an item of Part 1 of the schedule is automatically continued or deemed to be incorporated under section 8 on the day on which that item comes into force and the Minister shall issue to it letters patent that set out the information required by subsection 8(2).

(2) The rights and obligations of a port authority referred to in subsection (1) that was one or more harbour commissions immediately before the coming into force of this subsection are governed by subsection 10(3).

(3) The rights and obligations of a port authority referred to in subsection (1) that was, immediately before the coming into force of this subsection, a local port corporation established under the *Canada Ports Corporation Act* are as follows:

(a) the corporate name of the port authority is substituted for that of the local port corporation in every contract, collective agreement, lease, licence, permit or other document entered into or granted by the local port corporation, the Canada Ports Corporation or any of their predecessors in respect of the port;

(b) the real property and immovables, and any rights related to them, that the local port corporation administers, or the title to which it holds, on behalf of Her Majesty in right of Canada, whether or not in its own name, remain the property and rights of Her Majesty;

(c) the management of the federal real property and federal immovables set out in the letters patent, and any rights related to them, is conferred on the port authority;

(d) the personal property, or movable, and any rights related to ~~it the property~~, that the local port corporation administers, or the title to which it holds, on behalf of Her Majesty in right of Canada, whether or not in its own name, become the property and rights of the port authority;

(e) an existing cause of action, proceeding or claim by or against the local port corporation or liability or other obligation of the local port corporation is

unaffected except that any judgment or order is to be satisfied first by the port authority;

(f) a civil, criminal or administrative action or proceeding pending by or against the local port corporation may be continued only by or against the port authority; and

(g) subject to paragraph (e), a conviction against, or a ruling, order or judgment in favour of or against, the local port corporation may be enforced only by or against the port authority.

(4) The rights and obligations of a port authority referred to in subsection (1) that was, immediately before the coming into force of this subsection, a non-corporate port within the meaning of the *Canada Ports Corporation Act* are as follows:

(a) the corporate name of the port authority is substituted for that of the Canada Ports Corporation or any of its predecessors in every contract, collective agreement, lease, licence, permit or other document entered into or granted by the Canada Ports Corporation or any of its predecessors in respect of the port;

(b) the real property and immovables, and any rights related to them, that form part of the port and that the Canada Ports Corporation administers, or the title to which it holds, on behalf of Her Majesty in right of Canada, whether or not in its own name, remain the property and rights of Her Majesty;

(c) the management of the federal real property and federal immovables set out in the letters patent, and any rights related to them, is conferred on the port authority;

(d) the personal property, or movable, and any rights related ~~to the property, to it~~ that relate to the port and that the Canada Ports Corporation administers, or the title to which it holds, on behalf of Her Majesty in right of Canada, whether or not in its own name, become the property and rights of the port authority;

(e) an existing cause of action, proceeding or claim by or against the Canada Ports Corporation in respect of the port or a liability or other obligation of that Corporation in respect of the port is unaffected except that any judgment or order is to be satisfied first by the port authority;

(f) a civil, criminal or administrative action or proceeding pending by or against the Canada Ports Corporation in respect of the port may be continued only by or against the port authority; and

(g) subject to paragraph (e), a conviction against, or a ruling, order or judgment in favour of or against, the Canada Ports Corporation in respect of the port may be enforced only by or against the port authority.

(5) For the purposes of subsection (4), the Minister may fix the limits of a non-corporate port that is to be managed by a port authority and settle any question that arises in respect of the property, rights or obligations of the port authority.

13. (1) The directors or commissioners of the bodies that become port authorities under section 12 cease to hold office on the day referred to in section 18 and have no right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent of Her Majesty for ceasing to hold office by virtue of this Part.

(2) Neither the port authority nor Her Majesty in right of Canada is bound by any severance agreement entered into between a predecessor of the port authority and any of its officers after December 1, 1995.

### **AMALGAMATION OF PORT AUTHORITIES**

13.1 (1) The Governor in Council may remove any director of an amalgamating port authority during the period that begins on the day on which the Governor in Council requires the amalgamation and ends on the day before the day on which the amalgamation takes effect.

(2) Subsection 14(2.3) does not apply to a director of an amalgamating port authority who holds office on the day on which the Governor in Council requires the amalgamation.

(3) A fee that is in force in respect of a port on the day which an amalgamation takes effect continues in force for a period that ends on the earlier of the expiry of six months and the day on which it is replaced by a fee fixed under subsection 49(1).

### **Directors**

14. (1) The directors of a port authority shall be appointed as follows:

- (a) the Governor in Council appoints one individual nominated by the Minister;
- (b) the municipalities mentioned in the letters patent appoint one individual;
- (c) the province or provinces mentioned in the letters patent appoint one or two individuals as mentioned in the letters patent; and
- (d) the Governor in Council appoints the remaining individuals nominated by the Minister in consultation with users selected by the Minister or the classes of users mentioned in the letters patent.

(1.1) The Governor in Council may appoint a director under paragraph (1)(b) or (c) who has been nominated by the Minister if the position has been vacant for more than one year.

(2) The ~~d~~Directors are appointed to hold office for ~~such any~~ term of not more than three years ~~that as~~ will ensure as far as possible the ~~expiry expiration~~ in any one year of the terms of office of not more than one half of the directors, the terms being renewable ~~twice once~~ only.

(2.1) A director shall serve no more than nine consecutive years on the board.

(2.2) A director's appointment takes effect on the day on which notice of the appointment is received by the port authority.

(2.3) Subject to subsection (2.1), if a successor has not been appointed at the expiry of a director's term, the director continues to hold office until their term is renewed or their successor is appointed.

(2.4) Subject to subsection (2.1) and despite subsection (2), the term of office of a director appointed under subsection (1.1) to fill a vacant position under paragraph (1)(b) or (c) expires on the day on which a director is nominated under that paragraph.

(3) No person is eligible to be appointed as a director within twelve months after the expiration of their term or renewed term.

(4) The directors are appointed to serve part-time.

(5) The board of directors shall fix the remuneration of the directors, the chairperson and the chief executive officer.

(6) Subject to the letters patent, a majority of the directors in office constitutes a quorum at any meeting of directors and a quorum of directors may exercise all the powers of the directors.

**15.** (1) The directors of a port authority appointed under any of paragraphs 14(1)(a) to (c) shall have generally acknowledged and accepted stature within the transportation industry or the business community.

(2) The directors of a port authority appointed under paragraph 14(1)(d) shall have generally acknowledged and accepted stature within the transportation industry or the business community and relevant knowledge and extensive experience related to the management of a business, to the operation of a port or to maritime trade.

**16.** The following individuals may not be directors of a port authority:

- (a) an individual who is a mayor, councillor, officer or employee of a municipality mentioned in the letters patent;
- (b) an individual who is a member of the legislature of a province, or an officer or employee of the public service or of a Crown corporation of a province, mentioned in the letters patent;
- (c) a Senator or a member of the House of Commons ~~Parliament or an officer or employee of the federal public administration, including an officer or employee in a federal Crown corporation;~~
- (c.1) an officer or employee of the federal public administration, a federal Crown corporation or a port authority;
- (d) an individual who is not a resident Canadian, as defined in subsection 2(1) of the *Canada Business Corporations Act*;
- (e) an individual who is a director, officer or employee of a person who is a user of the port;
- (f) an individual who is under eighteen years of age;
- (g) an individual who has been declared mentally incompetent by a court in Canada or elsewhere; or
- (h) an undischarged bankrupt.

**17.** The board of directors shall elect a chairperson from among their number for a term not exceeding two years, the term being renewable.

**18.** Subject to subsection 19(1), where a port authority is continued under section 10 or 12, the directors or commissioners of the former local port corporation or harbour commission, respectively, continue to hold office as provisional directors of the port authority until the earlier of the day on which they are replaced or removed and ninety days after the date of the continuance.

**19. (1)** A director of a port authority ceases to hold office when the director

- (a) dies or resigns;
- (b) is removed for cause by the authority that made the appointment, namely, the Governor in Council, the municipalities, or the province or provinces ~~or the other directors;~~ as the case may be; or
- (c) is no longer qualified under section 16.

(2) The resignation of a director becomes effective on the day on which a written resignation is received by the port authority or on the day specified in the resignation, whichever is later.

**20.** The board of directors is responsible for the management of the activities of a port authority.

**21. (1)** The board of directors of a port authority shall appoint a chief executive officer and may appoint other officers that they consider appropriate.

(2) The chief executive officer is not a member of the board of directors.

(3) A port authority may appoint the personnel that it considers necessary for the operation of the port.

**21.1** Subject to the letters patent, the board of directors may delegate the powers to manage the activities of the port authority to a committee of directors or to the officers of the port authority.

**22. (1)** Every director and officer of a port authority shall, in exercising powers and discharging duties,

(a) act honestly and in good faith with a view to the best interests of the port authority; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a port authority shall comply with this Part, the regulations made under subsection 27(1) and the letters patent and by-laws of the port authority.

(3) No provision in a contract or resolution relieves a director or officer from the duty to act in accordance with this Part, the regulations made under subsection 27(1), the letters patent or the by-laws or relieves them from liability for a breach of any of them.

### **Legal Regime Applicable to Port Authorities**

**23. (1)** If a port authority or a wholly-owned subsidiary of a port authority is acting as agent of Her Majesty in right of Canada, the port authority or subsidiary must fulfil or satisfy an obligation or liability in respect of the port authority or subsidiary, as the case may be, arising from its exercise of, or its failure to exercise, a power or right or arising by operation of law. Her Majesty is not responsible for fulfilment or satisfaction of the obligation or liability, except that if a judgment or decision is rendered by a court of competent jurisdiction in respect of the obligation or liability, Her Majesty is responsible

for satisfying the judgment or decision to the extent that it remains unsatisfied by the port authority or subsidiary at least thirty days after the judgment or decision becomes final.

(2) If a port authority or a wholly-owned subsidiary of a port authority is not acting as agent of Her Majesty in right of Canada, an obligation or liability in respect of the port authority or subsidiary, as the case may be, arising from its exercise of, or its failure to exercise, a power or right or arising by operation of law is an obligation or liability of the port authority or subsidiary, as the case may be, and not an obligation or liability of Her Majesty.

(3) A port authority and a wholly-owned subsidiary of a port authority shall fully maintain in good standing at all times the insurance coverage required by any regulations made under paragraph 27(1)(e).

24. The *Financial Administration Act*, other than subsection 9(3) and sections 155, 155.1 and 156, does not apply to a port authority or a wholly-owned subsidiary of a port authority.

25. No payment to a port authority or a wholly-owned subsidiary of a port authority may be made under an appropriation by Parliament to enable the port authority or subsidiary to discharge an obligation or liability. This section applies

(a) even if the port authority or subsidiary is an agent of Her Majesty in right of Canada as provided under section 7; and

(b) unless the payment

(i) is made under the *Emergencies Act* or any other Act in respect of emergencies,

(ii) is a contribution in respect of the capital costs of an infrastructure project,

(iii) is a contribution in respect of environmental sustainability, or

(iv) is a contribution in respect of security, and

(c) unless the authority for the funding of Her Majesty's obligations is an agreement that was in existence before March 1, 1999.

~~(b) notwithstanding any authority given under any other Act, other than an authority given under the *Emergencies Act*, any other Act in respect of emergencies or any Act of general application providing for grants, or other than an authority for the funding of Her Majesty's obligations under an agreement in existence at the time of the coming into force of this paragraph.~~

25.1 The Minister may, with the approval of the Governor in Council given on the recommendation of the Treasury Board and on any terms and conditions specified by the Governor in Council on the recommendation of the Treasury Board, make a contribution under subparagraph 25 (b)(iv).

26. No guarantee may be given under the authority of Parliament by or on behalf of Her Majesty for the discharge of an obligation or liability of a port authority or a wholly-owned subsidiary of a port authority. This section applies even if the port authority or subsidiary is an agent of Her Majesty in right of Canada as provided under section 7.

27. (1) For the purposes of this Part, the Governor in Council may make regulations for the corporate management and control of port authorities or wholly-owned subsidiaries of port authorities, including regulations

(a) adapting any provision of the *Canada Business Corporations Act* and any regulations made under that Act, including provisions imposing punishment, for the purpose of applying those provisions as adapted to port authorities;

(b) prescribing, for the purposes of section 32, categories of investments in which a port authority may invest;

(c) respecting the preparation, form and content of the documents referred to in paragraphs 37(2)(a) to (d) and the information referred to in subsection 37(3);

(d) prescribing the remuneration threshold for the purposes of paragraph 37(3)(c) and the method of determining that threshold;

(e) respecting the insurance coverage that a port authority and a wholly-owned subsidiary of a port authority must maintain; ~~and~~

(f) respecting the imposition of obligations on a port authority or a wholly-owned subsidiary of a port authority, as an agent of Her Majesty in right of Canada, including any requirements for a port authority or a wholly-owned subsidiary of a port authority to indemnify Her Majesty;

(g) respecting the information and documents to be provided by a port authority to the Minister at the Minister's request; and

(h) respecting the amalgamation of port authorities.

(2) A regulation made under subsection (1) may apply to only one port authority or wholly-owned subsidiary of a port authority.

(3) A regulation made under subsection (1) may be made binding on Her Majesty in right of Canada or a province.

## Capacity and Powers

28. (1) A port authority is incorporated for the purpose of operating the port in respect of which its letters patent are issued and, for that purpose and for the purposes of this Act, has the powers of a natural person.

(2) The power of a port authority to operate a port is limited to the power to engage in

(a) port activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, to the extent that those activities are specified in the letters patent; and

(b) other activities that are deemed in the letters patent to be necessary to support port operations.

(3) The activities that a port authority may engage in under paragraph (2)(b) may be carried on by the port authority directly or through a wholly-owned subsidiary of the port authority. The port authority and the subsidiary are not agents of Her Majesty in right of Canada for the purpose of engaging in those activities.

(4) A port authority shall not carry on any activity or exercise any power that it is restricted by its letters patent from carrying on or exercising, nor shall it carry on any activity or exercise any of its powers in a manner contrary to its letters patent or this Act.

(5) A port authority or wholly-owned subsidiary of a port authority that enters into a contract other than as agent of Her Majesty in right of Canada shall do so in its own name. It shall expressly state in the contract that it is entering into the contract on its own behalf and not as agent of Her Majesty in right of Canada. For greater certainty, the contracts to which this subsection applies include a contract for the borrowing of money.

(5.1) If a port authority that is subject to a code governing its power to borrow enters into a contract, or executes any other document, for the borrowing of money, the document shall include an express statement that the borrowing complies with the code.

(6) The directors of a port authority shall take all necessary measures to ensure

(a) that the port authority and any wholly-owned subsidiary of the port authority comply with subsections (5); and, if applicable, (5.1); and

(b) that any subcontract arising directly or indirectly from a contract to which subsection (5) applies expressly states that the port authority or subsidiary, as the case may be, enters into the contract on its own behalf and not as agent of Her Majesty in right of Canada.

(7) If a port authority or a wholly-owned subsidiary of a port authority fails to comply with subsection (5) or (5.1), or the directors of a port authority fail to comply with

subsection (6) or section 30.1, the Minister of Finance, on the recommendation of the Minister of Transport, may impose any limitations that the Minister of Finance considers to be in the public interest on the power of the port authority or subsidiary to borrow money, including limitations on the time and terms and conditions of any borrowing.

(8) For greater certainty, the imposition under subsection (7) of limitations on the power of a port authority or subsidiary to borrow money or the imposition of other limitations or controls by the Minister, any other member of the Queen's Privy Council for Canada or the Governor in Council, through the issuance of letters patent, the granting of any approval or any other means, does not expand the extent, if any, to which the port authority or subsidiary is an agent of Her Majesty in right of Canada beyond that described in section 7.

(9) A port authority, or a wholly-owned subsidiary of a port authority, that enters into a contract as an agent of Her Majesty in right of Canada is bound by the contract and is responsible to Her Majesty for the performance of obligations to other parties under the contract.

10) Except for a use authorized under this Act, a port authority may continue to use any real property or immovables that it manages, holds or occupies for any purpose for which the real property or immovable was used on June 1, 1996 in the case of a port authority referred to in section 12, or the date of issuance of its letters patent in any other case, but, if the port authority ceases to use it for that purpose at any time, the port authority may not reinstitute the use.

(11) The directors of a port authority shall take all necessary measures to ensure that its wholly-owned subsidiaries

(a) have and exercise only the powers authorized in the letters patent of the port authority;

(b) carry on only the activities authorized in the letters patent; and

(c) do not exercise any power or carry on any activity in a manner contrary to the letters patent or this Act.

(12) The Governor in Council may declare that any provision of this Part that applies only to port authorities applies to a wholly-owned subsidiary of a port authority. In that case, the provision applies to the subsidiary as if it were a port authority, with such modifications as the circumstances require.

(13) A wholly-owned subsidiary of a port authority may continue to carry on any activity or exercise any power that it carried on or exercised on December 1, 1995 but, if the subsidiary ceases to carry on the activity or exercise the power at any time, it may not recommence it unless the activity or power is authorized in the letters patent.

(14) Unless the letters patent of a port authority provide otherwise, the port authority or a wholly-owned subsidiary of the port authority shall not

(a) cause the incorporation of a corporation whose shares on incorporation would be held by, on behalf of or in trust for the port authority or subsidiary;

(b) acquire shares of a corporation to be held on behalf of or in trust for the port authority or subsidiary;

(c) acquire all or substantially all of the assets of another corporation;

(d) sell or otherwise dispose of shares of a wholly-owned subsidiary of the port authority; or

(e) cause the dissolution or amalgamation of a wholly-owned subsidiary of the port authority.

29. (1) Subject to its letters patent, to any other Act and to any regulations made under any other Act, a port authority may

(a) construct, purchase, lease, operate and maintain railways on lands it manages, holds or occupies;

(b) enter into agreements with any person for the maintenance of the railways referred to in paragraph (a) and for their operation, in a manner that will provide all railway companies whose lines reach the port with the same facilities for traffic as those enjoyed by that person; and

(c) enter into arrangements with any person for facilitating traffic to, from or within the limits of the port.

(2) A railway referred to in paragraph (1)(a) is not subject to Part III of the *Canada Transportation Act* but the Governor in Council may make regulations applying any provision of the *Railway Safety Act* and any regulations made under that Act to such a railway.

(3) Subject to its letters patent, to any other Act, to any regulations made under any other Act and to any agreement with the Government of Canada that provides otherwise, a port authority that operates an airport shall do so at its own expense.

30. Unless the letters patent provide otherwise, the directors of a port authority may, by resolution, make, amend or repeal by-laws that regulate the affairs of the port authority or the duties of its officers and employees.

30.1(1) The directors of a port authority that is subject to a code governing its power to borrow shall certify to the Minister that the borrowing policy is in compliance with the code.

(2) If there are any changes in respect of the borrowing policy, the directors of the port authority shall certify to the Minister that the policy remains in compliance with the code.

(3) The directors of the port authority shall provide a copy of the borrowing policy to the Minister if the Minister requests one.

**31. (1)** Subject to the letters patent, a port authority may borrow money on the credit of the port authority for port purposes.

(2) Unless the letters patent or by-laws of a port authority provide otherwise, the board of directors may, by resolution, delegate the powers referred to in subsection (1) to a committee established by the directors.

(3) Subject to subsection (4), a port authority may not mortgage, hypothecate, pledge or otherwise create a security interest in the federal real property or federal immovable that it manages in any way other than to create a security interest in ~~pledge~~ the revenues of that property.

(4) A port authority may, if authorized in the letters patent, create a security interest in fixtures on federal real property and federal immovables to the same extent as Her Majesty could create such an interest and may, instead of Her Majesty, execute and deliver the documents required for that purpose.

(5) For the purposes of subsections (3) and (4), "security interest" means an interest in or charge on property or fixtures mentioned in those subsections to secure the discharge of an obligation or liability of the port authority.

(6) A grant under subsection (4) may be effected by any instrument by which an interest in real property or a right in an immovable may be granted by a private person under the laws in force in the province in which the federal real property, federal immovable or fixtures are situated.

**32.** A port authority may invest any moneys in its reserves or any moneys that it does not immediately require in

(a) debentures, bonds, bankers' acceptances or other debt obligations of or guaranteed by Her Majesty in right of Canada or any province or municipality in Canada or any member of the Canadian Payments Association; or

(b) investments of a category prescribed by regulation by the Governor in Council for the purposes of this section.

33. A person who deals with a port authority, acquires rights from a port authority or directly or indirectly acquires rights relating to a port authority is deemed to know the contents of the letters patent of the port authority.

### **Annual Meeting**

34. The directors of a port authority shall call an annual meeting not later than eighteen months after the port authority comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting.

35. (1) The annual meeting of a port authority shall be open to the public and held in any of the municipalities where the port is situated, in premises large enough to accommodate the anticipated attendance.

(2) A port authority shall, at least thirty days before the annual meeting, have a notice published in a major newspaper published or distributed in the municipalities where the port is situated setting out the time and location of the meeting and specifying that the port authority's financial statements are available to the public at its registered office.

(3) At the annual meeting, the board of directors shall ensure

(a) that there are available a sufficient number of copies of the most recent audited annual financial statements of the port authority for the persons present at the meeting; and

(b) that the chief executive officer and the directors are available to answer questions about the operations of the port authority posed by the persons present at the meeting.

36. The board of directors of a port authority shall present at every annual meeting

(a) comparative financial statements that relate separately to

(i) the period that ended not more than six months before the annual meeting and that began on the date the port authority came into existence or, if the port authority has completed a fiscal year, immediately after the end of the last completed fiscal year, and

(ii) the immediately preceding fiscal year;

(b) the report of the auditor of the port authority; and

(c) any further information respecting the financial position of the port authority and its wholly-owned subsidiaries and the results of their operations required by this Act, any regulations made under this Act, the letters patent or the by-laws.

## **Financial Management**

37. (1) A port authority shall make available for inspection by the public, at its registered office during normal business hours at least thirty days before the annual meeting, its audited annual financial statements and those of its wholly-owned subsidiaries for the preceding fiscal year.

(2) The financial statements shall be prepared in accordance with generally accepted accounting principles and consist of at least the following:

- (a) a balance sheet;
- (b) a statement of retained earnings;
- (c) a statement of income and expenses; and
- (d) a statement of changes in financial position.

(3) The annual financial statements shall set out the total remuneration paid in money or in kind to each of the following persons in that year by the port authority or its wholly-owned subsidiary, including any fee, allowance or other benefit:

- (a) the directors;
- (b) the chief executive officer; and
- (c) the officers and employees whose remuneration exceeds a prescribed threshold.

(4) A port authority shall submit to the Minister its audited annual financial statements, and those of its wholly-owned subsidiaries, at least thirty days before the port authority's annual meeting.

(5) A port authority shall provide the Minister with such accounts, budgets, returns, statements, documents, records, books, reports or other information as the Minister may require, including information about any contingent liabilities of the port authority or of its wholly-owned subsidiaries.

38. (1) A port authority shall ensure that, in respect of itself and its wholly-owned subsidiaries,

- (a) books of account and accounting records are kept; and
- (b) financial and management control and information systems and management practices are maintained.

(2) The books, records, systems and practices shall be kept and maintained in a manner that will provide reasonable assurance that

(a) the assets of the port authority are safeguarded and controlled;

(b) the transactions of the port authority are in accordance with this Part and the letters patent and by-laws of the port authority; and

(c) the financial, human and physical resources of the port authority are managed economically and efficiently and the operations of the port authority are carried out effectively.

39. A port authority shall, within three months after the end of each fiscal year, annually submit to the Minister, in respect of itself and each of its wholly-owned subsidiaries, a five-year business plan containing such information as the Minister may require, including any material changes in respect of information provided in the previous business plan.

40. The financial statements and business plan of a port authority shall be prepared in a form that clearly sets out information about each of the activities of the port authority and its wholly-owned subsidiaries, with the information about port activities referred to in paragraph 28(2)(a) set out separately from the information about other activities referred to in paragraph 28(2)(b).

### **Special Examinations**

41. (1) A port authority shall have a special examination carried out to determine whether the books, records, systems and practices referred to in subsection 38(1) were, in the period under examination, maintained in a manner that provided reasonable assurance that they met the requirements of subsection 38(2).

(2) A special examination shall be carried out at least once every five years and at any additional times that the Minister may require.

(3) Before beginning a special examination, the examiner shall survey the systems and practices of the port authority and submit a plan for the examination, including a statement of the criteria to be applied, to the audit committee of the port authority, or if there is no audit committee, to the board of directors, and, in the case where the Minister has required the special examination to be carried out, to the Minister.

(4) Where the examiner and the audit committee or board of directors disagree about the plan, the Minister may make a final determination with respect to it.

(5) The examiner shall, to the extent the examiner considers it feasible, rely on an internal audit carried out by the port authority.

42. (1) The examiner shall, on completion of the special examination, submit a report and a summary report of the findings to the Minister and to the board of directors.

(2) The examiner's report shall include

(a) a statement as to whether in the examiner's opinion, with respect to the criteria established under subsection 41(3), there is reasonable assurance that there are no significant deficiencies in the systems and practices examined; and

(b) a statement of the extent to which the examiner relied on internal audits.

(3) A port authority shall, as soon as is practicable after it receives the summary report, have notice of the summary report published in a major newspaper published or distributed in the place where the port is situated.

(4) A port authority shall make the summary report available for inspection by the public at its registered office during normal business hours.

43. (1) Subject to subsection (2), a special examination shall be carried out by the auditor of a port authority.

(2) Where, in the opinion of the Minister, a person other than the auditor of a port authority should carry out a special examination, the Minister may, after consulting with the board of directors appoint another auditor to do it and may, after again consulting with the board, remove that auditor at any time.

### **Property**

44. (1) For the purposes of the *Federal Real Property and Federal Immovables Act*, the Minister has the administration of the federal real property and federal immovables of a port in respect of which letters patent have been issued to the port authority, other than property the administration of which is under any other member of the Queen's Privy Council for Canada.

(2) The Minister may, by in the letters patent, or supplementary letters patent, give to a port authority the management of any federal real property or federal immovable that is administered by

(a) the Minister under subsection (1); or

(b) any other member of the Queen's Privy Council for Canada, if the Minister has the consent of that other member.

(3) If the Minister gives the management of any federal real property or federal immovable to a port authority, the *Federal Real Property and Federal Immovables Act*, does not apply to that property, other than sections 3, 5, 12 to 14 and paragraphs 16 to the

extent that those sections are not inconsistent with this Act. (1)(a), (g) and (i) and (2)(g), does not apply to that property.

(4) The *Surplus Crown Assets Act* does not apply to a port authority.

(5) If a port authority is of the opinion that any real property or immovable is no longer required for port purposes, it shall so inform the Minister.

(6) A port authority may manage, occupy or hold only the real property and immovables set out in its letters patent.

45. (1) Where the Minister has given the management of any federal real property or federal immovable to a port authority, the port authority

(a) need not pay compensation for the use of that property;

(b) may retain and use the revenue received in respect of that property for the purpose of operating the port;

(c) shall undertake and defend any legal proceedings, subject to any instructions that may be provided by the Attorney General of Canada, with respect to that property; and

(d) shall discharge all obligations and liabilities with respect to that property.

(2) ~~A civil, criminal or administrative action or proceeding with respect to any federal real property or federal immovable that a port authority manages, or any property that it holds, or with respect to any act or omission occurring on the property, shall be taken by or against a the port authority and not by or against the Crown with respect to-~~

(a) any personal property or movable owned by that port authority;

(b) any federal real property or federal immovable that it manages;

(c) any real property or immovable that it holds; and

(d) any act or omission relating to any property referred to in paragraphs (a) to (c).

(3) A port authority may, for the purpose of operating the port, lease or license any federal real property or federal immovable that it manages, subject to the limits in the port authority's letters patent on its authority to contract as agent for Her Majesty in right of Canada. The term of the lease or licence may not be more than the maximum term that the letters patent set out for such a lease or licence.

(3.1) The port authority may exercise the powers under subsection (3) to the same extent as Her Majesty could exercise those powers and may, instead of Her Majesty, execute and deliver the documents required for that purpose.

(3.2) A port authority may lease or license any federal real property or federal immovable it manages for temporary use under paragraph 28(2)(a).

(4) A lease or licence of any federal real property or federal immovable may be effected by any instrument by which, under the laws in force in the province in which the property is situated, real property or immovables may be leased or a licence may be granted by a private person.

45.1(1) Her Majesty in right of Canada may acquire any real property or immovable for the purpose of operating a port at the request of the port authority and the port authority may pay the price of the property in question.

(2) If the management of the real property or immovable acquired under subsection (1) is removed from the port authority, Her Majesty does not become liable to the port authority for any portion of the price paid by it.

46. (1) Subject to subsection 45(3), a port authority may not dispose of any federal real property or federal immovable that it manages but it may

(a) without the issuance of supplementary letters patent, grant a road allowances, an easements, a real servitude, a rights of way or a licences for utilities, services or access; and

(b) to the extent authorized in the letters patent,

(i) exchange that property for other real property or immovables of comparable market value, if subject to the issuance of supplementary letters patent that describe the other property as federal real property or federal immovables have been issued, and

(ii) dispose of fixtures on federal real property and federal immovables.

(1.1) The port authority may exercise the powers under paragraph (1)(a) or (b) to the same extent as Her Majesty could exercise those powers and may, instead of Her Majesty, execute and deliver the documents required for that purpose.

(2) A port authority may dispose of any real property or immovable that it ~~occupies or~~ holds, other than federal real property or federal immovables, if supplementary letters patent have been issued, and, without subject to the issuance of supplementary letters patent, and, without the issuance of supplementary letters patent, it may grant a road allowances an easements, a real servitude, a rights of way or a licences for utilities, services or access.

(2.1) The port authority may acquire, lease as lessee or license as licensee real property or immovables other than federal real property or federal immovables, if supplementary letters patent have been issued.

(2.2) A port authority may lease or license any real property or immovable it holds, other than federal real property or federal immovables, for temporary use under paragraph 28(2)(b).

(3) A grant may be effected by any instrument by which an interest in real property or a right in an immovable may be granted by a private person under the laws in force in the province in which the federal real property or federal immovable is situated.

47. The *Navigable Waters Protection Act* does not apply to a work, within the meaning of that Act, that has been exempted by a regulation to which regulations made under section 62 of this Act apply.

48. (1) A port authority shall, within twelve months after the issuance of its letters patent, develop a detailed land-use plan that contains objectives and policies for the physical development of the real property and immovables that it manages, holds or occupies and that takes into account relevant social, economic and environmental matters and zoning by-laws that apply to neighbouring lands.

(2) The land-use plan may

(a) prohibit the use of some or all of the real property and immovables for, or except for, certain purposes;

(b) prohibit the erecting of structures or works or certain types of structures or works; and

(c) subject to any regulations made under section 62, regulate the type of structures or works that may be erected.

(3) A land-use plan shall not have the effect of preventing

(a) the use of any real property or immovable existing on the day on which the land-use plan comes into force for the purpose for which it was used on that day, so long as it continues to be used for that purpose; or

(b) the erecting or alteration of a structure or work that was authorized before the day on which the land-use plan comes into force if the erecting or alteration is carried out in accordance with the authorization.

(4) A port authority shall, at least sixty days before the coming into force of a land-use plan, have notice of the plan published in a major newspaper published or distributed in the place where the port is situated.

(5) The notice shall include information as to where a copy of the plan, including any related documents necessary to understand it, may be obtained and an invitation to any interested person to make representations to the port authority with respect to the proposed plan within those sixty days and to attend a public meeting at a specified time and place.

(6) After the port authority considers any representations made by interested persons with respect to a proposed plan, it may adopt the plan.

(7) The port authority shall have notice of each land-use plan that it adopts, together with notice of the place at which a copy of the plan may be obtained, published in a major newspaper published or distributed in the place where the port is situated.

(8) A port authority need not comply with subsections (4) to (7) in respect of a proposed land-use plan that

(a) has previously been published pursuant to subsection (4), whether or not it has been changed as a result of representations made pursuant to subsection (5); or

(b) makes no substantive change to an existing plan.

(9) Land-use plans are not regulations within the meaning of the *Statutory Instruments Act*.

### **Fees**

49. (1) A port authority may fix fees to be paid in respect of

(a) ships, vehicles, aircraft and persons coming into or using the port;

(b) goods loaded on ships, unloaded from ships or transhipped by water within the limits of the port or moved across the port; and

(c) any service provided by the port authority, or any right or privilege conferred by it, in respect of the port.

(2) A port authority may fix the interest rate that it charges on overdue fees.

(3) The fees fixed by a port authority shall be at a level that permits it to operate on a self-sustaining financial basis and shall be fair and reasonable.

(4) The fees and interest rate may be made binding on Her Majesty in right of Canada or a province.

(5) The fees fixed under paragraphs (1)(a) and (b) do not apply in respect of a Canadian warship, naval auxiliary ship or other ship under the command of the Canadian Forces, a ship of a visiting force within the meaning of the *Visiting Forces Act* or any other ship while it is under the command of the Royal Canadian Mounted Police.

(6) A fee that is in force in respect of a port on the coming into force of this section continues in force for a period ending on the earlier of the expiration of six months and the date on which it is replaced by a fee fixed under subsection (1).

**50.** (1) A port authority shall not unjustly discriminate among users or classes of users of the port, give an undue or unreasonable preference to any user or class of user or subject any user or class of user to an undue or unreasonable disadvantage.

(2) It is not unjust discrimination and it is not an undue nor an unreasonable preference or disadvantage for a port authority to differentiate among users or classes of users on the basis of the volume or value of goods shipped or on any other basis that is generally commercially accepted.

**51.** (1) Where a port authority proposes to fix a new fee or revise an existing fee for wharfage, berthage or harbour dues, it shall give notice of the proposal in accordance with this section and no fee shall come into force before the expiration of sixty days after the last of the notices is given.

(2) The notice shall

(a) set out the particulars of the proposal;

(b) specify that a document containing more details about the proposal may be obtained from the port authority on request; and

(c) specify that persons interested in making representations in writing to the port authority about the proposal may do so by writing to the address set out in the notice.

(3) The port authority shall

(a) have the notice published in a major newspaper published or distributed in the place where the port is situated;

(b) send, by mail or by electronic means, a copy of the notice to

(i) organizations whose members will, in the opinion of the port authority, be affected by the new or revised fee, and

(ii) every user and other person who has, at least ten days before, notified the port authority of a desire to receive notices or announcements under this Part; and

(c) post an electronic version of the notice in a location that is generally accessible to persons who have access to what is commonly referred to as the Internet.

(4) The notice required by this section does not apply to any fees accepted in a contract under section 53.

**52.** (1) Any interested person may at any time file a complaint with the Agency that there is unjust discrimination in a fee fixed under subsection 49(1), and the Agency shall consider the complaint without delay and report its findings to the port authority, and the port authority shall govern itself accordingly.

(2) Section 40 of the *Canada Transportation Act* applies, with such modifications as the circumstances require, to every report of the Agency made under subsection (1) as if the report were a decision made pursuant to that Act.

**53.** A port authority may enter into an agreement, agree, by a contract that the parties may agree to keep confidential, fixing an amount to be paid to the port authority to accept fees in respect of the persons and things set out in paragraphs 49(1)(a) to (c) that is ~~are~~ different from the fees fixed under those paragraphs.

### **Official Languages**

**54.** The *Official Languages Act* applies to a port authority as a federal institution within the meaning of that Act.

### **Liquidation and Dissolution**

**55.** (1) The Governor in Council may, by issuing a certificate of intent to dissolve, require a port authority to liquidate its assets in accordance with the certificate or the regulations made under paragraph 27(1)(a) and may by a subsequent certificate of dissolution dissolve the port authority, and the letters patent are deemed to be revoked. The net proceeds of liquidation are to be paid on dissolution to Her Majesty in right of Canada.

(2) The Governor in Council may, by issuing a certificate of dissolution, dissolve a port authority without requiring the liquidation of its assets, in which case the obligations and assets of the port authority revert on dissolution to Her Majesty in right of Canada under the administration of the Minister.

(3) A certificate of dissolution issued under this section becomes effective thirty days after the date it is published in the *Canada Gazette*.

(4) The Governor in Council may revoke a certificate of intent to dissolve at any time before the issuance of a certificate of dissolution by the issuance of a certificate of revocation of intent to dissolve.

(5) The revocation is effective on the date set out in the certificate of revocation and the port authority may then continue to carry on its activities.

### **Port Traffic Control**

**56.** (1) Subject to any regulations made under section 62, a port authority may, for the purpose of promoting safe and efficient navigation or environmental protection in the waters of the port, with respect to ships or classes of ships,

(a) monitor ships about to enter or within the waters of the port;

(b) establish the practices and procedures to be followed by ships;

(c) require ships to have the capacity to use specified radio frequencies; and

(d) establish traffic control zones for the purposes of paragraphs (a) to (c).

(2) Subject to any regulations made under section 62, a port authority may

(a) require information to be given, for the purpose of obtaining a traffic clearance, by ships or classes of ships about to enter the port or within the port;

(b) impose the conditions under which a traffic clearance is to be granted; and

(c) require information to be given by ships after they have obtained a traffic clearance.

(3) Subject to any regulations made under section 62, practices and procedures established by a port authority under subsection (1) shall not be inconsistent with national standards and practices for marine vessel traffic services, in particular those established under the *Canada Shipping Act*.

**57.** (1) A port authority shall take reasonable steps to bring notice of each practice and procedure proposed under paragraph 56(1)(b) to the attention of persons likely to be affected by it at least thirty days before the proposed effective date of the measure, and a reasonable opportunity within those thirty days shall be given to ship owners, masters, persons in charge of ships and other interested persons to make representations to the port authority with respect to it.

(2) The notice shall include information as to where a copy of the proposed measure, including any related documents necessary to understand it, may be obtained and an

invitation to any interested person to make representations to the port authority with respect to it within those thirty days.

(3) After the port authority considers any representations made by interested persons with respect to a proposed measure, it may adopt the measure.

(4) The port authority shall take reasonable steps to bring notice of each measure that it adopts, together with notice of the place at which a copy of the measure may be obtained, to the attention of persons likely to be affected by it.

(5) Subsection (1) does not apply to a measure

(a) notice of which has been given pursuant to that subsection, whether or not it has been changed as a result of representations made pursuant to that subsection; or

(b) that makes no substantive change to an existing measure.

(6) Subsection (1) does not apply where the port authority is satisfied that an urgent situation exists, but the port authority shall take reasonable steps to bring notice of the measure to the attention of any person likely to be affected by it as soon as possible after it comes into force

**58.** (1) For the purpose of promoting safe and efficient navigation or environmental protection, a port authority may designate a person or a member of a class of persons, each of whom shall be furnished with a certificate of designation, to exercise the following powers with respect to ships about to enter or within the port or an area of the port:

(a) give a traffic clearance to a ship to enter, leave or proceed within the port or any area of the port;

(b) direct the master, ~~the pilot~~, person in charge of the deck watch or any other person in charge of a ship or the pilot to provide ~~specified~~ information in respect of the ship specified by the designated person;

(c) direct a ship to use specified radio frequencies in communications with the port station or other ships; and

(d) subject to subsection (2), 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.

(2) A person designated under subsection (1) may direct a ship to do or refrain from doing anything described in paragraph (1)(d) 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 562.1(1)(a) of the *Canada Shipping Act*;
- (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.

(3) No ship shall

- (a) if it is required to obtain a traffic clearance, enter, leave or proceed within a port or a traffic control zone without having obtained the clearance; or
- (b) if required to maintain direct communication with a person designated under subsection (1), proceed within a port or a traffic control zone unless it is able to do so.

**59.** (1) Subject to subsection (2), a person or ship is guilty of an offence and liable to a fine of not more than \$5,000 where the offence is committed in respect of a ship of twenty metres in length or less, or to a fine of not more than \$50,000 where the offence is committed in respect of a ship exceeding twenty metres in length, if the person or ship

- (a) does not follow the practices and procedures established by a port authority under paragraph 56(1)(b) or have the capacity to use the radio frequencies specified by the port authority under that paragraph;

(b) does not do what a person designated under subsection 58(1) requires the person or the ship to do under that subsection;

(c) fails to comply with subsection 58(3); or

(d) knowingly makes a false or misleading statement, either orally or in writing, to a person designated under subsection 58(1).

(2) It is a defence to a charge under subsection (1) that the master, ~~pilot,~~ the person in charge of the deck watch or other person in charge of the ship or the pilot

(a) had reasonable grounds to believe that compliance would have imperilled life, the ship or any other ship or any property; and

(b) in the case of a charge under paragraph (1)(b), had notified the person designated under subsection 58(1) of the non-compliance and of the reasons for it as soon as possible after it took place.

(3) Where a ship is prosecuted for an offence under this section, it is sufficient proof that the ship has committed the offence to establish that the act or omission that constitutes the offence was committed by the master of the ship or any person on board the ship, whether or not the person on board has been identified.

60. For greater certainty, Canadian warships, naval auxiliary ships and other ships under the command of the Canadian Forces, ships of a visiting force within the meaning of the *Visiting Forces Act* and any other ships while they are under the command of the Royal Canadian Mounted Police have access to Canadian ports.

### **Order and Safety**

61(1) Subject to any regulations made under section 62, a port authority shall take appropriate measures for the maintenance of order and the safety of persons and property in the port.

(2) Subject to any regulations made under the *Marine Transportation Security Act*, a port authority shall take appropriate measures for the maintenance of marine transportation security.

### **Regulations**

62. (1) For the purposes of this Part, the Governor in Council may make regulations respecting

(a) the navigation and use by ships of the navigable waters in a port, including the mooring, berthing and loading and unloading of ships and equipment for the loading and unloading of ships;

(b) the use and environmental protection of a port, including the regulation or prohibition of equipment, structures, works and operations;

(c) the removal, destruction or disposal of any ship, part of a ship, structure, work or other thing that interferes with navigation in a port and provision for the recovery of the costs incurred;

(d) the maintenance of order and the safety of persons and property in a port;

(d.1) the information or documents that must be provided by the owner or the person in charge of a ship to the port authority.

(e) the regulation of persons, vehicles or aircraft in a port;

(f) the regulation or prohibition of the excavation, removal or deposit of material or of any other action that is likely to affect in any way the navigability of a port or to affect any of the lands adjacent to a port;

(g) the regulation or prohibition of the transportation, handling or storing, in a port, of explosives or other substances that, in the opinion of the Governor in Council, constitute or are likely to constitute a danger or hazard to life or property; and

(h) the ~~obligations~~ ~~stewardship obligation~~ of a port authority in respect of federal real property and federal immovables under the management of the port authority.

(2) A regulation made under subsection (1) may apply to only one port.

(3) A regulation made under subsection (1) may be made binding on Her Majesty in right of Canada or a province.

(4) Subject to subsection 49(6), any regulations made before the coming into force of this section with respect to a port in respect of which letters patent are issued to a port authority shall, to the extent that they are compatible with this Act, continue in force for a period ending on the earlier of the expiration of twelve months after the letters patent are issued and the date on which regulations to replace them are made under subsection (1) with respect to that port.

**63.** (1) A port authority has, in respect of the operation of an airport, the power to enforce regulations made by the Minister for the purpose of providing unobstructed airspace for the landing and taking off of aircraft at the airport.

(2) Subject to its letters patent, a port authority

(a) shall make regulations in accordance with any agreement entered into by it with respect to an airport before the coming into force of this subsection; and

(b) may make regulations with the approval of the Governor in Council if there is no such agreement.

(3) The regulations referred to in subsection (2) are for the regulation and control of the airport and all persons engaged in the operation of aircraft at the airport, including regulations prohibiting the landing or taking off of aircraft of a certain type or aircraft exhibiting a certain characteristic.

(4) A regulation made under subsection (2) may be made binding on Her Majesty in right of Canada or a province.

5) Subject to subsection 49(6), any regulations made with respect to an airport before the coming into force of subsection (2) by a body that becomes a port authority under section 12 shall, to the extent that they are compatible with this Act, continue in force for a period ending on the earlier of

(a) the expiration of 12 months after letters patent are issued in respect of the port authority, and

(b) the date on which regulations to replace them are made under subsection (2) with respect to the airport.

**64.** A port authority may erect marks or signs to indicate the limits of the navigable waters under its jurisdiction and every mark or sign so erected is evidence of the limits of those waters.

## **END OF PART 1 - CANADA PORT AUTHORITIES**