

## GENERAL – FEES AND LEASES

The *Canada Marine Act* (CMA) contains various provisions regarding fees, as defined in section 2, to be paid to Canada Port Authorities (CPAs).

CPAs have a general power to fix fees that includes the ability to fix fees for the use of a port, for goods moving within a port, or for any services being provided by the CPA at the port. The CPAs are required to set fees that are fair and reasonable and fixed at a level that allows them to be financially self-sustaining. CPAs cannot unjustly discriminate among users in the setting of fees and must give notice for new fees or revised fees. Users have a right to file a complaint with the Canadian Transportation Agency (CTA) on the basis of unjust discrimination in a fixed fee.

### Background

The power to fix fees is similar to powers that existed under the *Canada Ports Corporation Act* and the *Harbour Commissions Act*.

The National Marine Policy states, in part, that CPAs be given a high degree of autonomy and the ability to manage their assets in a commercial manner. The CPAs have the power to set fee schedules, negotiate commercial leases and contracts and to borrow funds from commercial lenders, within the limits set out in their Letters Patent.

During a legal process, in which a tenant of a CPA disputed the terms of its lease agreement, issues included whether various provisions of the CMA relating to fees apply to lease rental charges. The Federal Court of Appeal determined that lease payments are not fees within the meaning of the CMA and therefore the CMA provisions related to fees do not apply to these payments.

The court decision reflected the original intent of the CMA that fees should not include lease payments under commercially negotiated contracts as it could have an impact on the financial viability of CPAs, including their ability to borrow funds using revenues generated from leases as collateral.

For the sake of clarity and certainty, CPAs would like to see the definition of fees amended to explicitly exclude lease and rental payments. Terminal operators and shippers on the other hand favour the CMA being amended to confirm that lease payments charged to port tenants are fees, subject to review by the CTA.

### Proposed Change

It is proposed that the definition of fees found in Section 2 of the CMA be clarified to specifically exclude payments under leases or licence agreements from the definition of fees. Furthermore, section of the CMA be clarified to the changes to this definition.

The change confirms the court interpretation and the original intent of the CMA.

### Recommendations by the CMA Review Panel – 5.7

*The Canada Marine Act should be clarified specifically to exclude lease payments from the definition of fees.*

### Stakeholder Views

The CPAs, along with others who supported all of the recommendations made by the Association of Canadian Port Authorities, recommended that fees should exclude lease payments. The stakeholders who are tenants of CPAs recommended that fees should

include lease payments. There were a number of stakeholders who also called for the creation of a dispute resolution mechanism with respect to fees and tariffs in the CMA.