

ACPA Board Position on PILT

Introduction

In 1999 the Canada Marine Act (CMA) established the Canadian Port Authorities (CPA) as statutory corporations. Prior to incorporation of the various Authorities, the port facilities that they now manage were administered by a number of different types of entities; some were parent Crown corporations, some were operating divisions of the Canada Ports Corporation (CPC) and others were harbour commissions. During that time harbour commissions paid no grants in lieu of taxes to the municipalities; ports that were operating divisions of the CPC paid grants in lieu of taxes on behalf of the federal government; and the Crown corporations paid grants on the basis established by the Municipal Grants Act, as administered by PWGSC.

The new Canadian Port Authorities (CPA) vary widely in terms of the size of their respective port operations and, consequently, their financial and staff resources. Unlike departments and other agencies of the federal government, the newly created CPAs do not receive appropriations from the federal government. In an era of corporate streamlining and harsh competition, the CPAs must concentrate on fulfilling their primary commercial functions - and specific administrative regulations - imposed upon them by the terms of the Canada Marine Act, while at the same time operate as a viable business.

The ACPA

The Association of Canadian Port Authorities (ACPA) represents the interests of the new CPAs in matters of common interest to the Ports. Currently, the ACPA is most concerned with ensuring that the application of the Canada Marine Act to the new Authorities is fair and equitable. The ACPA is also dealing with many important issues such as cost-recovery and user fees; environmental stewardship; privacy and access to information; payments in lieu of taxes; infrastructure development; productivity and competition matters; corporate taxation; international trade; and other social and regional issues as dictated by the local circumstances of the various Port Authorities. These are the new realities faced by the CPAs.

Municipal Grants Act Amendments

The amendments to the Municipal Grants Act (Bill C-10) does not seem to apply to the private operations of Port Authorities since it deals only with 'federal property'. While the federal government is developing 'best practices' for the valuation of special purpose federal properties such as parks and prisons, it must also make provision for the same with respect to 'federal property' at Canadian ports. The CPAs look forward to cooperating with the federal government as it seeks to establish best practices for valuing federal property.

The ACPA is seeking to develop its own 'best practices' for the realistic valuation of 'private' port property of the various Port Authorities. To this end, the ACPA ports have now established a Task Force to examine the impact of payments in lieu of taxes, since it is no longer under federal authority, and it is working to determine a fair and equitable means to assess those port properties other than 'federal real property.' Federal real property is clearly defined in the Canadian Marine Act and the Letters Patent.

It is the position of the ACPA that the Municipal Grants Act - including the proposed amendments in Bill C-10 - does not relinquish the federal government's responsibility to make payments in lieu of taxes on all 'federal real property' as defined in the Letters Patent. The Canada Marine Act specifically states that all Acts of the Crown are applicable to the Canadian Port Authorities and therefore this must include the Municipal Grants Act. Furthermore, in the Letters Patent the definition of federal real property is clearly delineated in Schedule C for each port. It is that federal property which is covered under the Municipal Grants Act and on which the federal government must make payments in lieu of taxes. The CPAs will make similar payments on its property as determined by a 'best practices' approach.

It is clear that the ports are charged with responsibility for managing federal government property as stated in the Regulatory Impact Analysis Statement (RIAS) of the Canada Gazette (May 1, 1999): "Although there is still considerable latitude for voluntary standards through by-laws and policies adopted by port authority boards of directors, fully voluntary standards and lighter forms of regulatory control were considered and rejected as being inappropriate for port authorities, which are agents of the federal Crown for certain purposes and which will manage extensive federal government property." While the CPAs understand it is subject to extensive regulation, it is also charged with managing "extensive federal government property." While ports do not wish to charge the federal government fees for managing those properties, Port Authorities do not - and some cannot - incur increasing levels of tax liability from those properties; and that includes any payments in lieu of taxes to municipalities.

Recommendations:

1. That federal real property, as defined in the Letters Patent by the Canada Marine Act, be treated as all other federal real property with respect to the Municipal Grants Act (Bill C-10).
2. That the Canadian Port Authorities will establish a 'best practices' approach for making payments in lieu of taxes to municipalities on all its property other than 'federal real property' as defined by the Canada Marine Act.