

**ASSOCIATION OF CANADIAN
PORT AUTHORITIES**

SUBMISSION

to the

Canada Marine Act Review Panel

**Ottawa, Ontario
September 3, 2002**

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"Recognizing the importance of international trade and the need for Canadian transportation firms and industries to compete internationally, a key consideration in the implementation of transport policies - including taxation and user charges - is the need to ensure that these do not put Canadian interests at a competitive disadvantage relative to foreign policies that may distort otherwise efficient transportation markets (p. 314)."

**CTA Review Report:
Vision and Balance**
June 2001

EXECUTIVE SUMMARY

Canadian Port Authorities (CPA) are the major Canadian ports that make up Canada's National Ports System as decreed under the Canada Marine Act (CMA). CPAs have a tremendous economic impact on the Canadian economy. The Canada Marine Act governs the operations of CPAs and as such the Act must be amended to ensure that the National Ports System is maintained and, indeed, enhanced. The Act places the overall responsibility on the federal government, through Transport Canada, to maintain an effective and competitive marine transportation system for the country.

The ACPA looks forward to working in partnership with governments to enhance the role of CPAs as the 'economic engines' that they have become within the intricate, intermodal transportation network. This can only be achieved by reducing the financial and regulatory burden on CPAs with appropriate amendments to the Canada Marine Act.

If appropriate amendments are not made to the CMA we believe the National Ports System will suffer. CPAs will not survive in the long-term, some may not in the short-term. It is now time to listen to the concerns raised by CPAs - the 'commercial' entities charged with implementing the CMA over the past four years. CPAs have experienced the problems first-hand. If they do not know what needs to be done to amend the Act with respect to seaports, who does?

The Association strongly encourages a 'proactive' approach to CMA amendments. We encourage the Panel to rely on the expertise of port management to bring forward positions which will advance the competitiveness of all Canadian Port Authorities and the National Ports System in general. Amendments to the CMA are doomed to failure if looked at through the prism of stiff central agencies and keen regulatory bodies in Ottawa.

Yes, the CMA did commercialize the operation of ports in Canada and it has made CPAs more efficient. However, it was done in a climate of deficit reduction and without due regard to the full 'business impact' of CMA regulations. The fiscal and regulatory environment is now quite different and the CMA Review Panel must seize the moment and do what needs to be done to make recommendations for a much stronger Act.

The first order of business is to redress the un-intended, negative consequences of the CMA as set out in this submission, such as: CPAs sending a percentage of annual gross revenues to Ottawa; CPAs being restricted in borrowing ability; CPAs having a complex governance structure conferred by agency status; CPAs being subject to excessive local taxation; CPAs turning over proceeds from land sales to federal coffers; CPAs having to incur exorbitant legal costs due to definitions contained within the CMA; and CPAs not being able to access federal funding for such important requirements as security and other necessary infrastructure improvements. Appropriate changes to the Act are needed.

The current economic climate during this review process is much different than it was during the introduction of the CMA. Due to sound fiscal management in recent years Canada is now experiencing surplus budgets. The federal government is to be commended for this new, positive budgetary environment. CPAs are confident that the *CMA Review Panel* will zero-in on the necessary amendments in light of this new fiscal reality.

The Panel must make the right decisions to develop solid marine infrastructure in order to sustain a competitive National Ports System in Canada in the years ahead. These amendments must be made with a view to the 'business impact' of amendments on CPAs. The *CMA Review Panel* must wrestle with the original objectives of the *Canada Marine Act* as stated in *Appendix A, Section 4 of the Act* and determine how best to achieve them. Primary among those objectives is the 'harmonization of standards with international competitors'.

We draw the Review Panel's attention to another insight provided by the *CTA Review Panel Report* wherein it states: "In the larger matter of port access to funding, the US decision to support public port investment shows recognition of the role of ports as generators of economic activity and facilitators of trade. Such recognition has arguably been lacking in Canadian transportation policy, notwithstanding the designation of CPAs as the National Ports System."

The ACPA looks forward to meeting with the *CMA Review Panel* to address any and all issues raised in this formal, written submission. There is much work to do to ensure that there are appropriate amendments to the *Canada Marine Act*.

PART I: ACPA RECOMMENDATIONS: CANADA MARINE ACT REVIEW

RECOMMENDATION 1: *Ensure that the standard by which the CMA is reviewed takes into consideration the key objectives established in Appendix A: Section 4 of the Canada Marine Act.*

RECOMMENDATION 2: *The ACPA urges the CMA Review Panel to ensure that a comprehensive Business Impact Test be undertaken with respect to all regulatory amendments to the Canada Marine Act .*

RECOMMENDATION 3: *The current charge on gross revenues of CPAs is regressive and must be reviewed with a view to complete abolition or decreasing it or stipulating that the stipend be used for future development of the National Ports System.*

RECOMMENDATION 4: *Section 25 of the Act must be amended to allow CPAs access to federal funding for port infrastructure.*

RECOMMENDATION 5: *Remove all of the borrowing restrictions presently in place in the Letters Patent and allow the market to dictate a particular port authority's ability to borrow; and consider innovative financing tools such as tax-exempt revenue bonds and taxing authorities similar to those of the United States.*

RECOMMENDATION 6: *The definition of 'fees' in the CMA must explicitly exclude leases and rentals.*

RECOMMENDATION 7: *Equity must be maintained within the CMA and PILT payments relating to federal lands managed by port authorities be paid by the federal government in the same manner as they are paid for on behalf of the SLSMC.*

RECOMMENDATION 8: *CPAs must be permitted to execute land conveyances in other than 'exchange' situations and to enter into agreements with third parties to purchase land on behalf of the Crown.*

RECOMMENDATION 9: *A Port Authority must be permitted to acquire, manage, occupy, hold, possess, sell or dispose of real and personal property.*

RECOMMENDATION 10: *CPAs must be permitted to exchange federal real property for other real property of either comparable or greater market value.*

RECOMMENDATION 11: *CPAs must be permitted to retain and use all revenues, including the proceeds of any sale, received in respect of all federal real property for the purpose of port development.*

RECOMMENDATION 12: *The CMA must be clarified showing that directors and officers are not liable for third party actions with respect to effluents and other environmental pollution.*

RECOMMENDATION 13: *The CMA must be adjusted to make it clear that land exchanges may be conducted by a CPA when such action is in the best interest of the CPA as determined by the port.*

RECOMMENDATION 14: *It must be made clear in the CMA that CPAs do NOT have responsibility to prevent and mitigate the effects of untreated sewage effluent nor any deleterious substance entering harbour waters through systems which have been in existence prior to the enactment of the Canada Marine Act.*

RECOMMENDATION 15: *The ACPA supports the criteria for composition of the boards of CPAs and recommends that there be clarification of the fact that directors can be removed with 'cause' by a majority vote of the existing directors.*

RECOMMENDATION 16: *The CMA be amended to permit CPAs to merge in the future should there be a strong and practical business case for such an alliance.*

RECOMMENDATION 17: *The CMA must be amended to clearly define the activities of CPAs as they relate to the 'agency' status conferred on CPAs by the Act in cases where there are excessive regulatory requirements imposed on CPAs.*

RECOMMENDATION 18: *The CMA must recognize that all security expenditures required to ensure port authorities are secure for national interests are paid for by the federal government and that the CMA be changed to permit the federal government to appropriate direct funding for seaport security in Canada.*

RECOMMENDATION 19: *The CMA be amended to permit the federal government to 'invest' in Canadian port infrastructure as the US federal and state governments continue to do in the United States.*

RECOMMENDATION 20: *The federal government must consider creating a specific port development fund for facilities-related projects of CPAs.*

RECOMMENDATION 21: *CCG marine service fees to be eliminated to enhance the competitiveness of the marine sector.*

PART II. INTRODUCTION

The Association of Canadian Port Authorities (ACPA) represents the interests of Canadian Port Authorities (CPA) and associated stakeholders that make up the National Ports System in Canada, through which \$100 billion worth of goods flow annually. The ACPA is the pre-eminent association for the advocacy and advancement of the Canadian Port Industry. ACPA members contribute greatly to the local, regional and national economy of Canada.

Canada's ports are truly economic engines and gateways to trade. Modern seaports have become critical nodes within a complex system of logistical and industrial centres. Many changes have taken place in the globalization of markets, production and consumption forcing ports to meet these new challenges. Ports must be competitive in all they do in order to become 'ports of call' on international and domestic freight routes. The regulation governing the business of ports will determine to a large extent how competitive Canadian Port Authorities are now - and in the future.

The value of CPAs to Canada's trade is a statistic not widely known to those outside of the marine industry. For example, few know that approximately 220 million tonnes of goods are handled by 19 CPAs annually with an approximate value of \$100 billion. Another 200 million is handled by private ports. The impact of CPAs is not readily apparent when one looks at the most recent *Annual Report, Transportation in Canada 2001*, wherein it notes that there are approximately 1,200 people employed by CPAs. While that is true, it is not the whole story.

One must consider the fact that 'direct' employment created by tenants and users at ports is significant. Direct employment at the Vancouver Port Authority alone exceeds 27,000. The 'indirect' impact in terms of employment exceeds 60,000. Given that the Vancouver Port Authority is the largest Canadian port the contribution to the regional economy of BC is indeed impressive. The Port of Vancouver's 2001 Economic Impact Study revealed how impressive it is with taxes generated as follows: Federal \$366.4 million; Provincial \$201 million; and Municipal \$55.5 million. It also showed that employment at the Port of Vancouver is slightly higher than that of the B.C. mining industry and about half the size of B.C.'s agriculture industry.

Across the country, at a smaller port, the economic impact is as important to the local and provincial economies of the Province of Newfoundland and Labrador. The St. John's Port Authority has an economic impact on the Newfoundland economy in excess of \$225 million. The *CMA Review Panel* must consider the Canada Marine Act in light of the total economic impact of ports. Based on the individual economic impact studies of 19 CPAs, the combined, annual economic impact from handling \$100 billion worth of goods is approximately \$20 billion dollars, with direct and indirect jobs created exceeding 250,000.

CPAs are encouraged that the formal review of the CMA has begun and looks forward to assisting in making the Act a better piece of legislation. It is critical that the CMA be amended to enhance the competitiveness of the National Ports System. The ACPA is pleased that the intent is not to "change the overall principles set out by the National Marine Policy." CPAs agree that they can now operate more efficiently as a commercial entity under the CMA, but there are

ways in which the Act can and must be improved. This submission outlines some of the recommendations for improvement.

The ACPA looks forward to continued work with the Review Panel, Transport Canada and other federal departments in this review to make the necessary changes for better rules under which ports must operate and compete. The ACPA is grateful to the *Canadian Transportation Act Review Panel* for drawing attention to some of the critical issues now faced by CPAs in its Report submitted to the Minister of Transport in June 2001. It is also gratifying that the *CMA Review Guidance Document* highlights some of the key concerns of ports.

The ACPA supports the Minister of Transport in his bold *Transportation Blueprint for the Next Decade and Beyond*. The need for a strong national transportation policy for Canada has never been greater. The *CMA Review Panel* now has a golden opportunity to make a difference in marine transportation policy.

The *CTA Review Panel* made an astute - though troubling - insight when it stated:

"The lifecycle of legislation and regulation is often measured in years and decades, while markets, technologies and people change much more rapidly. The regulatory environment for transportation must be responsive to this ever changing world, and efforts must be made to adapt solutions rather than trying to create a one-size-fits-all solution."

Governments must recognize the reality of constant change and find ways to accommodate industry by fast-tracking legislation and economic regulation that adversely impacts industry.

This submission will also focus on the process by which the CMA Review is conducted and the absolute necessity for the *CMA Review Panel* to consider the negative 'business impacts' revealed in the implementation of the CMA. More importantly, it must do the same while considering amendments required to improve the Act. In tabling the *CTA Review Panel Report*, the Minister of Transport noted that the recommendations focused on: competition; commercial operations; efficiency; infrastructure; sustainable

development; and e-business. Since the inception of the CMA, Port Authorities have been most concerned with these key issues as they relate to port operations. Indeed, the *CTA Review Panel* noted that, "... the *Canada Marine Act* does NOT give CPAs the necessary tools to meet the goals of national marine policy." CPAs endorse this view based on the stark realities encountered while living under the Act.

The CMA Review Process

CPA stakeholders have reviewed the *CMA Review Guidance Document* and noted that many of the key issues for CPAs are indeed listed. While there are a number of stakeholders with an interest in reviewing the CMA, it must be emphasized that the Act is legislation that primarily directs the governance and regulation of CPAs with respect to the effective management of transportation infrastructure. As such, the review must first and foremost, focus on some of the 'unintended negative consequences' on CPAs. 'Business impacts' must become the standard by which all amendments are measured. This is critical if the goal is to enhance the competitiveness of the National Ports System.

CPAs believe that some of the principles of the CMA were not reflected in the 'implementation' of the Act. Specifically, these key principles are stated in Appendix A: Section 4 of the Act wherein the objectives of the Act are declared (*Appendix A*). However, the objectives of the *National Marine Policy* stated on page 2 of the *CMA Guidance Document* neglects to list these laudable national objectives. The key CMA objectives for CPAs must be brought back into focus if we are to have meaningful debate and implement the federal government's stated objectives with respect to the National Ports System in Canada. The relevant objectives for CPAs are noted as follows:

4. (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 social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;
- (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 costs 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) coordinate with other marine activities and surface and air transportation systems.

It is incumbent upon the *CMA Review Panel* to assess whether or not these key objectives have been achieved over the past four years during the implementation of the Act. **The ACPA believes that the Act has fallen short when measured against these worthwhile, national objectives.** If the federal government has other goals and objectives for the National Ports System - other than those stated above - they must now be debated. We cannot put off until tomorrow what must be done today for a competitive port system in Canada. If we do, we will all be losers in the end.

It may be necessary for the *CMA Review Panel* to undertake a study of the operating environments of ports in other jurisdictions in comparison with that of Canadian Port Authorities. That comparison would not necessarily take into consideration the respective gross revenues, but comparable traffic, tonnage, business operating environment, regulation, taxation, etc. Clearly, it will be necessary to

compare the investment in port infrastructure in the United States versus that of Canada given that the United States is Canada's largest trading partner. The ACPA has retained a firm to begin these essential comparisons and will provide the findings to the CMA Review Panel prior to the September 24 deadline for final submissions.

RECOMMENDATION 1: *Ensure that the standard by which the CMA is reviewed takes into consideration the key objectives established in Appendix A: Section 4 of the Canada Marine Act.*

There is a clear and definitive process for general parliamentary review of legislation to which this Act will ultimately be subject. The *Standing Joint Committee on the Scrutiny of Regulations* reviews all regulations. It can recommend changes to regulations to the government, report to Parliament on problems with regulations that members of the Committee have discovered, and propose to Parliament that a regulation be overturned. The mechanism by which this Standing Committee is assured that regulations are appropriately vetted throughout the process is the *Regulatory Impact Analysis Statement* (RIAS) and the *Business Impact Test* (BIT). Both are critical standards for regulatory development and/or change. There is some question as to whether or not either process was followed in the initial policy development process related to the *Canada Marine Act*. That may be why CPAs have experienced implementation problems with respect to 'commercial' operations over the past several years.

As Industry Canada sources note, the *Business Impact Test* can help identify causes and sources of problems with regulations. It assists in avoiding an un-wanted burden on business. The system is designed to complement, not replace current consultative mechanisms. It can be used "during reviews of existing regulations to determine where opportunities exist to increase the efficiency of regulation." The BIT can and should be used in the context of the "competitive analysis of a sector to identify opportunities for regulatory improvements." It is now time to apply this process to the analysis of regulatory amendments to the *Canada Marine Act*.

RECOMMENDATION 2: *The ACPA urges the CMA Review Panel to ensure that a comprehensive Business Impact Test be*

undertaken with respect to all regulatory amendments to the Canada Marine Act .

**PART III: CRITICAL ISSUES FOR CANADIAN PORT
AUTHORITIES IDENTIFIED IN THE CMA REVIEW
GUIDANCE DOCUMENT**

The ACPA was encouraged by the statements by the Minister of Transport that, "The work of the *CTA Review Panel* will be one of the key building blocks in the development of a new transportation blueprint for Canada." The ACPA strongly encourages the Minister to incorporate into his new policy the positive recommendations for CPAs raised by the *CTA Review Panel* in its June 2001 Report to the Minister and as noted in the ACPA's formal response to that report (posted on the *CTA Review Panel* website).

The *CTA Review Panel* identified key factors limiting the financial viability of ports and noted that: "... conditions placed on CPAs in their Letters Patent - especially on levels of borrowing, disposition of lands, and the requirement to make payments to various levels of government - impede the effectiveness and financial viability of the CPAs. This has placed certain ports at a competitive disadvantage ... contrary to the spirit of the National Marine Policy." To address these most pressing concerns, the ACPA's *Competition Task Force* made specific recommendations to the Minister of Transport and the *CTA Review Panel*.

The *CMA Review Guidance Document* lists the critical issues previously identified by CPAs and their respective stakeholders. This submission will address the issues in the order in which they appear in the *CMA Review Guidance Document*. The order in which they are listed does not accord any level of priority to the respective issues, but is provided in this manner for ease of reference by the Panel.

A. (i) FINANCIAL ISSUES

Annual Charge on Gross Revenues

Section 8(2) (h) of the CMA provides for a charge or stipend on the gross revenues of a CPA as set out in the Letters Patent. That charge is to be paid annually to the Minister of Transport in order to maintain the CPA's Letters Patent in good standing. This charge has the effect of draining the capital reserves of Port Authorities, reserves that are necessary for reinvestment in port infrastructure to support an efficient and competitive port system. CPAs pay municipal taxes; generate trade in goods and services; and create jobs. CPAs should not be expected to pay a 'special' charge should they be fortunate enough to increase business revenues. This is, in effect, a tax on success. Therefore, the payment of a stipend to Transport Canada by CPAs should be abolished or altered to reflect a more positive impact on port finances.

To further complicate the matter, the requirement for an annual stipend is set out in the CMA prior to the provisions for debt servicing. This implies that commercial borrowing is based on second lien status thereby leading to higher borrowing costs for commercial port loans. Thus creating a built-in inequity that must be changed.

The economic activity generated by Canada Port Authorities, by way of direct and indirect income taxes paid from employment, should be considered a sufficient return by the Crown. In addition, CPAs are maintaining a 'public good' in the facilitation of international trade across the country. Any increase in the revenues of a CPA will further enhance the ability of the port to re-invest in port development leading to greater economic generation in future. While governments pursue complex innovation strategies - as they should - there are simple ways and means to prime the 'economic pump' provided by the existence of a CPA in their respective locales. The CMA Review Panel must not overlook the 'forest' in its assessment of the key elements that make up Canada's National Ports System.

It is important to recognize the purpose and policy underlying the gross revenue charge in the first instance. The stipend was to provide a return to the federal government for the use of its assets - a return which was to approximate the historical payments made to the federal government by the predecessors to Port Authorities. It is also important to keep the issue in context. Prior to the CMA a majority of

today's CPAs had not been providing any direct return to the federal government for the use of its assets.

The stipend was not intended to drain the capital reserves of CPAs, reserves required to maintain and enhance the infrastructure necessary to support an efficient and competitive port system. It should also be noted that no such charge is applied to competing US port authorities. In addition, Parliament did not intend the stipend to place CPAs at financial risk and impair their likelihood of remaining financially self-sufficient (one of the predecessor conditions to becoming a Port Authority pursuant to section 8 (1) (a) of the Canada Marine Act.

The current system, as it exists, does not recognize that a charge based on revenues is subject to interpretation, thus creating some inequities between the various CPAs, as some ports are landlord ports while other ports are operating ports. As revenues in operating ports are largely offset by operating expenses, these ports have to pay a higher gross revenue charge relative to landlord ports where terminal operators incur the operating expenses.

It should be noted that the stipend burden is now clearly showing signs of doing two things which were clearly not intended by Parliament, that is, drain capital reserves and place some Port Authorities at financial risk. The gross revenue charge is proving to be ill-advised and the government must look to the total economic development and revenues generated for the government from the \$100 billion worth of goods handled by CPAs annually; and the associated economic impacts. It is time governments recognize the negative business impact on CPAs from requiring stipends to be paid annually to the Government of Canada; funds that go directly into the Consolidated Revenue Fund for general government spending. In and of itself, the stipend seems insignificant for some ports, but when combined with other costs the regulatory toll is high.

RECOMMENDATION 3: *The current charge on gross revenues of CPAs is regressive and must be reviewed with a view to complete abolition or decreasing it or stipulating that the stipend be used for future development of the National Ports System.*

Access to Federal Funding

Pursuant to Section 25 of the *Canada Marine Act*, no payment to a CPA may be made under an appropriation to enable the CPA to discharge an obligation or liability. However, it is submitted that this provision does not recognize the management of public assets role of the CPAs. This includes the restrictions or obligations placed upon CPAs as a result of the Letters Patent process which included limiting descriptions of permitted activities. These descriptions and the attendant uncertainty surrounding permissible activities makes it difficult for Port Authorities to obtain funding in a conventional manner to develop projects or renovate buildings, for example. Such activity could have a major economic impact on an area within harbour limits and on federal Crown land.

If, however, such a project, acquisition or renovation relating to a building owned by the Federal Crown were vested in agencies or corporations other than Port Authorities, they could receive appropriations by Parliament to enable them to discharge their obligations. Why does this seem to not be the case for 'commercial' Port Authorities? Why the double standard? This has the unintended result of 'un-leveling the playing field' and placing Port Authorities not only at a disadvantage with respect to other non-Canadian ports in close proximity, but also vis-a-vis the private and public sector entities in the CPAs' own backyard.

In the *International Journal of Maritime Economics* (2001, 3, 198-220), Dr. Mike Ircha commented on the generous level of public support for port authorities in the United States:

A MARAD (1994) survey of 50 US ports found that 16% received short term financial assistance from local and state governments and 30% obtained long term financial aid. A more recent MARAD (1999) survey of US ports showed that state and local government loans, grants and other tax revenues contributed 18.7% of their total capital. The major sources of revenue for US Ports in 1998 were the issuance of tax-exempt revenue bonds (40.9%) and port revenues (33.8%).

More recently, in the Spring of 2002, port authorities in the US received significant funding for seaport security in the form of direct grants from the federal government, approximately \$350 million.

The US situation is in stark contrast to that of Canadian Port Authorities which have been incorporated as not-for-profit businesses under the Canada Marine Act. CPAs receive no subsidy, are expected to be financially self-sufficient, and provide revenues both to the federal government in the form of an annual stipend based on gross revenues; and, to local municipalities in the form of payments in lieu of taxes. This leads to different pricing systems in the two highly competitive port systems.

CPAs have a strategic location in major urban centers and fulfill an important role in their ongoing development. In recent months Canada's cities have argued for greater federal recognition of the important roles played by Canadian cities with respect to the economic and social development of Canada. In a similar respect, Port Authorities must continue to manage and administer their port operations on their land in a sound, efficient and cost-effective manner and, in order to do so, they must receive support from Her Majesty in right of Canada.

Change to this clause is required to enable Port Authorities to obtain funding, loans or grants to construct or erect any building on lands they manage for Her Majesty. This would avoid giving portions of lands or buildings to municipalities, the urban community or any other agency that has no expertise in port operations. It would also allow ports to receive funding from Her Majesty when they experience difficulty in obtaining funds by conventional means from financial institutions. For example, the renovation or addition of a wharf, the erection of works or a building such as a cargo, bulk, container or cruise-ship terminal could provide a major asset for regional development. The flexibility of this section would also allow each case to be assessed on its merits and these projects to be funded in part through commercial loans, with or without interest, or through a grant.

The cost of port infrastructure has greatly increased in today's climate versus that of 10 years ago. For example, currently the major trend in the container trades is the development of major hub container

ports served by post-Panamax vessels (larger than the Panama Canal locks) that currently reach 7,060 TEU (20-foot equivalent containers carried onboard). Such large vessels will likely serve only a limited number of strategically located hub ports with container transshipment to and from feeder ports and inland container depots by coastal shipping and intermodal systems. Canada's established ports will have to make major investments in order to deal with the changing dynamics of ever larger ships. These investments will include: adequate deep water and the associated environmental concerns related to dredging; wider channels; deeper berths; suitable high-speed cargo-handling equipment; a competitive labour force; suitable berths for coastal feeder vessels; and good road and rail intermodal connections to inland destinations.

The US has recognized the increasing costs of port infrastructure and views its seaports as 'strategic assets' and has provided significant funding for port infrastructure. The federal government needs to consider how it can assist with the development of port infrastructure as has been done in the US. To assist port infrastructure development this section of the CMA must be amended to allow direct government involvement to assist in funding new port initiatives.

It must also be recognized that some port infrastructure is truly a 'public good' and not 'commercial' in the literal sense of the word. Much of the infrastructure is 'public' infrastructure much the same as Canada's roads are 'public' infrastructure in that it provides a greater economic return to the nation than it does 'directly' to users of the port authority. Without a definitive way to make direct public investments in this type of infrastructure - as is done in the United States - the national economy will be weakened.

RECOMMENDATION 4: *Section 25 of the Act must be amended to allow CPAs access to federal funding for port infrastructure.*

Borrowing Limits

The *CTA Review Panel* rightly notes the essential requirement to increase the borrowing limits of ports when it says: "Modern, efficient terminal facilities are essential if ports are to be competitive in the cruise, container and, increasingly, in the bulk business. Future trade

flows and attendant unit costs of imported or exported goods dictate that ports be able to move quickly to upgrade, modernize and develop handling capabilities." CPAs require adequate funds to invest in port development to enhance the competitiveness of the National Ports System. Apart from borrowing considerations, the Minister of Transport would move some way in that direction by: permitting ports to increase borrowing limits to invest in port infrastructure; permitting ports to retain the proceeds from the sale of port lands; and canceling the stipend ports are now required to pay the federal government.

In the fall of 1996, Nesbitt Burns undertook a study for Transport Canada, as part of the *National Marine Policy* review, to assess the financial self-sufficiency, debt capacity, estimated borrowing costs, and appropriate source of funds for each of the 18 selected ports which were then proposed as future CPAs. Nesbitt Burns relied on the Corporate Plans which had been prepared by the respective ports and on discussions with federal officials. Although the financial/quantitative assessment was a reasonable approach to arriving at specific targets, it was only one method of evaluation. A more comprehensive review of US competition should have been included as part of the evaluation criteria for the Government to consider before adopting a policy on borrowing.

Nesbitt Burns further stated: "Accordingly, we believe the inability of ports to pledge assets as in the current draft of Bill C-44 could limit the accessibility of financing for ports needing to access this market (Bank Market), potentially limiting maturity and amount and increasing costs." The *Canada Marine Act* passed into law without providing for the right of ports to pledge federal real property, and as a result, the borrowing capacity of ports was predicated on their operating cash flow. Turning to the federal government - as they must to change borrowing limits in the Letters Patent - puts the decision-making power related to port development in the hands of government officials and NOT port managers. This is diametrically opposed to the basic tenets of the Canada Marine Act, that is, to make CPAs' 'commercial' entities that are 'self-sufficient'. This illogical aspect of the CMA must be addressed.

CPAs are limited to pledging the revenues generated from the use of federal lands rather than the physical assets themselves as 'collateral

for loans from commercial banks and other financial institutions.' Ircha in his study on Canadian ports (*International Journal of Maritime Economics* 2001) noted that: "Restricting the borrowing capacity of CPAs in this manner will likely lead to higher interest rates for the loans being provided and reduce the actual amounts available." He goes on to point out support for this argument when quoting the former President and CEO of the Halifax Port Authority who indicated that the port had already felt the impact of these borrowing restrictions in its failed bid to attract Maersk/Sea-Land to develop a major container hub at the Halifax Port Authority. Ircha also quotes Dowd (2000) and points to other CPAs experiencing the same difficulties: "Even if debt limits of these major ports were raised, without providing stronger security to the lenders, the resulting debt servicing costs would likely make these ports uncompetitive with their US counterparts." The intent of the Canada Marine Act was NOT to make ports un-competitive!

For those ports requiring major infrastructure investments, for example, a new container terminal costing \$250-\$700 million, the present statute does not allow the port the ability to borrow significant funds to be a major player in project development, nor does it provide for federal Government assistance by way of loan guarantees, etc. The only recourse for these ports will be to turn to other levels of government, and of course, in partnership with the private sector, to finance new terminals. This potentially places CPAs on the sidelines with respect to major decisions or sets them up as marginal players in future port development. This is as a direct result of the fact that CPAs are required to obtain its capital funding from the private lending agencies based on current and projected cash flow.

CPAs are doubly disadvantaged given certain borrowing restrictions while at the same time the federal government is prohibited under the Act from providing direct financial support to ports. The port may, in fact, end up being only a minor player in these future investments, or not a player at all. In the US, this is not the case. Various levels of government continue to support the US port system by investing (grants, tax-free bonds, revenue bonds, etc.) millions of dollars every year. Despite the advantages created by a low Canadian dollar, eventually Canadian ports will lose their competitive edge in favour of US port domination.

RECOMMENDATION 5: Remove all of the borrowing restrictions presently in place in the Letters Patent and allow the market to dictate a particular port authority's ability to borrow; and consider innovative financing tools such as tax-exempt revenue bonds and taxing authorities similar to those of the United States.

A. (ii) FEES AND LEASES

The Canada Marine Act was proclaimed into law on June 11, 1998. Over the following three years 19 ports were established as Canada Port Authorities in accordance with Article (1) of the Act. Under the interpretation section of the Act, 'Fees' as defined: "... includes harbour dues, berthage and wharfage, as well as duties, tolls, rates and other charges." Section 49(1) of the Act establishes the authority for a Port Authority to fix a fee, and more specifically applied to ships, vehicles, aircraft, persons, goods and services. There is no specific mention of lease rentals under this Section of the Act.

In addition, Article 49(6) reads: "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)." Surely, Parliament did not intend for all lease rates to expire six months after the CPA was formed. Leases in most situations are for several years, and the terms and conditions, including rental rates, in fact go beyond six months after the CPAs were formed. In December 1995, the Minister of Transport, the Honourable Douglas Young, in his *National Marine Policy* pamphlet included the following under the section *Business Discipline and Self-Sufficiency*: "Although they won't issue shares, they will be private-sector organizations with a mandate to operate with full commercial discipline."

Minister Young was referring to the new Canada Port Authorities. In another statement in this document, it is stated: "They will be freed from unnecessary government regulation and have the authority to make contracts and leases, to set tariffs and fees in response to market conditions, and to borrow money from commercial lenders." It is very important to note that there is a clear separation of 'contracts

and leases' and 'tariffs and fees' in this document which outlines the policy and principles of the legislation.

In a letter by the Minister of Transport, Hon. David Collenette, dated January 24, 2001, it is noted that, ".... as you are aware, it was never the intention of the Canada Marine Act that these rents be included in the provision dealing with fees fixed by a Port Authority. The government acted to ensure that its intent with regard to fixing the fees and leases was clear. Accordingly, on June 9, 2000 the Governor-in-Council rescinded the decision of the Canada Transportation Agency, which ruled that the Agency did not have the jurisdiction to consider the application of rental charges associated with the use of property."

The definition of 'fees' in Section 2 of the CMA is vulnerable to being interpreted as including rents and other revenues relating to land use and occupation. The obvious intention of the drafters of the CMA was that rents and such other revenues be excluded from 'fees'. In the consultation process respecting Bills C-44 and C-9 leading to the CMA, concerns were voiced about the proposed definition of 'fees' being too all encompassing.

In the past, Transport Canada's response was that this was merely a minor concern which they did not share. Subsequently Transport Canada officials advised the Senate Standing Committee on Transport that it would be inappropriate to use a regulatory review process (such as the CTA process) to set aside lease amounts arrived at through a private, commercial negotiation. It also advised that any regulatory review process should only be employed to prevent unfair discrimination in the fees set unilaterally by a port. Since proclamation of the CMA senior Transport Canada officials have consistently and repeatedly stated that the Act was not intended to impose any review of land use and occupation charges by the CTA.

If the CTA's decision is allowed to stand and if the government does not correct the situation (so that it becomes aligned with what the government proclaims it intended) then every lease, easement, licence or any other land-use agreement - will be vulnerable to repeated tribunal and court challenges. The result will be Canada Port Authorities continuously experiencing administrative chaos,

extraordinary costs and significantly diminished net income as every agreement reached may be opened up to negotiation. In order to avoid any ambiguity in interpretation of the Canada Marine Act, the definition of 'fees' must be amended to explicitly exclude leases and rentals.

RECOMMENDATION 6: *The definition of 'fees' in the CMA must explicitly exclude leases and rentals.*

A. (iii) PAYMENT IN LIEU OF TAXES (PILT)

This is an issue which even now has serious consequences for the viability of some ports, resulting in the necessity of a more realistic regime for the valuation of federal real property in general. While the PILT Act governs taxation with respect to federal real property, there must be some recognition of the federal government's role in the determination of, and responsibility for, PILT payments for federal real property under the charge of Canada Port Authorities acting as agents of the Crown.

The *Canada Marine Act* amended the Municipal Grants Act, Bill C-10, to make all Canada Port Authorities (CPA's) subject to the Municipal Grants Act (MGA) and subject to rules pertaining to grants in lieu of taxes (GILTS), now called Payments in Lieu of Taxes (PILT). This applies to all federal real property in Canada, including federal real property under the control and administration of CPAs.

All CPAs are now faced with stronger competitive challenges vis-a-vis other ports in close proximity located in the United States. Many of these US ports are not subject to any form of taxation, with some even being able to levy taxes in support of port operations. This may be construed as unfair trade practices in some circles. The introduction of a new taxing regime under PILT will have a significant and potentially damaging financial impact on some CPAs; and over the longer term all CPAs. Even though the CMA provided for a phase-in of the PILT over a four-year period, the financial impact is significant and has - and will continue to - put a strain on the finances of some CPAs. In some instances it represents a cost of nearly 25% of a CPA's gross revenue.

Section 2.1 of the Act asserts that: "That the purpose of this Act is to provide for the fair and equitable administration of payments in lieu of taxes." If the PILT Act makes some CPAs commercially un-viable, it can hardly be considered 'fair and equitable.' Clearly, that must not have been the intent of the government or its legislation.

Furthermore, the Act states that the ports of Canada are to be 'commercially viable' in order to remain as CPAs. It is therefore imperative that added costs such as PILT not place a port - that was considered to be financially self-sustaining under section 8(1)(a) of the CMA - commercially un-viable as a result of this new tax. If the actions of the federal government place those ports in jeopardy, then we contend that the Government of Canada, through its insistence that all ports be subject to PILT, may contravene the very essence of the CMA.

In addition to the financial impacts, there are a number of competitive issues that also impact upon each CPA's ability to offer rates and services that are in keeping with Section 4(b) of the CMA. It is important to note that part of the *National Marine Policy* states that CPAs: "Base 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." Unless steps are taken to reduce the burden to all of Canada's ports under the CMA some CPAs will have difficulty surviving the long-term. It should also be noted that all CPAs are paying costs that far exceed those of their competitors in the United States. There are many other costs impacting the competitive environment of ports such as dredging, payments of stipends, environmental assessment, and financing options that are also barriers to operating on an equal footing with US competitors.

Historically, some CPAs, specifically former Harbour Commissions, have never had to pay municipal taxes, dividend payments to Ottawa or dredging costs. As a result of potential PILT obligations flowing from continuance of these ports as CPAs, crippling costs will be thrust upon these traditionally smaller market ports. This will exert significant pressure on port rates which were established prior to the establishment of the PILT requirements.

In the three (3) Ontario ports surveyed in the initial studies related to the CMA, calculations showed that based on a formula of assessed

value multiplied by the local mill rate, PILT payments will approximate anywhere from 17 - 25% of the gross revenues. The result of these additional liabilities is a Canadian port system where almost half of the designated ports of national significance may not be viable in the very near future. These additional burdens must be recognized and addressed through appropriate revisions to the CMA.

The key question that must be posed: Do governments still view ports as essential infrastructure to facilitate strong commercial activity across Canada? Does the federal government not now consider, as it has historically, the key role ports play as a 'public good' within the respective regions of Canada? The way in which these questions are answered determine - to a great extent - the commercial viability of ports in Canada in the years to come. The Association believes that the intent of the Canada Marine Act was never to impose an additional burden on CPAs and make them less competitive than their US competitors. We strongly recommend the proper interpretation of the tax obligations of the federal government and CPAs under the CMA as they relate to real property. To this end, two years ago the ACPA PILT Task Force submitted a list of key questions to Transport Canada (*Appendix B*). To date they have not been addressed.

There are municipal realities that cannot be ignored. Federal and provincial Governments have downloaded a number of costs to municipalities. In order to administer these costs, municipal governments are constantly looking for additional revenues while not increasing the rates paid by residential taxpayers. A major study of Canada's cities by Neil Bradford for the *Canadian Public Policy Research Network* (CPRN) noted that: "In the past 5 years, federal and provincial government revenues increased 33.2% and 26.1% respectively. Local government revenues increased only 7.7%. Transfer payments from federal and provincial governments contribute only 18.7% of total municipal revenues, compared to 27% in U.S. cities and 31% in European cities. Canadian cities are more dependent on property taxes, a limited and less than ideal revenue source." Consequently, rates for industry have risen significantly in the past 10 years. The taxation rates of some local municipalities will further weaken the competitiveness of Canadian ports. CPAs must - and will - continue to work in partnership with their respective municipalities to strengthen local and regional economies.

Unfair taxation practices have proven to be a crippling blow to business in the provinces and many operations have left because of excessive taxation. Ports cannot leave! In all cases, profitability of traditional industrial activities has been negatively impacted by this one-sided increase in property taxation. Ports should not be viewed as 'cash cows' for governments, but strategic economic partners for the ongoing development of key port cities. Unfortunately, ports are being viewed in the same vein as other 'federal property' not on port lands; a predictable and reliable source of revenue for municipalities from federal property such as parks and prisons.

In addition to looking at the federal real property that is considered upland (not covered by water) many municipalities expect PILT to be made on the bed of the harbour. Depending upon the size of the Port Authority this has the possibility of forcing the self-sufficiency issue to the fore yet again. The port community needs to have a new regime of taxation that is clearly reflected in the CMA, one that does not cripple ports as they try - and want - to compete in the global economy.

There are other political realities that come into play. A number of the CPAs have been paying PILT, but they too need a more 'fair and equitable' means for assessing the quantum of taxes they are expected to pay municipalities on the federal government's real property. It must be recognized that municipalities in Canada have no right to a payment under the Constitution Act of 1867, wherein it is stated that: "No Lands or Property belonging to Canada or any Province shall be liable to Taxation."

Further, under the Canada Marine Act, Section 11(1)(a) it is stated that: "Every corporation included in Schedule III ... shall, if it is exempt from real property tax, comply with any regulations made under paragraph 9(1)(f) respecting any payment that it (may) make in lieu of a real property tax or frontage or area tax." This clause implies that 'federal real property' on port lands - or not - must be treated in the same way.

CPAs and governments - at all levels - need to consider what they want the shape of ports to be for the 21st century. We cannot abandon the historical significance of ports for the various regions of

Canada in terms of trade and strong economic activity. Nor must we forget the environmentally friendly way in which goods are transported via marine versus other modes. In this way ports will also be making a significant contribution to strategies for dealing with the issue of climate change.

Now that the municipalities are aware that CPA's are subject to the Payments in Lieu of Tax Act (PILT) there is an expectation that all CPAs will now make payments for all 'federal real property' under their control and administration. Local pressures may be too great for an individual Port Authority to withstand regardless of how damaging those payments may be to the continued viability of the CPA. Certain CPAs have recently obtained strong legal opinions which indicate that PILT on 'federal real property' is the responsibility of the federal government. As these funds were identified for capital works and transferred to special reserves for that specific purpose, all with the approval of the Minister of Transport, it becomes questionable as to whether or not a port will be able to expand operations, and thus revenues, if its capital reserves are depleted through the payment of PILT.

CPAs face stark realities as commercial enterprises under the Canada Marine Act. There is a need for all federal real property to be treated fairly and in the same manner. The waterways and facilities owned by the Crown and managed by the St. Lawrence Seaway Management Corporation (SLSMC) are subject to PILT, however, these grants are being paid by the federal government under the CMA. Why should there be a distinction between the SLSMC and the CPAs, especially when they were both established under the CMA? Both have long been considered a 'public good' related to national transportation.

All 'federal real property' on port lands must be treated in the same manner as 'federal real property' on all other lands in Canada. Based on a thorough reading of the *Canada Marine Act* it is the opinion of the ACPA that Canadian Port Authorities are NOT required by the Act and Regulations to make a grant or payment in lieu of taxes to municipalities in Canada with respect to any of the 'federal real property' under the management of CPAs.

It is the position of the ACPA that the Payments in Lieu of Tax Act (PILT) 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 Payments in Lieu of Taxes Act as it relates to 'federal property'. 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 Payments in Lieu of Tax Act and on which the federal government must now make payments in lieu of taxes. The CPAs will make similar payments on its other 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 that they are subject to extensive regulation, they are 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 cannot afford increasing levels of tax liability from those properties; and that includes any payments in lieu of taxes to municipalities.

RECOMMENDATION 7: *Equity must be maintained within the CMA and PILT payments relating to federal lands managed by port authorities be paid by the federal government in the same manner as they are paid for on behalf of the SLSMC.*

A. (iv) REAL PROPERTY

Acquisitions and Dispositions

Immediately prior to implementation of the *Canada Marine Act* (CMA), the local port corporations were empowered to acquire, hold, process, sell, dispose of or lease real property when previously authorized by the Governor-in-Council (see S.36 and Schedule 1 S.11). Thus a federal port administration could, in its own right, acquire or sell off land. Also, under the Canada Ports Corporation Act, local port corporations were charged with the responsibility for the administration, management and control of port lands. With the implementation of the CMA port administrations were effectively stripped of their power of sale in almost all circumstances and were relegated strictly to management of port lands.

Within the CMA, provisions respecting real property are found in sections 44 through 46. The results intended by these sections included port administrations being empowered to execute all land transaction documentation (including land registry or land title office forms, plans, etc.) for all federal real property within the port (see sections 45(3)(3.1) and 46(31). Another example of an 'intended' result was that port administrations would be empowered to accomplish the exchange of federal real property for other real property of comparable market value subject only to the requirement of the issuance of supplementary letters patent. From the perspective of CPAs, the reality is that much of what was intended to be delivered by sections 44 through 46, in support of Canada's commercial ports becoming more competitive and responsive to the ordinary demands of the market environment in which they compete, was not achieved in this regard.

The drafting of the CMA sections 44-46 has resulted in a myriad of intended and unintended consequences that create significant issues and difficulties for Port Authorities. At their worst, these matters threaten the continued financial viability of a number Canadian Port Authorities and, at the other end of the spectrum, threaten CPAs with administrative chaos with respect to land transactions.

Sale of Port Lands: The restoration to port administrations of the ability to sell federal real property would support and enhance the competitiveness of CPAs. Currently the actual sale of port land is effectively in the hands of the Department of Transport. The process is determined by federal government policy and regulation governing

the disposal of federal real property. None of that considers the needs of, or is responsive to, the competitive marketplace in which ports operate or the strategic and business needs of any port.

Since the implementation of the CMA, port land transactions involving Ottawa have not been expedited in terms of time to complete in many cases, especially for larger CPAs. There has been no enhanced certainty for any prospective purchaser. In contrast, land transactions which would have previously involved Ottawa, but now only involve the port administration directly, have been significantly expedited and the requisite certainty greatly enhanced.

Transport Canada's focus on its policy and administrative considerations creates a lack of both the certainty and timeliness which are so essential to accomplishing business transactions. The reality is that port administrations, with respect to sale of port lands, are worse off than they were under the CPC Act and in this respect the CMA is not supportive of enhancing their competitiveness. CPAs are now effectively prohibited from doing strategic land disposals.

Technically, in law, the negotiation of the terms of sale and the process leading to the sale are in the control of the government with Transport Canada having the lead authority and responsibility. Thus the primary considerations surrounding any proposed sale of port lands have everything to do with the government's policy and administrative concerns, not the best interests of the port in enhancing Canada's trade as determined by the CPAs or Board of Directors.

RECOMMENDATION 8: *CPAs must be permitted to execute land conveyances in other than 'exchange' situations and to enter into agreements with third parties to purchase land on behalf of the Crown.*

Filing of Documents: There is a need to clarify the fact that Port Authorities are empowered to accomplish the execution and filings of all land transaction documentation, including agreements, conveyances, forms and plans to be filed in land registry or land title offices of any Canadian province or territory, on their own behalf, on behalf of the government of Canada or on behalf of any holder of federal real property within the port registered in any land registry or

land title office. The drafters of the CMA intended that Port Authorities be empowered to accomplish - in all respects - the execution and filings of all documents necessary to accomplish authorized land transactions involving all real property within the ports. Unfortunately the drafting does not clarify, to the satisfaction of all land registries or land title offices in the provinces hosting Canadian Port Authorities, that they have the powers intended by the drafters.

In some CPAs there are significant federal real property tracts registered in the names of different corporate, quasi-government and government entities (e.g. Harbour Commissioners, Vancouver Port Corporation, His Majesty the King, etc.) Typically, these lands are most likely to involve current and future needs for land transaction documentation to be filed in land registries or land title offices (e.g. surrenders, leases, assignments of leasehold interests, easements, rights of way, etc.) to reflect conveyances of some or all interests or to provide or facilitate security on tenants' loans etc.

The consequences of any 'raising document execution' issued by a Registrar is either significant delay or the termination of a transaction, additional costs and the unnecessary raising of uncertainty re: a Port Authority's ability to accomplish an authorized land transaction. Those consequences negatively impact the willingness to deal with a CPA, the CPA's reputation and the price or terms a Port Authority is in a position to negotiate.

RECOMMENDATION 9: *A Port Authority must be permitted to acquire, manage, occupy, hold, possess, sell or dispose of real and personal property.*

Exchange of Port Lands: From time to time Port Authorities are requested by municipalities to exchange lands in circumstances where the market value of the land the CPA is to receive is significantly greater than the land the Port Authority is being asked to give up. Also, opportunities may arise for Port Authorities to negotiate land exchanges with private sector entities wherein the Port Authority may acquire land of significantly greater market value than the land the CPA is to give up. Quite simply, there are circumstances where simple market value is not the premise for seeking the exchange and where the value to the local municipality or the private sector entity is not based in traditional market value considerations.

The purpose of 'comparable' in section 46 was to ensure Port Authorities did not give up port lands for lands of lesser value, thus subtracting from the total market value of federal real property in a port. On the other hand, it is unlikely and illogical to argue it was intended to prevent Port Authorities from adding to the total market value of federal real property in a port. Port Authorities should be allowed to benefit from land exchanges, even when the market value significantly exceeds the market value of the land being given up. More information is provided on this subject below with respect to the retention of proceeds from the sale of port lands.

RECOMMENDATION 10: *CPAs must be permitted to exchange federal real property for other real property of either comparable or greater market value.*

Retention of Proceeds from the Sale of Federal Real Property

Canada Port Authorities must be empowered to retain and use all revenue, including the proceeds of any sale of real property received in respect of that property for the purpose of operating the port. Currently the CMA appears to empower Port Authorities to "retain and use the revenue received in respect of that property for the purpose of operating the port," however, discussions between Transport Canada and Treasury Board/Finance have not clarified that 'revenue' includes the proceeds of land sales. Thus, CPAs have not been permitted to retain the proceeds from the sale of federal real property on port lands. As a consequence a number of significant strategic land sales have not proceeded. The French language version reference to 'les recettes' does not clarify what was intended, rather it even further muddies the waters.

Prior to the CMA port administrations retained the proceeds from the sale of port lands. Port Authorities, in order to properly plan and budget with good commercial discipline, require certainty respecting whether or not they can retain the proceeds from the sale of real property for the purpose of operating the port. Transport Canada has said that it did indeed recommend to the Treasury Board Secretariat that CPAs be permitted to retain the proceeds from the sale of real property with certain conditions such as the proceeds being re-

invested in the port. If CPAs are to continue to develop and remain competitive they must re-invest heavily in port infrastructure. Already, a CPA's ability to borrow is limited by the *Canada Marine Act*, the inability to retain the proceeds from the sale of land would further limit the port's ability to have the necessary funds to invest in port development.

Though certain federal officials argue it was not their intent to allow Port Authorities to retain the proceeds of the sale of federal real property, section 45(1) (b) states: "45 (1) Where the Minister has given the management of federal real property to a Port Authority, the Port Authority: (a) (b) may retain and use the revenue received in respect of that property for the purpose of operating the port.." From this clause it would appear that CPAs have the authority to retain revenue from the sale of federal real property based upon the above specific provision in the Canada Marine Act (CMA). However, the Treasury Board of Canada recently took a decision preventing a CPA from retaining the proceeds from the sale of a small parcel of land.

Canadian Port Authorities must be permitted to retain the proceeds from the sale of federal real property to make necessary investment in port infrastructure and to remain 'commercially viable' as decreed under the Act. As in a number of cases, for this to occur, Transport Canada must take ownership of this issue and further impress upon central agencies the need for CPAs to retain the proceeds from the sale of federal real property.

RECOMMENDATION 11: *CPAs must be permitted to retain and use all revenues, including the proceeds of any sale, received in respect of all federal real property for the purpose of port development.*

Environmental Risks

Canadian Port Authorities have been unable to provide Transport Canada with an inventory of third party discharges on Crown lands as a result of the large number of pipes spewing untreated effluent into Canadian harbours. These pipes do not belong to the Port Authority, but are owned by both governmental and private organizations.

A number of ports are aware of initiatives by various third parties being lead by Mayors of affected municipalities, such as the *Partners for Clean Harbours* proposal recently submitted to the federal government (*Appendix C*). They call on all levels of government for a cost-shared program to rectify the pervasive and long-standing problem of sewage effluent being discharged in harbours adjoining port property. We are encouraged by such efforts and the ACPA has written both the Minister of Transport and the Minister of Environment indicating the need for both a federal harbour clean-up fund and a pollution prevention strategy related to future discharges.

Furthermore, the Association is encouraged by a recently announced federal initiative by Environment Canada referred to as the *Municipal Wastewater Effluent Initiative*. We are hopeful that this new initiative, which is expected to be completed within the next 24 months, will clearly delineate the responsibility for sewage effluent under the various Acts of Parliament such as the Fisheries Act, the Canadian Environmental Assessment Act and the Canada Marine Act. The clarification of responsibility for enforcement and liability under federal legislation is long overdue.

At the August 2001 meeting of the Board of Directors of the Association, it was unanimously approved that the Minister of Environment be requested to initiate a federal government cost-sharing program for Canadian harbour clean-up. The Association followed up by writing the Minister of Environment in support of a federal clean-up program for Canada's harbours (*Appendix D*). The letter went on to note that the volumes of untreated effluent flowing into the harbours adjacent to four of Canada's ports are significant, namely: St. John's - 91 million litres per day; Halifax - 120 million litres per day; Saint John - 22 million litres per day; Vancouver - 66 million litres per day; and Victoria, B.C. - 123 million litres per day.

We look forward a positive outcome of these various initiatives and would expect that these initiatives will result in producing the requisite information needed by Transport Canada for its environmental strategies. CPAs believe strongly in the need for sustainable development strategies and will continue working with governments - at all levels - to ensure responsible environmental stewardship on port lands. Clearly, it was not the intent of the Canada Marine Act to

make the directors and officers of Canada Port Authorities responsible and liable for the actions of governments with respect to the environment. The responsibility for environmental problems that have been worsening over many years cannot now be delegated to non-governmental organizations such as CPA.

RECOMMENDATION 12: *The CMA must be clarified showing that directors and officers are not liable for third party actions with respect to effluents and other environmental pollution.*

Exchanges of Property

Land exchanges involving federal real property should NOT be restricted to exchanges of parcels of land of comparable market value. The CMA authorizes the exchange of federal real property "for other real property of comparable market value" (subsection 46(1)(b)(i)). The Department takes the position that exchanges are restricted to lands of closely similar market value and that exchanges of lands otherwise, even exchanges where CPAs realized the greater benefit, are not authorized by Section 46.

Transport Canada now takes the position that land exchanges are even restricted to lands of closely similar market value and that exchanges of lands otherwise, even where CPAs realize a greater benefit, are not authorized under Section 46. From time to time CPAs are requested by municipalities or, private sector interests, to exchange lands in circumstances where the market value of the land the CPA is to receive is significantly greater than the land the port is being asked to relinquish. Put simply, there are circumstances where simple market value is not always the primary premise for seeking the exchange. Often it is the case that the value to the local municipality or the private sector entity is not based purely on traditional market value considerations. The purpose of the word 'comparable' in Section 46 was to ensure that CPAs did not give up port property for lands of lesser value, thus detracting from the total market value of federal real property in a port.

Transport Canada's focus on its overall policy and administrative considerations creates a lack of both the certainty and the timeliness which are essential for sound business practice. The reality is that CPAs are worse off with respect to land transactions under the CMA

than they were before the CMA. Under this regime there can be no strategic land disposals that are often necessary to enhance the competitiveness of ports. The ACPA is encouraged by Transport Canada's response to ACPA's *Critical Issues Document* in June of 2001 when it stated that Transport: "...agrees in principle that the Act be adjusted to make it clear that land exchanges may be conducted by a CPA when the properties are of comparable market value or when the property to be acquired by the federal government is of greater value."

RECOMMENDATION 13: *The CMA must be adjusted to make it clear that land exchanges may be conducted by a CPA when such action is in the best interest of the CPA and as determined by the port.*

A. (v) ENVIRONMENTAL RESPONSIBILITIES AND AUTHORITIES

In addition to concern related to sewage effluents noted above, CPAs are indeed cognizant of other issues related to sound environmental stewardship. The ACPA has been active in recent months on issues related to imminent amendments to the Canadian Environmental Assessment Act, the Municipal Wastewater Effluent Initiative by Environment Canada, Ballast Water and others. Environmental stewardship is an ongoing preoccupation with all CPAs.

The ACPA welcomes the comments made by the *CTA Review Panel* in its chapter on the environment. It was accurately noted that:

Transport Canada has authority to regulate environmental emissions and damage from certain types of operations and equipment. The department regulates pollution from aircraft, ships and railways, for example. It also regulates water pollution from ships, through the *Canada Shipping Act* and the *Arctic Waters Pollution Prevention Act*. Further Transport Canada administers the *Transportation of Dangerous Goods Act, 1992*. The department shares some of these regulatory responsibilities with other departments.

It is because of these 'shared' responsibilities that confusion is often caused with respect to the environmental stewardship role of CPAs.

We support the view of the *CTA Review Panel* that "strong and effective partnerships are critical, particularly with other federal departments and other governments." The ACPA strongly believes that these relationships need to be strengthened and that there must be better communication of their respective roles and responsibilities.

The *CTA Review Panel* did not address the grave concern of many Canadian municipalities with respect to untreated sewage effluent spewing into Canadian harbours noted in the previous section. There must be a federal-provincial recognition of this ongoing problem. Solutions must be found to stop the untreated effluent and clean-up existing pollution. This serious environmental problem requires the commitment of all levels of government.

Since the release of *CTA Review Panel* report the Minister of Environment announced a new Municipal Wastewater Effluent Initiative. The three priorities under this initiative are: 1) delivery of CEPA and Fisheries Act legal commitments; 2) influencing effective use of sustainable infrastructure funds; and 3) develop partnerships in sharing coordinated management knowledge. Under the Global Programme of Action, Canada's National Programme of Action identifies sewage as a primary source of pollution to the marine environment. The Minister of Environment is now looking at a proposed strategy to address the problem of sewage effluent in Canada in relation to his mandate under the Canadian Environmental Protection Act (CEPA).

CPAs are authorized under the CMA regulations to issue permits to municipalities with respect to effluents. Under the CMA, CPAs can issue permits and must also 'mitigate' against any damages. New approaches have to be found to address 'within the pipe' assessments and the 'precautionary principle.' It must be remembered that there will be no 'quick fix' to address this problem that has been brewing for over 80 years. However, there will be timelines related to this specific initiative. The ACPA would like the CMA to clarify roles and responsibilities with respect to this initiative related to sewage effluent.

RECOMMENDATION 14: *It must be made clear in the CMA that CPAs do NOT have the responsibility to prevent and mitigate the effects of untreated sewage effluent nor any deleterious*

substance entering harbour waters through systems which have been in existence prior to the enactment of the Canada Marine Act.

A. (vi) GOVERNANCE

The *CTA Review Panel* noted that the Minister of Transport "makes a number of appointments to CPA boards - four to eight of the directors on boards with seven to eleven members." However, what is not noted by the *CTA Review Panel* is that a majority of these directors have been "nominated" by port users through committees established by each CPA. Thus, the majority of Directors on the Boards of CPAs have, in theory, been nominated and appointed by the users of the respective CPAs. It should be noted that the Minister has the ability to choose someone other than those nominated. In practice, however, this has rarely or never been done.

The Minister of Transport confirms these nominations by making the appointments official. Although there have been suggestions for change in this process, the ACPA believes that the process of Board appointments is proving satisfactory. Some have strongly suggested that the two term limit for directors of CPAs be extended given the need to provide continuity in port governance and the practical need for ports in smaller communities who may not have a large pool of qualified directors from which to draw.

During the implementation of the *Canada Marine Act*, the federal government upheld the process of transparency as well as that of representatives, particularly relating to the presence of users on the Board of Directors. It would be superfluous to list the duties imposed on CPAs corresponding to the public notices for various items, such as land, non-operating revenues and expenses, the annual meeting, and others.

In effect, the government has amended the composition of Boards of Directors by stipulating one appointment by the federal government, one by the provincial government and another by the municipal government, as outlined in the Letters Patent. The other appointments are made by the Governor-in-Council on the

recommendation of the current Minister following consultation with the users.

The rights of shareholders in private enterprise are set out in Part XII of the *Canada Business Corporations Act* (Sections 132 and 146) including, more specifically, the right to vote at meetings. In the case of the CPAs there is no direct connection whatsoever between the shareholder and the shareholder's power on the Board of Directors. Of course, the total absence of this direct connection is understandable given the public entity circumstances of ports.

The composition of Boards prescribed in the *Canada Marine Act* is justifiable with regard to the representatives of the federal government, as it holds the rights in law. As for the board members from other levels of government, it may be perceived as more political than representative of port interests; the same is true, however, of the user-nominated directors given the ability of the federal Minister to override those so nominated. The ultimate goal of a board is the better governance and administration of ports. That is why they are on the Board of Directors in the first place.

RECOMMENDATION 15: *The ACPA supports the criteria for composition of the boards of CPAs and recommends that there be clarification of the fact that directors can be removed with 'cause' by a majority vote of the existing directors.*

A. (vii) MERGING OF CANADA PORT AUTHORITIES

There has been discussions over the years about the pros and cons of certain port authorities merging. This has not, as yet, resulted in any advancement on the matter. However, a number of CPAs in close proximity in the respective regions of Canada have seen fit to form strategic alliances to maximize business opportunities. There may be a requirement in future, as dictated by competitive forces, to have closer ties between certain CPAs. This practice has been successfully executed in the past by other modes of transportation. Already CPAs are active partners with other modes such as road and rail and now see the benefits of partnering with other CPAs to the benefit of their strategic business plans.

RECOMMENDATION 16: *The CMA be amended to permit CPAs to merge in the future should there be a strong and practical business case for such an alliance.*

A. (viii) AGENT STATUS

Section 7(1) of the CMA set out that a CPA is an agent of Her Majesty for the purposes of engaging in activities related to shipping, navigation, transportation of passengers and goods, and handling of good and storage of goods as specified in paragraph 28 (2) (a) of the Act. The *CMA Guidance Document* states that there was, "An advantage afforded to CPAs through agent status is greater protection from the application of municipal taxation and zoning, provincial environmental laws and other non-federal regimes." This is diametrically opposite to the reality of operating CPAs. In every instance CPAs must comply with local regulations in addition to those imposed by other federal statutes such as the CMA, the PILT Act, Access to Information Act, Canadian Environmental Assessment Act, the Fisheries Act, the Canadian Environmental Protection Act, the Official Languages Act, the Privacy Act and others specific to CPAs.

In fact, the *CMA Review Guidance Document* supports this fact when it notes that, "With the agency status come a number of controls placed on the operation of CPAs, both through letters patent, the Act and attendant regulations. CPAs remain restricted in the activities they may perform, the amount of money they may borrow, the real property they may manage, occupy or hold, and so forth." The *CMA Review Guidance Document* points the way to which these issues can be resolved when it notes that discussions would be required with central agencies. While that may be so, it is the responsibility of Transport Canada to make the recommendations to central agencies for refinement of all aspects of agency status as conferred upon CPAs. This is the only way in which we will find ways of making necessary improvements in this area.

RECOMMENDATION 17: *The CMA must be amended to clearly define the activities of CPAs as they relate to the 'agency' status conferred on CPAs by the Act in cases where there are excessive regulatory requirements imposed on CPAs.*

PART IV: OTHER CRITICAL ISSUES FOR CANADIAN PORT AUTHORITIES

The following issues were raised in the CTA Review, but not covered in the *CMA Review Guidance Document*. These are also critical issues for ports and speak to the need to re-focus on the strategic objectives of the *Canada Marine Act* as noted at the outset.

B. (i) SECURITY

While Canada is making some progress on the security front, CPAs are concerned with both the pace of progress vis-a-vis the US re: seaport security initiatives and the lack of direct funding for seaport security in Canada. There is concern about the potential for very high costs being imposed on CPAs by future policies related to seaport security. Under Canada's Constitution Act (formerly the BNA Act) "ports and harbours, along with navigation and shipping, and certain ferry operations" are clearly set out as federal government responsibilities. As such the national government must be responsible for ensuring an adequate level of security at Canada's major seaports.

The ACPA has been monitoring recent events related to security with great interest. We are uncertain as to the federal government's plans to implement the *Canada-U.S. Smart Border Declaration* with respect to the free flow of goods and people via seaports. We know that the US is moving forward aggressively and is steadfast in ensuring that security measures are in place to identify any and all risks associated with incoming goods via the 'first point of entry' such as seaports. They continue to be active in this regard and support policies with specific, mandated programs that are well funded.

In the past six months the US Congress approved approximately \$350 million in grants to US port authorities for security of their facilities. Recent estimates for similar security initiatives taken - or to be taken - for the protection of CPA facilities by the 19 CPAs amount to \$40 million. This does not include the ongoing costs related to security. This is troubling for Canadian maritime security as recent Senate hearings have noted. More troubling still, is the fact that

Transport Canada has consistently maintained that the total, budgeted funding for ALL maritime security in Canada is a paltry \$60 million over five years! These financial commitments have been prompted by the events of September 11 and the subsequent actions taken by the US government. Yet, they fall short of the security funding need for seaport security in Canada. To date Transport Canada has committed no funding for seaport security in Canada.

The concern of Canadian Port Authorities is that they will be subject to increased security standards imposed by the federal government, in concert with the US government, without the necessary funding support to implement such standards. If Canadian ports are to increase security measures and incur high costs in doing so, they will become less competitive than their neighbours to the south. Ports must continue to make investments in port development initiatives to ensure that they remain competitive with US ports. Adding non-budgeted items related to national security issues will erode all CPAs' ability to compete and detract from needed capital investments related to port infrastructure. It must also be noted that most of the growth in future business for Canadian ports will come from the US. That business will not come if the flow of goods and people from Canadian ports are perceived as a security threat.

In supporting the federal government's action on security, it is necessary to identify the Port Authorities' responsibilities as they relate to the provision of security. It is clear that issues related to national security such as customs, immigration, international trade, breaches of the criminal code, breaches of provincial statutes, and breaches of federal statutes are the responsibility of the appropriate governmental authority. In supplying the necessary security, the Ports and the associated enforcement agencies are enhancing the security for the nation as a whole and for the United States. To this end, additional costs to meet these obligations clearly come within the domain of governments.

Recognizing the need for enhanced security in these areas, Port Authorities want to take measures to ensure that these responsibilities are fully met. However, CPAs need the financial support of the federal government with respect to access control and perimeter security, support that has been given to other modes of transportation in recent months.

We understand that there is much activity within government circles in Canada focusing on risk assessments across all transportation modes. The Chair of the ACPA has written the Minister of Transport, and other Cabinet Ministers, expressing our concern with respect to marine security. We are uncertain as to the final results of these risk and vulnerability assessments and the impact on port operations in terms of additional costs.

The ACPA needs the federal government to understand the business impacts of the eventual, national or bi-national security policy. The business impacts are real: the prospect of tariffs being increased for port customers as a result of higher security standards being imposed; potential loss of business as a result of delays at the border or pre-clearance requirements giving an edge to US ports over Canadian ports; and slowing the pace of capital improvements due to diverted expenditures for enhancing security, both one-time and ongoing operational costs.

The above factors, combined with the fact that US ports already receive significant, ongoing funding from their governments further adds to the 'un-level playing field' between Canadian and US ports. This initiative would then comply with the stated objective of the CMA as stated in Section 4 (b) of the CMA noted at the outset: "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."

RECOMMENDATION 18: *The CMA must recognize that all security expenditures required to ensure port authorities are secure for national interests are paid for by the federal government and that the CMA be changed to permit the federal government to appropriate direct funding for seaport security in Canada.*

B. (ii) COMPETITION FROM U.S. PORTS

One of the most important findings of the *CTA Review Panel* for ports was the fact that U.S. ports are supported by all levels of

government. Ports in the United States are clearly recognized for their strategic economic importance to their national and local communities. As the *CTA Review Panel* aptly notes:

"... increasing competition for Canada's container ports from the U.S. ports (has created) the need to upgrade facilities to meet it. Lack of a funding component in Canada, coupled with recently announced government funding in U.S. marine infrastructure, principally ports, under the TEA-21 initiative, might exacerbate an already un-level playing field." The railway industry also suffers from the lack of a level playing field when compared to US railroads.

Strategic port partners in the rail sector have to endure high federal fuel excise taxes that dictate a higher pricing mix for shippers via strategic port-rail links. Given the need for strong intermodal links the situation faced by Canadian ports and railways negatively impacts the competitiveness of the whole Canadian transportation chain when compared to that of the US. The key question now is will the Canadian government commit to the same level of support for Canadian seaports and their intermodal partners? This must be done if the playing field is to be levelled once and for all.

The ACPA urges the Minister of Transport to undertake initiatives that will 'level the playing field' with US ports as recommended by the *CTA Review Panel* as follows and as noted verbatim in the Report:

- allow Canadian Port Authorities to issue revenue bonds;
- establish a central port development fund;
- permit government/port joint ventures; and
- allow port authorities to retain all operating surpluses for infrastructure investment purposes.

Government action is required to sustain the competitive National Ports System in Canada. The *CTA Review Panel* "believes that US government expenditures on marine infrastructure do, in the longer term, represent a competitive threat to Canada's largest ports. About half of all US ports receive some form of funding assistance, while others have the ability to levy a municipal tax on local citizens to fund port improvements. Still others can use revenues generated from non-port activities." Canadian governments at all levels must recognize this critical imbalance in public support for Canadian Port Authorities and must take action to redress this imbalance.

In recognition of the role played in the management of public assets undertaken by the CPAs, and the need to access funding in particular circumstances for projects, it is the view of the ACPA that CPAs should be eligible to apply for all funding sources that are available to other profit and not-for-profit organizations. Currently, Section 25 of the CMA may lead some to view this otherwise. This has the unintended result of creating an un-level playing field and placing Port Authorities at a disadvantage with other non-Canadian ports in close proximity or other economic sectors in Canada.

A report prepared for the B.C. Government entitled, *Options to Improve the Competitiveness of Ports in British Columbia* (March 2001), concluded that:

"...there is an emerging port competitiveness issue and that there are significant barriers to investment that will prevent BC ports from making the investments needed to remain competitive in terms of service and capacity given the level of investment currently in US west coast ports." It noted some real challenges for Canadian Port Authorities to remain competitive in terms of government - at all levels - providing a suitable investment climate.

RECOMMENDATION 19: *The CMA be amended to permit the federal government to 'invest' in Canadian port infrastructure as the US federal and state governments continue to do in the United States.*

B. (iii) NEED FOR A SPECIFIC PORT DEVELOPMENT FUND

The *CTA Review Panel* noted that, "Ports also need access to capital for major expansion and capital projects, dredging, environmental compliance, security compliance and other facilities-related projects." Prior the *Canada Marine Act* the federal government had funding programs in place for dredging national harbours to ensure that certain ports remained competitive. Also, ports were able to take full advantage of all funding programs offered by the federal government. While the need for such government largesse was true before the introduction of the Act, it remains true to this day. Rest assured that US Port Authorities receive extensive government funding under

such initiatives as the TEA-21 for transportation infrastructure development.

Increased 'dredging costs' will greatly reduce the financial strength of some ports and hamper their ability to invest in needed infrastructure. Increased 'taxation' have already greatly eaten into the revenues Port Authorities need to re-invest in port development. Increased 'security' standards have increased both one-time capital costs and will be a larger budget item for Port Authorities for years to come. CPAs need to make ongoing port investment to strengthen the competitiveness of the national ports system which has always been viewed by governments and the general public as a valuable 'public good.' As such, there must be a specific development fund which all ports can use to undertake all manner of specific port-related projects.

The limitations placed on CPAs by the Canada Marine Act as noted above greatly impedes a Port Authority's ability to develop much needed port infrastructure. Other avenues will have to be explored by the Review Panel to redress the imbalance created by the legislation. The *CTA Review Panel* noted several solutions to counter heavy support for US ports by all levels of government such as the following:

- allowing Port Authorities to issue revenue bonds;
- establishing a central port development fund;
- permitting government/port joint ventures; and
- allowing Port Authorities to retain operating surpluses for infrastructure investment purposes.

These and more will have to be brought into the funding mix to enhance the competitiveness of the National Ports System.

RECOMMENDATION 20: *The federal government must consider creating a specific port development fund for facilities-related projects of CPAs.*

B. (iv) MARINE SERVICES FEES

While the cost-recovery policy of the government of Canada appears to be a laudable goal, it begs the question: What role does government play in maintaining a national transportation system? Clearly, all in the marine sector pay huge sums of taxes and presumably a portion of those corporate and personal taxes is applied to the provision of transportation infrastructure and services - for all modes. There is little rationale behind signaling out the marine mode to pay above and beyond for essential services for what in effect is a 'public good.' This is another limiting factor to the competitiveness of the marine sector in Canada.

Eliminating Canadian Coast Guard (CCG) Marine Service Fees would be a positive step in demonstrating the federal government's commitment to promoting Canada's vital marine sector and enhance the competitiveness of Canadian industry. Implementing a ten-year agreement that eliminates the fees and establishes a framework for a strong partnership with CCG, would create a positive outcome for the government and the marine industry.

There must be a close partnership between government and industry to ensure that levels of service correspond with user needs. Here, too, Canadian industry is at a disadvantage vis-a-vis their US counterparts who are not required to pay marine service fees. Key players in the marine sector in Canada have thus proposed to 'level the playing field' with an agreement that would have a ten-year term. The proposal calls for the elimination of Marine Service Fees as soon as possible. The agreement would also establish an ongoing partnership between industry and the Canadian Coast Guard with the goal of ensuring that services and programs are delivered in the most cost-effective manner possible.

Eliminating CCG Marine Service Fees would be a positive step in demonstrating the government's commitment to promoting Canada's vital marine sector and enhancing the overall competitiveness of Canadian industry.

RECOMMENDATION 21: CCG marine service fees to be eliminated to enhance the competitiveness of the marine sector.

**PART V: STATEMENTS OF SUPPORT
FROM MARINE STAKEHOLDERS**

Please see the statements of support on the CMA Review Panel website at www.tc.gc.ca under Marine Policy section.

**PART VI: COMPARISON OF US PORTS IN SEVERAL JURISDICTIONS
WITH SEVERAL CANADIAN PORT AUTHORITIES**

This work has been contracted and will be submitted before the next deadline for submissions, September 24, 2002.

PART VII: APPENDICES

A. Appendix A: Section 4 of the Canada Marine Act

Section 4 of the CMA declares the objectives of the Act, and is shown below, for reference purposes.

It is hereby declared that the objective 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 social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;
- (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) 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;
- (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) coordinate with other marine activities and surface and air transportation systems.

B. Questions Submitted to Transport Canada Re: The Canada Marine Act

The questions noted below were submitted to Transport Canada's legal department almost 2 years. They must be addressed first and foremost if we are to have a fair and equitable resolution to the key issues related to the CMA.

1. Does the definition of Ports under the CMA include "proprietary" as well as "jurisdictional" interests?
2. Under the CMA who owns the body of water, as distinct from the submerged lands - irrespective of who has jurisdiction over water?
3. Does the CMA extinguish littoral entitlements?
4. Does the CMA give a port an "overriding" authority to operate a port regardless of ownership of the submerged lands?
5. Does a Port Authority need a lease on submerged land included within its Letters Patent in order to exercise their "jurisdiction" over the water sheen?

6. Does "navigational jurisdiction" mean the same as "jurisdictional authority"?
7. Does Section 92.10 (c) of the Constitution Act, 1987, i.e.. "for the general advantage of Canada" or Section 91 (generally referred to as clauses for the peace, order and good government of Canada), or any other section, give the federal Government the authority to impose a change in Provincial Property Tax Assessment law and practices?
8. Is there a difference in law between the 'watersheen' and the 'submerged land', i.e.. ships do not use the seabed therefore value accrues to the watersheen not the submerged land?
9. Is the Port Authority responsible under the CMA to remediate third party contaminants: a) on submerged land; b) on provincially-owned submerged lands and water as noted in the Letters Patent.
10. Faced with insolvency as a result of the cost of an environmental clean-up order; is the Port Authority legally responsible for the clean-up?
11. Does the CMA override a Provincial Assessment Statute where there are conflicting determinations of 'occupier' of the submerged land; e.g., a vessel on the watersheen at rest, mooring, loading, unloading, or lightening either at the dockface or at anchor in open water?
12. Under the CMA, is it necessary for a Port Authority to issue a lease or license for a vessel to occupy any part of the water under the Port Authority 'proprietary' or 'jurisdictional' control?
13. Given that the HMO under the CMA has the right to direct vessel traffic within a port, can or should a port issue 'water' leases giving 'exclusive possession' to the lessee?

The ACPA looks forward to having these questions appropriately addressed and provided to the body conducting the 'Best Practices Study' for valuation of port property in Canada.

C. Recent Action Taken by the Association of Canadian Port Authorities Re: The Problem of Sewage Effluent in Canadian Harbours

1. Original letter signed and sent by Scott Smith, Chair, ACPA.

October 10, 2001

Honourable David Anderson
Minister
Environment Canada
10 Wellington Street, 28th Floor
Hull, Quebec K1A 0H3

Dear Minister:

RE: CANADIAN HARBOUR CLEAN-UP

At the August 25, 2001 meeting of the Board of Directors of the Association of Canada Port Authorities (ACPA), it was unanimously approved that you be requested to initiate a federal government cost-sharing program for Canadian harbour clean-up.

As you are aware, the volumes of untreated effluent into Canada's major ports are significant: St. John's - 91 million litres per day; Halifax - 120 million litres per day; Saint John - 22 million litres per day; Vancouver - 66 million litres per day; and Victoria, B.C. - 123 million litres per day.

Clearly, the present situation is one which greatly threatens many aspects of our Canadian environmental well-being.

Your support in initiating a cost-shared clean-up program with the respective provinces and municipalities is greatly needed and respectfully requested.

Sincerely,
Association of Canadian Port Authorities
R. Scott Smith
Chair

NEWS RELEASE

ASSOCIATION OF CANADIAN PORT AUTHORITIES L'ASSOCIATION DES ADMINISTRATIONS PORTUAIRES CANADIENNES

For Immediate Release
October 15, 2001

CANADA PORTS GROUP CALLS FOR CANADIAN HARBOUR CLEAN-UP

At the August 25, 2001 meeting of the Board of Directors of the Association of Canada Port Authorities (ACPA), it was unanimously approved that the Minister of Environment be requested to initiate a federal government cost-sharing program for Canadian harbour clean-up. Scott Smith, Chair of the ACPA said, "It is common knowledge in this country that untreated sewage is spewing into some of Canada's harbours at an alarming rate." Mr. Smith went on to say that the general public is no longer prepared to accept this untenable environmental problem.

The Association has written the Minister of Environment and Mr. Smith pointed out that, "Clearly, the present situation is one which greatly threatens many aspects of our Canadian environmental well-being." The letter went on to note that the volumes of untreated effluent into the harbours adjacent to four of Canada's ports are significant, namely: St. John's - 91 million litres per day; Halifax - 120 million litres per day; Saint John - 22 million litres per day; Vancouver - 66 million litres per day; and Victoria, B.C. - 123 million litres per day.

The Association now calls upon the federal government for support in initiating a cost-shared clean-up program with the respective provinces and municipalities which is greatly needed and respectfully requested.

For more information please contact:

Gary LeRoux
Association of Canadian Port Authorities

Phone: (613)232-2036
Web Site: www.acpa-ports.net

The Association of Canadian Port Authorities was founded in 1959 and groups together ports and harbours and related marine interests into one, national association. The ACPA represents all Canada Port Authorities, various government entities and companies doing business in the marine sector. The ACPA is the pre-eminent Association for the advocacy and advancement of the Canadian Port industry. ACPA members contribute greatly to the local, regional and national economy of Canada with \$100 billion of goods annually flowing through Canadian ports.