

# Canada proposes to amend the Canada Transportation Act and the Canada Marine Act to improve transparency and accountability

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On June 20, 2023, the federal government introduced Bill C-52, the [Enhancing Transparency and Accountability in the Transportation System Act](#), which aims to improve transparency, accessibility, and accountability in key areas of Canada's transportation system, including marine transportation. The proposed legislation comes in the wake of significant focus placed on Canada's transportation sector in recent years following the COVID-19 pandemic.

Bill C-52 includes amendments to both the [Canada Transportation Act](#) and the [Canada Marine Act](#). This article will discuss the potential impact of the proposed amendments on the marine sector.

## Key Developments

- Canadian port authorities will have to abide by additional requirements when establishing or amending port fees.
- The Canadian Transportation Agency (CTA) will be given broader powers to hear challenges brought by port users and tenants regarding new or revised port fees, with such challenges no longer being restricted to allegations of unjust discrimination.
- The Minister of Transport will be able to develop an alternative dispute resolution process for disputes between port authorities and port users regarding terminal leases.

## Accountability and Transparency for Canadian Port Authorities

Under the Canada Marine Act, Canadian port authorities are permitted to fix fees in respect of ships coming into or using the port, the loading/discharge and handling of goods, and any other service provided by the port authority. Bill C-52 amends the Canada Marine Act to increase the accountability of port authorities by introducing principles that port authorities must observe when fixing port fees.

The Canada Marine Act currently requires that port fees to be fixed at a level that **permits the port authority to operate on a “self-sustaining financial basis,” and which are “fair and reasonable.”** Bill C-52 would, in addition, require port authorities to fix fees:

- a. in accordance with an explicit and published methodology, which would include any conditions affecting the fees;
- b. that would not, based on reasonable and prudent projections, generate revenues exceeding the authorities existing and future financial requirements;
- c. structured in a way that does not encourage a user to engage in practices that diminish safety for the purposes of avoiding a fee; and
- d. that would not unjustly discriminate among users or classes of users of the port, give undue or unreasonable preference to any user or class of user or subject any user or class of user to an undue or unreasonable disadvantage.

In addition, Bill C-52 would bolster the existing notice requirements under the Canada Marine Act by requiring port authorities to provide port users and tenants with more information when proposing to fix a new or revised fee, including the reasons for fixing the new or revised fee.

## Greater Oversight by Canadian Transportation Agency

Ports users and tenants can also look forward to a more streamlined and comprehensive mechanism for challenging a new or revised port fee. The Canada Marine Act currently provides a right of complaint to the CTA in respect of port fees, but only where the fee is alleged to result in unjust discrimination. Bill C-52 will substantially **expand the scope of the CTA’s oversight to also allow for complaints on the basis that the port authority failed to comply with the new fee-making principles or the notice and information requirements described above.**

Readers should note, however, that if these changes are implemented, only those parties who made written representations will be permitted to make a complaint to the CTA, subject to certain limited exceptions. This is a departure from the existing **approach, which allows any “interested person” to file a complaint, regardless of whether they made prior representations to the port authority regarding the fee.**

It is also noteworthy that these new remedies are restricted to port fees and do not give any additional powers to the CTA to interfere with contracts of carriage, fees charged by terminals to cargo owners, demurrage tariffs or other penalties imposed by carriers or **terminals. Accordingly, even with its broadened powers, the CTA’s mandate would be different than the much more expansive mandate of the Federal Maritime Commission in the United States.**

## New Dispute Resolution Mechanism

Lastly, Bill C-52 contemplates the development of an alternative dispute resolution process for disputes in respect of a terminal lease between a port authority and a port user. This dispute resolution process is likely meant to provide an additional avenue of recourse for port tenants given the express exclusion of payments made under a lease **agreement from the definition of “fees” under the Canada Marine Act<sup>1</sup>.**

The exact details for this process have not been released but will likely be the subject of further announcements in the near future.

## Next Steps

The imposition of additional restrictions on the port authorities' fee-making power would be a welcome change for many marine industry stakeholders and could help ensure that port services are available at a reasonable cost. While the [Federal Court](#) recently confirmed that the Canada Marine Act empowers port authorities to commercially operate ports, the proposed restrictions on the imposition of port fees reaffirms that port authorities do not enjoy unfettered discretion in this regard.<sup>2</sup>

Taken together, the proposed changes in Bill C-52 represent a positive step for port users in terms of accountability and accessibility. BLG will continue to monitor and report on developments relating to Bill C-52 and other related proposals as they occur.

If you have any questions on how any of these amendments may impact you or your business, please contact any of the authors or key contacts below.

<sup>1</sup> See also *Westshore Terminals Ltd. v. Vancouver Fraser Port Authority*, 2002 FCT 195, *aff'd* 2002 FCA 517.

<sup>2</sup> *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, 2022 FC 1109.

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