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

July 07, 2023

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*[1].

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.[2]

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.

[1] See also *Westshore Terminals Ltd. v. Vancouver Fraser Port Authority*, 2002 FCT 195, aff'd 2002 FCA 517.

[2] *GCT Canada Limited Partnership v. Vancouver Fraser Port Authority*, 2022 FC 1109.

The authors would like to thank Makena Anderson, summer law student, for her valuable assistance in the preparation of this bulletin.

By

Jean-Marie Fontaine, Dionysios Rossi, Emily Pitre, Braeden Stang

Expertise

Disputes, Transportation, Shipping

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.