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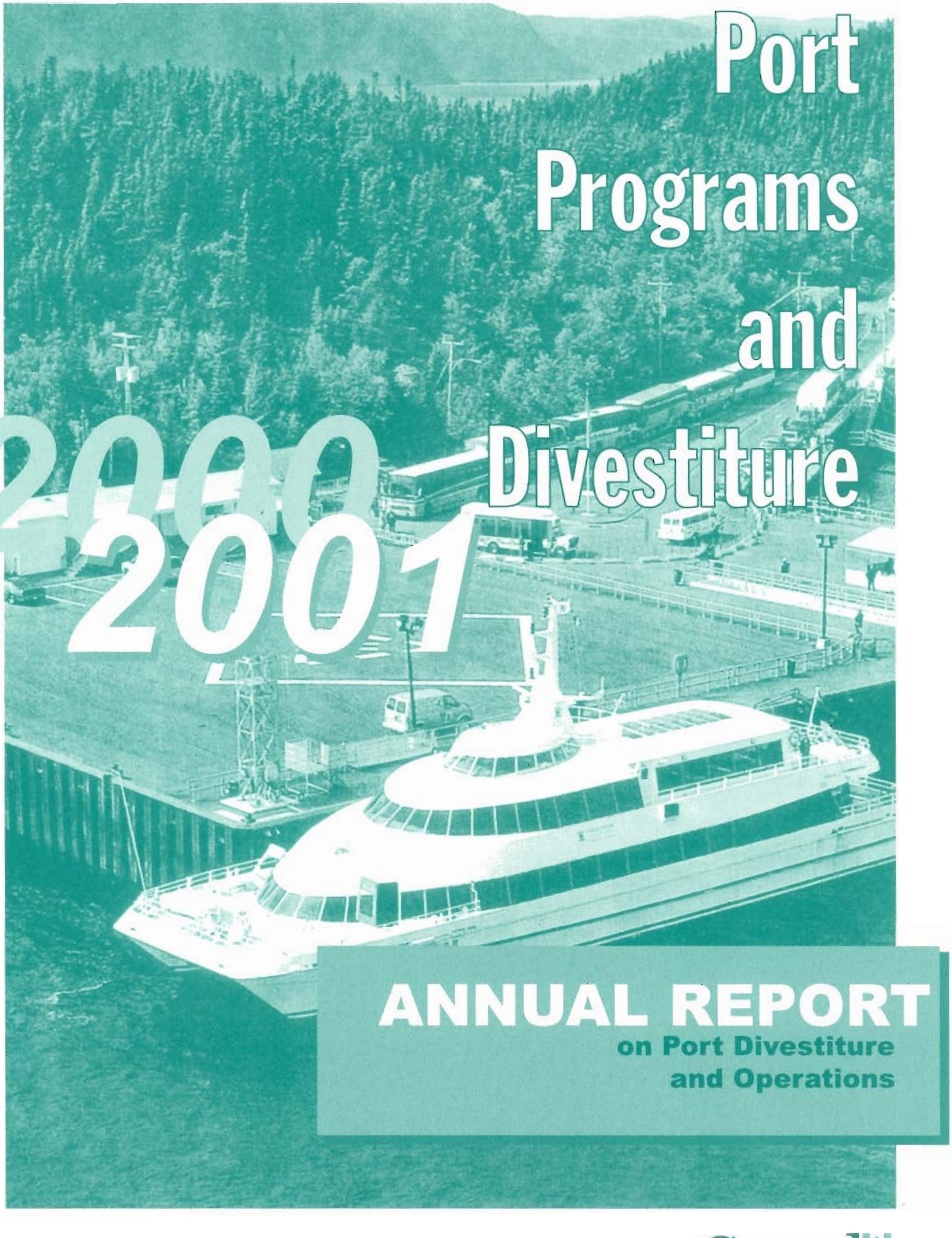

Port Programs and Divestiture

2000 2001

ANNUAL REPORT
on Port Divestiture and Operations

Canada

Table of Contents

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Port Programs and Divestiture

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Foreword

I am pleased to have the opportunity to submit to Parliament, pursuant to subsection 72(7) of the *Canada Marine Act,* the *Annual Report on Port Divestiture and Operations 2000/2001.*

The importance of Canada's ports to the national interest is clear. The public port system supports the safe and efficient movement of vessels and cargo, and is integral to regional economic prosperity.

By divesting the smaller regional/local facilities to communities and other interested local groups, responsibility for decision making is given to the people best placed to gauge local requirements. This contributes to the development of a more effective and efficient port system with local accountability.

I trust the information provided in this report will provide for a more thorough understanding of the port divestiture program and of the operation by Transport Canada of those public ports and regional/local public port facilities not yet transferred.

The Honorable David M. Collenette, P.C., M.P.
Minister of Transport

Port Divestiture

Program Description

The National Marine Policy, announced December 14, 1995, outlines the Government of Canada's intent to rationalize the Canadian Marine transportation system. One initiative within this policy framework is the port divestiture program. As of March 31, 2001, 390 of the 549 public ports and regional/local public port facilities originally operated by Transport Canada (71%) have been transferred, demolished or had their public harbour status terminated.
The National Marine Policy divided ports into three categories:

- those immediately eligible for Canada Port Authority (CPA) status;
- those designated as regional/local and slated for divestiture; and
- those designated as remote ports, many of which will continue to be operated by Transport Canada.

CPA ports will not be discussed here, as they are regulated by Part I of the Canada Marine Act and fall outside the scope of this report.

On April 18, 1996, Treasury Board approved the Minister of Transport's request for divestiture authority and for the establishment of the Port Divestiture Fund, both of which facilitate the divestiture process. A separate Port Transfer Fund was also put in place to finance activities related to port divestiture. A description of these two funds is found later in this report (see page 8).

Treasury Board provided overall approval for port divestiture and several specific approvals that have given the program the flexibility required to divest ports to other departments, provincial governments and local or community interests.

The Director General, Port Programs and Divestiture, exercises functional authority for the delivery of the port divestiture program in cooperation with regional divestiture teams across the country. This six-year program is scheduled to run until March 31, 2002.

The port divestiture program follows a land and chattels transfer strategy that was also approved by Treasury Board. Key principles of this strategy ensure that:

- no offer that leaves the Crown financially worse off as a result of divestiture will be accepted;
- the Crown receives best value for port land and other assets;
- a new port owner will not enjoy any windfall profits from the subsequent sale of lands, assets and/or chattels; and
- Transport Canada fully upholds its fiduciary responsibility with respect to First Nations.

Port Divestiture

There are six basic steps to port divestiture:

1. Transport Canada regional officials initiate port divestiture discussions with local interests.

2. Local interests then form a legal entity which signs a non-binding Letter of Intent to negotiate the port transfer and a Disclosure of Information Agreement with Transport Canada to protect third-party information.

3. Transport Canada provides the local entity with financial data, traffic or tonnage statistics and any relevant information concerning environmental, technical, engineering and property or leasing issues.

4. The local entity conducts a due diligence process with funding from Transport Canada.

5. Transport Canada and the local entity negotiate financial and other conditions of transfer.

6. Both parties sign a transfer agreement.

Transport Canada views this as a win-win situation. Public port divestiture allows communities to own their local facilities, control the use of these facilities, set their own tariff structures (if any), and determine the levels of service and maintenance required.

Progress to Date

As of March 31, 2001, a total of 390 of the 549 Port Programs and Divestiture facilities across Canada have been transferred or otherwise removed from the Transport Canada inventory.

- 211 declared public harbours were deproclaimed in June 1996 and March 1999.
- 64 sites were transferred to the Department of Fisheries and Oceans in 1996 and 1997.
- 39 sites were transferred to provincial governments (Newfoundland, New Brunswick and Ontario).
- 59 sites were divested to local interests.
- 3 port facilities were demolished.
- 14 sites have had their Transport Canada lease or licences terminated.

The department has deproclaimed 256 public harbours since the start of this program. Of this number, 26 harbours were found only during archival research that took place subsequent to the publishing of the National Marine Policy and were, therefore, not part of the original 549 port sites identified. In addition, 19 of these public harbours were adjacent to port facilities that had already been divested and had therefore already been removed from the original inventory.

Three Canada Ports Corporation ports — located in Churchill, MB, Port Colborne, ON and Prescott, ON — have been transferred. As well, Ridley Terminals Inc. (BC) became a parent Crown corporation.

As of March 31, 2001, there were 89 sites where Letters of Intent had been signed with various local interests to start the divestiture negotiation process. Transactions were in progress at 64 of these sites, or at portions thereof.

As of the same date, there were 125 regional/local and 34 remote sites across Canada remaining under the purview of Port Programs and Divestiture.

Table 1 – Progress to Date by Region (as of March 31, 2001)

Region	Original Inventory	Divested* in Previous Years	Divested* in 2000-2001	Total	Remaining
Atlantic	262	221	5	226	36
Quebec	73	27	9	36	37
Ontario	56	35	1	36	20
Pacific	158	76	16	92	66
Total	**549**	**359**	**31**	**390**	**159**

* Divested ports include those that have been deproclaimed or demolished

Note: This progress table may be found at

http://www.tc.gc.ca/PortPrograms/En/Summary.htm

Port Sale Proceeds

Consolidated Revenue Fund receipts of $44,859 have been collected from the sale of ports in 2000/2001.

In previous years, port sales yielded a total of $6,599,172, bringing the total for the entire program to $6,644,031.

1995-1996	—	$11,200
1996-1997	—	$523,860
1997-1998	—	$1,259,586
1998-1999	—	$653,990
1999-2000	—	$4,150,536
2000-2001	—	$44,859
Total		**$6,644,031**

Program Funding

Note: all financial figures presented in this report are based on forecasts for fiscal year 2000/2001 as at March 31, 2001.

The Port Divestiture Fund

Transport Canada is facilitating the divestiture initiative with the six-year, $125 million Port Divestiture Fund, which is intended to ease the transfer process by reducing the initial financial impact of port transfers.

This fund is used to provide assistance in bringing existing port property up to minimum safety or operating standards or to make lump-sum payments to facilitate the take-over of a port. It may also be used to cover a portion of costs incurred by the new owner or operator to achieve compliance with regulatory or insurance requirements, to fund feasibility studies or to reduce potential liability. Finally, the fund may be used to assist local groups, communities or other interests to take over a collection of ports and reduce costs by rationalizing infrastructure.

If no interest is shown in negotiating the transfer of a facility, the port is offered for sale by public tender. If there is still no interest shown, a decision concerning the future need for the facility is then made by Transport Canada.

The forecast expenditure of port divestiture funding for 2000/2001 was $46,697,000, bringing the total since the beginning of the program to $79,518,000 either disbursed or forecast for disbursal.

The Port Transfer Fund

A separate $40 million Port Transfer Fund, also funded from departmental resources, is used by Transport Canada to fund expenditures related to port divestiture. This fund covers such areas as land surveys, legal title searches, property appraisals, environmental assessments, the hiring of financial advisors and administrative expenses.

Including the $5,974,000 forecast for expenditure in 2000/2001, a total of $33,270,000 of the Port Transfer Fund has been disbursed or earmarked for use since the beginning of the program.

Table 2 – Port Divestiture Program Fund Expenditures

(All figures in $000s)

Fund/Year	1996/1997	1997/1998	1998/1999	1999/2000	2000/2001	Total
Port Divestiture Fund	13,077	1,542	1,269	16,933	46,697*	79,518
Port Transfer Fund	6,578	7,218	7,071	6,429	5,974*	33,270

Note: Previous year figures reported for the Port Divestiture Fund have changed following an adjustment to reflect policy changes on the source of funds for environmental remediation projects.

* *Forecast expenditures as at March 31, 2001. The Port Divestiture Fund figure includes $2,660,200 that has been set aside for sites where Agreements to Transfer were signed prior to March 31, 2001 but actual transfers will not take place until the new fiscal year.*

Issues

First Nations Concerns

The 1997 Supreme Court of Canada decision regarding *Delgamuukw vs. the Queen in Right of British Columbia* has had an impact not only on the department's ability to pursue specific divestiture activities, such as public port divestiture, but also on government-wide land transfer activities. This ruling has affected port transfers all across the country with the greatest effects felt in Ontario and British Columbia. In some cases, First Nations claims have been registered in the courts.

Transport Canada has developed a negotiator's consultation model that requires the Crown to determine the possible existence of legitimate aboriginal rights or title, before moving on to conclude a transaction. In many cases, some level of consultation is required prior to proceeding with divestiture. Where there are major issues to be resolved, departmental negotiators may need to seek the consent of the affected First Nations before a divestiture transaction can be finalized.

The Transport Canada consultation model is intended to provide a mechanism to identify First Nations issues and provide for the appropriate response. The use of this model enables departmental transactions, including the divestiture of ports, to proceed, albeit more slowly than was expected when the program began in 1996.

Provincial Issues

The provinces wish to protect their key ports and their positions are not always in full agreement with the National Marine Policy. In some cases, Port Programs and Divestiture facilities are located on waterlots that are subject to reversionary clauses with the province. Without the province's willingness to rescind these reversionary clauses, the divestiture program cannot proceed. Some sites are located on Provincial Crown land which must be returned to the Province as a part of the divestiture process. The Province, in turn, must issue tenure to the local entities acquiring Transport Canada facilities. In other places, municipalities must have provincial approval before negotiating with the federal government. Finally, in other cases, provincial Orders in Council are necessary. These various requirements increase the length of time it takes to divest a port.

Municipal Taxation

Transport Canada currently makes payments in lieu of taxes to municipalities at port sites across the country. These payments are made on the land and facilities but not on the associated wharves and marine structures.

Once these port facilities are transferred to a local entity, however, direct taxation of the eventual owners will reflect the value of the land and the replacement value of the facilities. This could mean a significant municipal tax increase for new owners adding to the financial expenses and difficulties for local regional/local port operators. That is, the resulting need to increase fees because of the tax burdens may well drive away port business.

Resolving this issue is under the control of the provincial government and solutions must be worked out between new owners and their local municipalities. Transport Canada performs a facilitation role here by seeking municipal and provincial cooperation on the matter wherever possible.

In the absence of any change in this municipal taxation policy, the successful divestiture of some of the larger regional/local public ports is expected to be problematic.

Port Operations

Program Objectives

Transport Canada's port policies and programs are aimed at the development of a ports system that:

- contributes to the achievement of Canada's international trade objectives as well as national, regional and local economic and social objectives;
- functions efficiently;
- provides port users with accessible and equitable transportation services; and
- works in coordination with other marine activities and surface and air transportation systems.

Administration

The program is administered by Transport Canada's Port Programs and Divestiture Directorate in cooperation with regional offices located in Dartmouth, NS, Quebec City, QC, Toronto, ON, and Vancouver, BC.

Local port administration varies according to local operations. Three sites — Cap-aux-Meules, QC, Victoria, BC, and Charlottetown, PE — are supervised by full-time public servants. In most cases, Transport Canada is represented locally by appointees who are compensated on a commission basis from fees collected from port users. These individuals, known as harbour masters and wharfingers, are appointed by the Minister of Transport. Their degree of activity is in direct correlation to traffic demands.

User Fees

The *Public Harbours and Port Facilities Act* has now been replaced by the *Canada Marine Act* (CMA). As a result, the Minister of Transport may now fix public port fees without proceeding through the regulatory process. Departmental officials continue, however, to consult and notify users and stakeholders of any public port fee adjustments.

Under the CMA, the Minister may fix fees to be paid in respect of:

- ships, vehicles, aircraft and persons coming into or using a public port or port facility;
- goods loaded on a ship, unloaded from ships or transhipped by water within limits of a public port, or stored in or moved across a public port facility; and
- services provided or rights conferred in respect of the operation of a public port or port facility.

Transport Canada publishes a tariff schedule for all charges except lettings. Typical charges include:

Harbour dues	A charge assessed against a vessel that comes into or uses a public port — based on vessel size and registry
Berthage	A charge for occupying a berth at a port — based on the vessel's size and its length of stay
Wharfage	A charge for moving cargo over a public wharf — based on cargo type with a rate per tonne or cubic metre
Storage	A charge for use of sheds or open space for assembling or distributing cargoes — depends on space occupied and duration of use
Letting	A rental charge — usually based on the market value of the property

If Transport Canada must undertake improvements specifically for the benefit of a major user, the department may supplement or replace these tariffs with negotiated contracts designed to improve the overall rate of cost recovery on investment.

Note: Information regarding public port fees is available at:
http://www.tc.gc.ca/PortPrograms/En/PublicPortFees.htm

Financial Review — Operations

Revenue and Expenditures for 2000/2001

EXPENDITURES	
Operating and maintenance	$14,891
Capital	$3,500
Gross expenditures	**$18,391**
REVENUE NET OF COMMISSIONS	
Gross revenue	($14,585)
Commissions, E.I. and C.P.P.	$1,234
Net Revenue	**($13,351)**
Total (Net operating, maintenance and capital expenditures)	**$5,040**

Expenditures and revenues are shown in $000s and are forecasts as at March 31, 2001.

Total revenue net of commissions for the program in 2000/2001 is forecasted to be $13.4 million. Under the terms of their appointment, harbour masters and wharfingers receive a set commission rate on tariff revenues collected from their respective ports. The remaining funds are vote-netted against operating and maintenance expenditures.

In 2000/2001, approximately 100 harbour masters and wharfingers represented Transport Canada at its public ports. For those appointees receiving commissions, the average annual commission paid was $12,340. Appreciation must be expressed to all appointees who provided sound port administration to the benefit of their community and to the credit of the federal government.

O&M Funding

The divestiture of Transport Canada-owned regional/local ports, as described in the first section of this report, is intended to take place over a six-year period ending March 31, 2002. As the department has publicly stated, the annual budget for maintenance repairs at public ports in conjunction with this program will be reduced annually as facilities are divested. The limited Transport Canada port maintenance funding available is intended for urgently needed safety-related items only.

Before the start of this program, the department was spending approximately $22 million per year for maintenance repairs. Because only safety-related repairs under the port divestiture program are funded, and since there are now fewer facilities to fund, a total of just $5,925,000 was allocated for port maintenance for 2000/2001. Over the same period, forecast expenditures covering both port maintenance and other standard operational requirements totaled $14,891,000. With respect to future year requirements, provisions will be based on the number of sites remaining in the Transport Canada inventory at that time.

Capital

Capital expenditures during the year were limited to Harrington Harbour, QC, Port Stanley, ON and Churchill, MB. Other urgent safety-reltaed minor capital expenditures were also made at various sites across the country.

For more information about the Ports Program visit the web site at http://www.tc.gc.ca/PortPrograms/En/Menu.htm