



Transport
Canada

Transports
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ANNUAL REPORT

ON PORT DIVESTITURE AND OPERATIONS



Canada

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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 2002-2003*.

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.

Through divestiture of the smaller Regional/Local public port facilities to communities and other interested local groups, responsibility for decision-making is assumed by 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 in this report will provide for a more thorough understanding of the Port Divestiture Program and the operation by Transport Canada of those public ports and Regional/Local public port facilities not yet transferred.



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

Port Divestiture

Program Description

The National Marine Policy, announced on December 14, 1995, outlines the Government of Canada's plan to rationalize the Canadian marine transportation system. One initiative within this policy framework is the Port Divestiture Program. As of March 31, 2003, 446 or 81% of the 549 public ports and public port facilities originally operated by Transport Canada had been transferred, demolished, or had their public harbour status terminated.

The National Marine Policy divides ports into three categories:

- sites immediately eligible for Canada Port Authority (CPA) status; *
- sites designated as Regional/Local ports that were slated for divestiture; and
- sites designated as Remote ports, which were to continue being operated by Transport Canada unless local stakeholders expressed an interest in acquiring these facilities.

On April 18, 1996, the Minister of Transport received Treasury Board approval of the terms and conditions governing the Port Divestiture Program, including the authority to establish a Port Divestiture Fund. A separate Port Transfer Fund was also put in place to finance departmental activities related to port divestiture. Details of these two funds are found later in this report (see page 7).

The six-year Port Divestiture Program, originally scheduled to run until March 31, 2002, was granted a one-year extension to March 31, 2003, and subsequently, a further three-year extension to March 31, 2006. Since 1996, this initiative has saved Canadian taxpayers approximately \$122 million.

The Program is sufficiently flexible to permit divestiture of ports to other federal departments, provincial governments or local interests, including municipalities. Transport Canada's 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.

The Port Divestiture Program follows a land and chattels transfer strategy to 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.

* 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.

Port Divestiture

There are six basic steps in port divestiture at the local or community level:

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 legally binding 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 other relevant information concerning environmental, technical, engineering, and property or leasing issues.
4. The local entity conducts a due diligence process, usually 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.

From a local community perspective, public port divestiture allows such 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 appropriate to local circumstances. From Transport Canada's viewpoint, the process described above will allow the department to meet its objective of withdrawing from the direct operation of Regional/Local ports nationwide.

Progress to Date

As of March 31, 2003, a total of 446 of the 549 Port Programs and Divestiture facilities across Canada had been transferred or otherwise removed from the original Transport Canada inventory as follows:

- 211 declared public harbours were deproclaimed;
- 64 sites were transferred to other federal departments;
- 40 sites were transferred to provincial governments (Newfoundland and Labrador, Nova Scotia, New Brunswick, Quebec and Ontario);
- 109 sites were divested to local interests;
- 4 port facilities were demolished; and
- 18 sites had their Transport Canada leases or licences terminated.

The department has, however, actually deproclaimed 267 public harbours since the start of the Program. Of this number, 26 were discovered 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, 30 of these public harbours were adjacent to port facilities that had been divested and had therefore already been removed from the original inventory.

Three Canada Ports Corporation ports — located in Port Colborne, Ont.; Prescott, Ont. and Churchill, Man. — have been transferred. As well, Ridley Terminals Inc. (B.C.) has become a parent Crown Corporation.

As of March 31, 2003, there were 71 Regional/Local and 32 Remote port sites across Canada remaining under the purview of Port Programs and Divestiture.

Table 1 — Progress to Date by Region (as of March 31, 2003)

Region	Original Inventory	Divested* in Previous Years	Divested* in 2002-2003	Total	Remaining
Atlantic	262	233	2	235	27
Quebec	72	36	0	36	36
Ontario	57	42	0	42	15
Pacific	158	122	11	133	25
Total	549	433	13	446	103

* Divested ports include those that have been deproclaimed or demolished, or those sites at which Transport Canada's interest has been terminated.

Note: Updates of this progress table may be found at:
<http://www.tc.gc.ca/programs/ports/progresssummary.htm>

Harbour Bed Divestiture

Harbour bed divestiture is an integral and fully consistent part of the Port Divestiture Program. In order to achieve the National Marine Policy objective of terminating Transport Canada's ownership and operation of Regional/Local ports, the department is required to terminate all of its ownership interests in those ports, including ownership of harbour beds where applicable. In a number of cases, harbour dues that are levied on vessels making use of a port must be collected even at sites for which there are no services being offered. Only once its ownership interests are terminated can Transport Canada then deproclaim the port and cease charging harbour dues.

It is important to note that Transport Canada owns a total of only 42 harbour beds and that the provinces already own the vast majority of the harbour beds in the hundreds of small ports nationwide. The 42 Transport Canada-owned harbour beds are located as follows:

Newfoundland and Labrador	11	New Brunswick	1	Manitoba	1
Prince Edward Island	4	Ontario	8		
Nova Scotia	15	British Columbia	2		

Federal and provincial negotiations for the transfer of Transport Canada's harbour beds are currently underway.

Port Divestiture Program Extensions

The Government of Canada approved a one-year extension of the Port Divestiture Program to March 31, 2003, and subsequently, a further three-year extension to March 31, 2006.

Program Funding

The Port Divestiture Fund

Transport Canada is facilitating the divestiture initiative with the Port Divestiture Fund. The original \$125 million Port Divestiture Fund envelope authority has been increased to \$170 million. To date, this fund has been sourced from within the Transport Canada budget and is intended to ease the transfer process by reducing the initial financial impact of port transfers.

The Port Divestiture 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 takeover of a port. It may also be used to cover a portion of the 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, Transport Canada then makes a decision concerning the future need for the facility.

Port Divestiture Fund expenditures for 2002-2003 were \$22.4 million, bringing the total expenditure to \$124.8 million since the beginning of the Program.

The Port Transfer Fund

Transport Canada uses a separate Port Transfer Fund, also funded from departmental resources, to fund departmental 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. A total of \$41.4 million of the Port Transfer Fund has been disbursed since the beginning of the Program.

Table 2 — Port Divestiture Program Fund Expenditures

(All figures in \$ millions)

Fund/Year	96-97	97-98	98-99	99-00	00-01	01-02	02-03	Total
Port Divestiture Fund	13.1	1.5	1.3	16.9	46.5	23.1	22.4	124.8
Port Transfer Fund	6.6	7.2	7.1	6.4	5.8	5.3	3.0	41.4

Revenue from the Sales of Ports

Since the beginning of the Program, \$8.6 million has been collected from the sale of port property and assets, \$8.4 million of which was returned to Transport Canada during fiscal year 2002-2003 for use in the Port Divestiture Program.

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 Transport Canada's ability to pursue public port divestiture, but also on government-wide land transfer activities. While this ruling has affected port transfers across the country, its greatest effects have been felt in Ontario and British Columbia. In some cases, First Nations claims have been registered in the courts, thereby further complicating delivery of the Port Divestiture Program.

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 to conclude a transaction. In many cases, some level of consultation is required prior to proceeding with divestiture. In exceptional circumstances, departmental negotiators may need to seek the agreement of the affected First Nations before a divestiture transaction can be finalized.

The Transport Canada consultation model provides a mechanism to identify First Nations issues and to 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. The transfers in Victoria, B.C. are prime examples of such First Nations consultation. Through the efforts of Transport Canada negotiators, two First Nations now sit together on the Board of the Greater Victoria Harbour Authority, the new owner of several former Transport Canada port facilities.

Provincial Issues

Provincial consent to conclude a port divestiture transaction is required in most cases of divestiture in Newfoundland and Labrador, Quebec and British Columbia. This is because the ports in these provinces are located on lands the provinces have provided to the federal government for the purpose of operating public ports. The lands must be returned to the Province in the event that Transport Canada ceases to require them for this purpose. The federal government therefore cannot transfer the lands to other parties without the specific approval of the applicable provincial government.

A process has now been implemented with the British Columbia government whereby the Province enters into a lease with the new operator upon transfer. Divestiture has been at a standstill in the provinces of Quebec and Newfoundland and Labrador. In the past year, however, these two provinces have shown interest in resuming divestiture discussions. Assuming continued cooperation at the provincial level, Transport Canada officials are confident that transfer agreements can be reached in these provinces as well.

Port Operations

Program Objectives

For public ports that remain undivested, 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, N.S.; Quebec City, Que.; Toronto, Ont. and Vancouver, B.C.

Local port administration varies according to local operations. Three sites — Charlottetown, P.E.I.; Cap-aux-Meules, Que. and Victoria, B.C. — are supervised by full-time public servants. In most cases, Transport Canada is represented locally by appointees who receive a set commission rate on tariff revenues collected from their respective ports. 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

Pursuant to the *Canada Marine Act* (CMA), the Minister of Transport may fix public port fees without proceeding through the regulatory process. Departmental officials notify users and stakeholders of any public port fee adjustments before such adjustments are made.

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

- vessels, vehicles, aircraft and persons coming into or using a public port or public port facility;
- goods loaded on to vessels, unloaded from vessels or trans-shipped 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 public 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 vessel size and length of stay.
Wharfage	A charge for moving cargo over a public wharf — based on cargo type with a rate per tonne or per cubic metre.
Storage	A charge for the use of sheds or open space for assembling or distributing cargo — based 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/programs/ports/menupublicportfees.htm>

Regulations

The National Marine Policy called for the complete reorganization of Canada's ports and harbours. In order to accommodate the changes to the structure of the port system, Transport Canada seamlessly replaced the entire regulatory regime in place at public ports. The *Public Ports and Public Port Facilities Regulations* modernized Transport Canada's regulatory responsibilities for safety, order, and operations at public ports, and replaced the *Public Harbours Regulations* and the *Government Wharves Regulations*. These regulations are supported by Practices and Procedures to control ship traffic and to promote safe and efficient navigation in public ports.

Note: Information regarding public port regulations is available at:
<http://www.tc.gc.ca/programs/ports/actsregulations.htm>

Other Activities

Transport Canada is working with numerous other federal government departments on the issue of security. This work is ongoing. As well, a Transport Canada committee comprised of members from all regions and headquarters is looking at *Canada Labour Code* issues relating to public ports. The aim of the committee is to ensure compliance with the *Canada Labour Code* at Transport Canada public port facilities.

Financial Review — Operations

Revenue and Expenditures for 2002-2003

EXPENDITURES	2001-2002 (\$ millions)	2002-2003 (\$ millions)
Operating and maintenance (includes commissions, EI and CPP)	16.8	17.1
Capital	6.8	2.5
Gross expenditures	23.6	19.6
REVENUE		
Revenue	(13.8)	(13.3)
Total (Net operating, maintenance and capital expenditures)	9.8	6.3

Note: Expenditures and revenues are forecast as of March 31, 2003.

Total revenue for the Program in 2002-2003 is forecast to be \$13.3 million. Under the terms of their appointments, 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 2002-2003, approximately 85 Harbour Masters and Wharfingers represented Transport Canada at its public ports. Appreciation must be expressed to all appointees who provided sound port administration to the benefit of their communities and to the credit of the federal government.

Operating and Maintenance Funding

The divestiture of Transport Canada-owned Regional/Local ports, as described in the first section of this report, was originally intended to take place over a six-year period ending March 31, 2002. The Government of Canada approved a one-year extension of the program to March 31, 2003, and subsequently, a further three-year extension to March 31, 2006. The annual budget for maintenance repairs at public ports throughout the life of the Program has been very modest, since Transport Canada port maintenance funding has been used for urgently needed safety-related items only.

Before the start of the Port Divestiture Program, the department spent approximately \$22 million per year for maintenance repairs, while a total of \$6 million was allocated for port maintenance for 2002-2003.

Capital

A previously approved, major capital project in Cap-aux-Meules, Que. is ongoing. During this fiscal year, major capital expenditures were approved for Les Escoumins and Blanc-Sablon, Que. Both projects are ongoing and will continue into the next fiscal year. As well, a safety-related minor capital project was undertaken at Pelee Island, Ont.

Note: For more information about Port Programs, visit: <http://www.tc.gc.ca/programs/ports/menu.htm>