

**BILL C-23: AN ACT TO AMEND THE CANADA MARINE ACT,
THE CANADA TRANSPORTATION ACT, THE PILOTAGE
ACT AND OTHER ACTS IN CONSEQUENCE**

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LEGISLATIVE HISTORY OF BILL C-23

HOUSE OF COMMONS

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N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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BILL C-23: AN ACT TO AMEND THE CANADA MARINE ACT,
THE CANADA TRANSPORTATION ACT, THE PILOTAGE
ACT AND OTHER ACTS IN CONSEQUENCE*

BACKGROUND

On 16 November 2007, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, introduced Bill C-23, An Act to amend the Canada Marine Act, the Canada Transportation Act, the Pilotage Act, and other Acts in consequence, in the House of Commons.

The *Canada Marine Act*, which received Royal Assent in 1998, implemented the federal government's *National Marine Policy* and called for the modernization of the marine management and regulatory regime to achieve greater efficiency in the marine transportation sector. It created a National Ports System composed of independently managed port authorities for ports that are vital to Canada's international and domestic trade. It also provided Canada's major ports with the necessary tools to operate commercially and efficiently. The Act was subject to a legislative review in 2003. Before proceeding with Bill C-23, Transport Canada undertook a number of studies to assess key recommendations resulting from the review.

In a backgrounder released on the same day Bill C-23 was introduced in the House of Commons, the department stated that in order to address issues that are important to the marine industry and to maintain Canada as a gateway for international trade, it would not be limiting its activities to legislative amendments, but would also pursue other policy initiatives in key areas intended to improve the competitiveness of the Canadian marine industry.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

A. Highlights

The highlights of the bill are that it:

- modifies the purpose of the *Canada Marine Act*;
- modifies Canada Port Authorities' access to federal funding in that a port authority would be permitted to apply for contribution funding related to infrastructure, environmental sustainability and the implementation of security measures;
- adds provisions regarding the power of a port authority to borrow money;
- adds provisions regarding amalgamation of port authorities;
- incorporates amendments related to governance and the appointment of directors of port authorities;
- provides additional regulatory powers of the Governor in Council; and
- introduces an administrative monetary penalty regime to make the enforcement of minor statutory violations easier to manage.

DESCRIPTION AND ANALYSIS

A. Technical Amendments

Bill C-23 makes a considerable number of housekeeping and technical amendments to provisions of the *Canada Marine Act*. These amendments are for the most part made to increase clarity and consistency between both language versions, and in some cases to increase consistency with Quebec civil law. The technical amendments will not be included in the following analysis, which will refer only to those amendments that have resulted in substantive changes to the provisions of the *Canada Marine Act*. References to “the Act,” unless otherwise indicated, mean the *Canada Marine Act*.

B. Purpose of the *Canada Marine Act*

Clause 3(1) amends section 4 of the *Canada Marine Act*, the purpose section, by adding an introduction that recognizes the significance of marine transportation to Canada and its contribution to the Canadian economy. It also amends paragraph (a) by replacing the reference to a “National Marine Policy” with the more general term “marine policies” and by

changing the order in which the objectives are named to national, regional and local. In addition, it adds, by way of a new paragraph (*a.1*) are named, an additional purpose: to promote the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy. Clause 3(2) amends paragraph (*h*) of section 4 to emphasize the need to integrate marine activities with other modes, i.e., surface and air transportation systems.

C. Canada Port Authorities (Part 1 of the *Canada Marine Act*)

1. Amendment of Schedule (Clause 4)

The Act currently provides in section 6(2) that the Minister may, by *order*, amend the schedule by adding to Part 2 the names of new port authorities or by removing from the schedule the names of port authorities that are dissolved. Clause 4 amends the section to simply provide that the Minister may, by *regulation*, amend the schedule. According to departmental officials, the reason for the change is to provide a mechanism that allows for a broader array of changes than are currently provided for in the Act.

2. Incorporation (Clause 5)

a. Letters Patent (Clause 5)

Clause 5(1) amends section 8(1) to clarify that when the Minister issues letters patent to a Canada Port Authority under section 8(1), such letters patent have the effect of *incorporating* the port authority. The purpose is to distinguish from the issuance of letters patent that have the effect of *continuing* an entity as a port authority.

Clause 5(3) amends section 8(2)(f)(iii) to change the reference from the “port of Vancouver” to “the port wholly or partially located in Vancouver.” The purpose is to clarify and make explicit the application of the provision to the Vancouver Port Authority or any amalgamated port authority in that location.

Section 5(2)(l) currently provides that the letters patent must set out the limits on the power of the port authority to borrow money on the credit of the port authority for port purposes. Clause 5(4) amends the section by adding to the end the words “or a code of conduct governing that power, as the case may be.” The purpose is for the borrowing regime in the letters patent to include an option for certain larger port authorities to apply a code rather than a limit. Related amendments are found in clauses 17(2) and 18.

b. Supplementary Letters Patent (Clause 6)

Section 9(1) currently provides that the Minister may, on his or her own initiative and after consulting with the board of directors, or at the request of the board of directors, issue supplementary letters patent amending the letters patent of a port authority if the Minister is satisfied that the amendment is consistent with the Act; the supplementary letters patent would take effect on the date stated in them. Clause 6(1) amends the first part of the provision such that the Minister may issue supplementary letters patent, either on his or her own initiative and after having given notice of the proposed changes to the board of directors, or when the board of directors has by resolution requested it. The amendment ensures that a request by the board of directors is evidenced in writing through a resolution of the board. In addition, clause 6(2) adds proposed new section 9(2) to require that the notice by the Minister referred to in section 9(1) be given in writing and that it set out a time limit within which the board of directors may provide comments to the Minister about the proposal.

3. Continuance of Harbour Commissions (Clause 7)

Clause 7(1) amends section 10(1) of the Act to make it clear that the letters patent setting out the information required in section 8(2) of the Act continue harbour commissions established under the *Harbour Commissions Act* as port authorities (i.e., letters patent of continuance as distinct from letters patent of incorporation) and to remove mention of the *Hamilton Harbour Commissioners' Act* and the *Toronto Harbour Commissioners' Act, 1911*, both of which have been repealed.

4. Amalgamation of Port Authorities (Clause 9)

Clause 9 adds proposed new sections 13.1(1) to (3) to the Act. Proposed section 13.1(1) gives the Governor in Council the power to remove any director of an amalgamating port authority from the day on which the Governor in Council requires the amalgamation until the day before it takes effect. Proposed section 13.1(2) excludes the application of proposed section 14(2.3), to which reference is made below, to a director of an amalgamating port authority who holds office on the day on which the Governor in Council requires the amalgamation. Proposed section 13.1(3) stipulates that a fee that is in force in respect of an amalgamating port continues in force for a period of six months, or less, if it is replaced by a fee fixed under section 49(1).

5. Directors (Clauses 10-13)

a. Appointment of Directors (Clause 10)

Clause 10 adds proposed new sections 14(1.1) to (2.4), regarding directors of port authorities, to the Act.

Section 14(1)(b) currently requires the municipalities mentioned in the letters patent to appoint one person as a director of a port authority, and section 14(1)(c) requires the province(s) mentioned in the letters patent to appoint one or two individuals as mentioned in the letters patent. Proposed section 14(1.1) permits the Governor in Council to appoint a director under section 14(1)(b) or (c) a director who has been nominated by the Minister if the position has been vacant for more than one year.

Currently, section 14(2) provides that the directors of a port authority are appointed to hold office for a term of no more than three years such that, as far as possible, the terms of office of no more than half of the directors will expire in any one year, the terms being renewable once only. Proposed section 14(2) changes the number of permissible term renewals from one to two, for an allowable maximum of three terms of no more than three years each.

Proposed section 14(2.1) specifies that a director can serve no more than nine consecutive years on the board.

According to proposed section 14(2.2), a director's appointment takes effect on the day on which the port authority receives notice of the appointment.

Proposed section 14(2.3) specifies that, subject to section 14(2.1), and despite section 14(2), if a successor has not been appointed at the expiry of a director's term, the director continues to hold office until his or her term is renewed or a successor is appointed.

Proposed section 14(2.4) clarifies that a director appointed by the Governor in Council under proposed section 14(1.1) may remain in office only until the appointing bodies under sections 14(1)(b) or (c) have nominated a director to that position.

b. Persons Excluded From Being Directors (Clause 11)

Clause 11 amends section 16 of the Act to ensure that a person who is an officer or employee of a port authority is disqualified from being a director of a port authority.

c. Ceasing to Hold Office as a Director (Clause 12)

Clause 12 amends section 19(1)(b) to remove the words “the other directors” from the list of entities that may remove a director of a port authority for cause. The reason for the amendment is to make it clear that, just as directors of a port authority cannot appoint other directors, they also cannot remove a director of a port authority.

d. Delegation by Board of Directors (Clause 13)

Clause 13 adds proposed new section 21.1 to the Act to provide that, subject to the letters patent, the board of directors may delegate the powers to manage the activities of the port authority to a committee of directors or to the officers of the port authority. Departmental officials indicate that this complements a similar provision on delegation of borrowing powers in section 31(2) of the Act. They point out that without this provision, the directors’ power to delegate would be in doubt.

6. Legal Regime Applicable to Port Authorities (Clauses 14-16)

a. No Appropriations – Exceptions (Clause 14)

The House of Commons Standing Committee on Transport, Infrastructure and Communities replaced the previously proposed amendment to section 25 in clause 14 with a new section 25 to provide that even if the port authority or subsidiary is an agent of the Crown, as provided under section 7, no payment to a port authority or a wholly-owned subsidiary of a port authority may be made under an appropriation by Parliament to enable the port authority or subsidiary to discharge an obligation or liability unless a) the payment is made under the *Emergencies Act* (or any other Act in respect of emergencies), or is in respect of the capital costs of an infrastructure project, or is in respect of environmental sustainability or security; or b) the authority for the funding of the Crown’s obligations is an agreement that was in existence before 1 March 1999.

b. Contribution (Clause 15)

Clause 15 adds proposed new section 25.1 to describe the approval process by which the Minister may make payments that are contributions to port authorities in respect of security pursuant to section 25(b)(iv). The Minister may do so with the approval of the Governor in Council given on the recommendation of Treasury Board and on any terms and

conditions specified by the Governor in Council on the recommendation of Treasury Board. Departmental officials point out that the approval process is similar to the one that exists in the *Marine Transportation Security Act*.

c. Regulation-making Powers (Clause 16)

Section 27 provides that, for the purposes of Part 1 of the Act, the Governor in Council may make regulations for the corporate management and control of port authorities (or wholly-owned subsidiaries) including regulations respecting a number of matters specifically enumerated in paragraphs (a) to (f). Clause 16 adds two new regulation-making powers in the form of two new paragraphs: (g) regulations respecting the information and documents to be provided by a port authority to the Minister at the Minister's request; and (h) regulations respecting the amalgamation of port authorities.

7. Capacity and Powers (Clauses 17-18)

a. Compliance With Code (Clause 17)

Clause 17(2) adds a proposed new section 28(5.1) to the Act, indicating that a port authority that is subject to a code governing its power to borrow must include, in any borrowing contract or instrument, a statement that the borrowing complies with the code. Clause 17(2) also amends section 28(6) to require directors of a port authority to take all necessary measures to ensure compliance with proposed new section 28(5.1). In addition, it amends section 28(7) to ensure that the Minister of Finance, on the recommendation of the Minister of Transport, may impose limitations and conditions on borrowings where there is non-compliance with proposed new section 28(5.1) or proposed new section 30.1 (see below).

b. Borrowing Policy (Clause 18)

Clause 18 adds proposed new sections 30.1(1) to (3) to the Act. According to proposed section 30.1(1), directors of a port authority that is subject to a code governing its power to borrow must certify to the Minister that the borrowing policy is in compliance with the code. Proposed section 30.1(2) requires that if there are any changes in respect of the borrowing policy, the directors of the port authority must certify to the Minister that the policy remains in compliance with the code. In addition, proposed section 30.1(3) requires the directors of a port authority to provide a copy of the port authority's borrowing policy to the Minister upon request.

8. Financial Management (Clauses 20-21)

a. Remuneration (Clause 20)

Section 37(3) currently requires a port authority to prepare annual financial statements that must set out, among other things, the total amount paid to specified persons during the year. Clause 20 amends the provision to clarify that this requirement applies to payments in money or in kind.

b. Business Plan (Clause 21)

Section 39 currently requires a port authority to annually submit a business plan to the Minister. Clause 21 amends section 39 to specify that the business plan must be submitted within three months after the end of each fiscal year.

9. Property (Clauses 22-25)

a. Transactions Relating to Real Property (Clause 22)

Clause 22(2) amends section 44(2) to clarify that the Minister may give to a port authority, through supplementary letters patent as well as original letters patent, the management of any federal real property or federal immovable that is administered by the Minister of Transport under section 44(1) or any other Minister provided the Minister of Transport has his or her consent. In addition, clause 22(2) amends section 44(3) to facilitate transactions related to federal real property⁽¹⁾ and federal immovables⁽²⁾ managed by a port authority.

b. Powers and Obligations When Management Given (Clause 23)

Section 45(1)(c) currently provides that when the Minister has given the management of any federal real property or federal immovable to a port authority, the port authority must undertake and defend any legal proceedings with respect to that property. Clause 23(1) amends that paragraph to make that requirement subject to any instructions that

(1) The *Canada Marine Act* defines “federal real property” as having the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*. The latter defines “federal real property” to mean any real property belonging to the federal Crown and including real property of which the federal Crown has the power to dispose.

(2) The *Canada Marine Act* defines “federal immovable” as having the same meaning as in section 2 of the *Federal Real Property and Federal Immovables Act*. The latter defines a “federal immovable” to mean an immovable (a term that is also defined in the Act and used in Quebec civil law to describe real property) belonging to the federal Crown, and including an immovable of which the federal Crown has the power to dispose.

may be provided by the Attorney General of Canada. Clause 23(2) amends section 45(2) to require legal proceedings to be taken by or against a port authority and not by or against the federal Crown with respect to personal property or movables owned by the port authority. Clause 23(3) adds a proposed new section 45(3.2) to provide that a port authority may lease or license any federal real property or federal immovable it manages for temporary use under paragraph (a) of section 28(2) concerning certain port activities.

c. Acquisition of Federal Real Property and Federal Immovables (Clause 24)

Clause 24 adds proposed new section 45.1(1) and (2) to the Act. Proposed section 45.1(1) provides that the federal Crown may acquire any real property or immovable for the purpose of operating a port at the request of the port authority, and that the port authority may pay the price of the property in question. This clarifies the existing process used when the Crown acquires federal real property. Further, proposed section 45.1(2) specifies that if the management of the real property or immovable acquired under proposed section 45.1(1) is removed from the port authority, the federal Crown does not become liable to the port authority for any portion of the price paid by it.

d. Disposition of Federal Real Property and Federal Immovables (Clause 25)

Clause 25(3) amends section 46(1)(b)(i) so as to replace the phrase “comparative market value” with “comparative value” and to clarify the stipulation that a port authority may not dispose of any federal real property or federal immovable that it manages but may exchange that property for other real property or immovables of comparable value, provided that supplementary letters patent describing the other property as federal real property or federal immovables have been issued *before* the exchange.

Clause 25(5) clarifies the provision in section 46(2) that a port authority may dispose of any real property or immovable that it holds, *other than* federal real property or federal immovables, if supplementary letters patent have been issued before the disposal, and adds the granting of “real servitude” to the list of transactions that do not require the issuance of supplementary letters patent. The reason for the addition of “real servitude” to the English version of the section is to increase consistency from a Quebec civil law perspective. In Quebec civil law, “servitude” generally means a charge on an immovable.

Clause 25(5) also adds a proposed new section 46(2.1), which expressly permits a port authority to acquire, lease (as lessee) or license (as licensee) real property or immovables, other than federal real property or federal immovables, provided that supplementary letters patent have been issued. It also adds a proposed new section 46(2.2) to allow a port authority to lease or license any real property or immovable it holds, other than federal real property or federal immovables, for temporary use under section 28(2)(b).

10. Port Traffic Control (Clause 31)

Section 58(1) permits a port authority to designate a person to exercise certain traffic control powers specified in the section with respect to ships about to enter or within the port or an area of the port. Clause 31(1) amends that section to provide that that person is to be furnished with a certificate of designation.

11. Maintenance of Marine Transportation Security (Clause 33)

Clause 33 changes the current section 61 to section 61(1) and adds proposed new section 61(2) to provide that, subject to any regulations made under the *Marine Transportation Security Act*, port authorities must take appropriate measures for the maintenance of marine transportation security.

12. Regulations for Purposes of Part 1 of the Act (Clause 34)

Section 62(1) of the *Canada Marine Act* enables the Governor in Council to make regulations respecting enumerated matters for the purposes of Part 1 of the Act. Clause 34(2) adds a new regulation-making power in proposed paragraph (d.1) respecting the information or documents that must be provided by the owner or the person in charge of a ship to the port authority.

D. Public Ports (Part 2 of the *Canada Marine Act*)

1. Designation by Way of Regulation (Clause 35)

Section 65(1)(a) of the *Canada Marine Act* enables the Governor in Council, by regulation, to designate as a public port any navigable waters within the jurisdiction of Parliament, “including any foreshore.” The foreshore is generally the strip of land that lies between the high and low water marks. Clause 35 replaces the phrase “including any foreshore” with “and any land covered by the navigable waters if the land is under the administration of the

Minister, including any related foreshore.” According to departmental officials, the purpose of the amendment is to provide more clarity as to the scope of the enabling authority of the Governor in Council to designate a public port by way of regulation.

2. Harbour Masters and Wharfingers (Clause 37)

Section 69(1) currently provides that the Minister may appoint as a harbour master or wharfinger for all or part of a public port (or public port facility) any person who, in the Minister’s opinion, is qualified and may accordingly assign responsibilities to that person. Clause 37 amends the section to expressly provide that these responsibilities include collecting fees and interest on fees.

3. Regulations for the Management, Control, Development and Use of Public Ports (Clause 41)

Clause 41(3) adds a new regulation-making power to section 74(1) in proposed paragraph (*d.1*) concerning the information or documents that must be provided by the owner or person in charge of a ship to the Minister.

E. Seaway (Part 3 of the *Canada Marine Act*)

1. Regulations (Clause 46)

Section 98 empowers the Governor in Council to make regulations for the management, control, development and use of the St. Lawrence Seaway, including regulations respecting a number of specifically enumerated matters. Clause 46(3) adds an additional enumerated matter in proposed paragraph (*d.1*) respecting the information or documents that must be provided by the owner or person in charge of a ship to the Minister or to any person who has entered into an agreement under section 80(5).

F. Regulations and Enforcement (Part 4 of the *Canada Marine Act*)

1. Detention – Enforcement Officer (Clause 49)

Section 115(1)(a) currently authorizes an enforcement officer to make a detention order in respect of a ship or goods carried on a ship if the officer believes on reasonable grounds that the owner or person in charge of the ship or goods has, in respect of the ship or goods, contravened any provision of the Act. Clause 49 amends the provision to also authorize detention for reason of contravention of a regulation under the Act rather than just the Act itself.

2. Detention of Ships – When Clearance Shall Be Given (Clause 50)

Clause 50(1) moves the contents of current paragraph (a) of section 116(4) of the Act to a new paragraph (a.1) and introduces into the Act a proposed paragraph (a) setting out an alternative, being a security deposit in the amount of \$100,000, as one of the preconditions to obtaining a clearance when a ship has been detained.

3. Offences and Punishment

a. Sale of Ship Where No Appearance and No Security (Clause 51)

Clause 51 amends 117 so as to recognize the security deposit provision established in proposed section 116(4)(a).

b. Offence and Fine (Clause 54)

Clause 54 expands to ships the application of section 127(1) of the Act, which currently applies only to persons, such that a ship can be found guilty of contravening the *Canada Marine Act* or regulations and thus be subject to a fine of no more than \$50,000. Clause 54 also adds proposed new sections 127(1.1) and 127(1.2) to the Act. According to proposed section 127(1.1), it is sufficient proof of the commission of an offence by a ship if it can be established that the act or omission that constitutes the offence was committed by the master of the ship or any person on board the ship, regardless of whether the person on board has been identified. Proposed section 127(1.2) expressly excludes from being an offence under the Act a contravention by any person of a bylaw made under section 30. The latter generally authorizes the directors of a port authority to, by resolution, make bylaws regulating the affairs of the port authority or the duties of its officers and employees.

Clause 54 also amends section 127(2) so as to extend to ships the due diligence defence provision that applies to persons.

c. Separate Offence (Clause 55)

Clause 55 extends the separate offence deeming provision in section 128(1) that currently applies to persons to ships. The provision provides that an offence committed on more than one day or continued for more than one day is deemed a separate offence for each day on which it is committed or continued.

d. Order to Comply (Clause 56)

Section 129(1) currently provides that if a person is guilty of an offence under Part 1 or the regulations made under section 27(1)(a), the relevant court may, in addition to any punishment it may impose, order the person to comply with the provisions that he or she has contravened. Clause 56 amends that provision to extend its application to ships.

e. Administrative Monetary Penalties (Clause 57)

Clause 57 adds proposed new sections 129.01 to 129.19, concerning administrative monetary penalties, to the Act. Departmental officials point out that enforcement by way of administrative monetary penalties is considered more efficient and flexible than by way of summary conviction, which is the prescribed punishment under certain provisions of the *Canada Marine Act*.

Proposed section 129.01 identifies the Transportation Appeal Tribunal of Canada established by section 2(1) of the *Transportation Appeal Tribunal of Canada Act* as the “Appeal Tribunal” referred to in the administrative monetary penalty provisions.

Proposed section 129.02 stipulates that a person or ship that contravenes a provision designated under proposed section 129.03(a) *commits a violation* and is liable to an administrative monetary penalty not exceeding a maximum amount identified by regulation.

Proposed section 129.03 enables the Governor in Council to make regulations pertaining to a number of matters (enumerated in paragraphs (a) to (f)) relating to administrative monetary penalties. Paragraph (a) of section 129.03 allows the Governor in Council to, by regulation, designate which provisions of the *Canada Marine Act* (other than sections 59(1)(d) and 126(b)) and its regulations, if contravened, may be proceeded with as a violation. According to paragraph (b), the regulations may establish the maximum administrative monetary penalty for a particular violation, which may not exceed \$5,000 in the case of an individual and \$25,000 in the case of a corporation or ship.

Proposed section 129.04 describes the criteria to be taken into account in each case where an administrative monetary penalty is to be imposed.

If an enforcement officer believes on reasonable grounds that a person or ship has committed a violation, the officer may issue and serve a notice of violation (proposed section 129.05(1)). Proposed section 129.05(2) enables the Minister to establish the form and content of notices of violation, but also requires that each notice of violation set out certain prescribed information.

A person or ship that has been served with a notice of violation must either pay the penalty set out in the notice or file a written request with the Appeal Tribunal for a review of the facts of the alleged violation or of the amount of the penalty (proposed section 129.06).

If the person or ship pays the penalty in accordance with the notice of violation, the person or ship is deemed to have committed the violation and proceedings in respect of the violation are ended (proposed section 129.07).

Proposed section 129.08 describes the review process before the Appeal Tribunal. A request for a review must be filed with the Appeal Tribunal at the address set out in the notice of violation on or before the date specified in the notice or within any further time that the Appeal Tribunal, on application, may allow (proposed section 129.08(1)). Upon receipt of the request for review, the Appeal tribunal must appoint a time and place for the review and must so notify, in writing, the Minister and the person or ship that filed the request for review (proposed section 129.08(2)). The member of the Appeal Tribunal who is assigned to conduct the review must provide the Minister and the person or ship that filed the request with the opportunity to present evidence and make representations (proposed section 129.08(3)). The Minister has the burden of proving that a person or ship has committed the violation identified in the notice (proposed section 129.08(4)). A person or ship that is alleged to have committed a violation is not required, and cannot be compelled, to give any evidence or testimony in the matter (proposed section 129.08(5)).

A person or ship that neither pays the penalty nor files a request for review in accordance with the particulars set out in the notice of violation is deemed to have committed the violation (proposed section 129.09).

Upon conclusion of the review, the member of the Appeal Tribunal who conducts the review may make one of two findings: that the person or ship did or did not commit the alleged violation of the *Canada Marine Act*. The member of the Appeal Tribunal must without delay inform the person or ship and the Minister of his or her determination (proposed section 129.1(1)). If the member determines that the person or ship did not contravene the Act, then, subject to section 129.11, no further proceedings may be taken against the person or ship in respect of the alleged violation (proposed section 129.1(2)). If the member determines that the person or ship has committed the alleged violation, then the member must inform the person or ship and the Minister of the amount of the administrative monetary penalty determined by the member to be payable (proposed section 129.1(3)).

A determination made under section 129.1 may be brought to the Appeal Tribunal by the Minister or a person or ship affected by the determination within 30 days after the determination (proposed section 129.11(1)). Parties that do not appear at review hearings are not entitled to appeal a determination, unless they can establish that there was sufficient reason for the absence (proposed section 129.11(2)). The appeal is heard before an appeal panel of the Appeal Tribunal, which may dispose of the appeal by either dismissing it or allowing it. In the latter case, the appeal panel may substitute its decision for the determination appealed against (proposed section 129.11(3)). If the appeal panel finds that a person or ship has committed the alleged violation, the panel must without delay inform the person or ship of the finding and of the amount of the administrative monetary penalty determined by the panel to be payable in respect of the violation (proposed section 129.11(4)).

Proposed section 129.12 sets out certain amounts that constitute debts to the federal Crown that may be recovered in a court of competent jurisdiction with certain exceptions and other conditions.

Proposed section 129.13(1) allows the Appeal Tribunal to certify, at the request of the Minister, all or part of a debt referred to in section 129.12 in respect of which there is a default of payment. According to proposed section 129.13(2), a certificate made under proposed section 129.13(1), when registered in a superior court, has the same force and effect as if it were a judgment obtained in that court for the amount of the debt specified in it and all reasonable costs and charges attendant in its registration.

Proposed section 129.14 provides that, if a corporation commits a violation (as per proposed section 129.02), every person who at the time of the commission of the violation was a director or officer of the corporation is a party to and liable for the violation, unless the act or omission took place without the person's knowledge or consent or the person exercised due diligence to prevent the commission of the offence.

A person or ship is liable for a violation committed by an employee acting within the scope of his or her employment regardless of whether the employee who committed the violation is identified or proceeded against, unless the person or ship establishes that the violation was committed without the knowledge or consent of the ship or person (proposed section 129.15).

Proposed section 129.16 specifies that a violation (within the meaning of proposed section 129.02) is not an offence; accordingly, section 126 of the *Criminal Code* (offence for disobeying an Act of Parliament) does not apply.

Due diligence may be used as a defence in a proceeding in respect of a violation (proposed section 129.17).

If an act or omission can be proceeded with as either a violation or an offence, proceeding in one manner precludes proceeding in the other (proposed section 129.18).

Proceedings in respect of a violation or prosecution for an offence must be commenced within one year after the subject-matter of the proceedings became known to the Minister (proposed section 129.19(1)). Proposed section 129.19(2) provides conditions under which to determine when the subject-matter became known by the Minister.

G. Human Resources (Part 5 of the *Canada Marine Act*)

1. Harbour Commissions (Clause 58)

Clause 58 amends section 133 to be consistent with section 10 of the *Canada Marine Act*. The amended section 133 stipulates that where, under section 10, letters patent are issued to a harbour commission continuing it as a port authority, certain applicable sections of the *Canada Labour Code* apply.

H. *Canada Transportation Act*

Clause 61 amends section 18(2) of the *Canada Transportation Act* in order to exclude temporary members of the Canadian Transportation Agency from the residency requirements set out therein.

I. Transitional Amendment

Clause 63 provides that section 25(b) of the *Canada Marine Act*, as it read immediately before the coming into force of clause 14 of Bill C-23, continues to apply in respect of a grant under an agreement in existence at the time of the coming into force of that section.

J. Consequential Amendments

Clause 64 repeals section 11.1 of the *Marine Transportation Security Act*, which provided in section 11.1(3) that it ceases to apply three years after the day the section comes into force.

Clause 65 amends section 2(3) of the *Transportation Appeal Tribunal of Canada Act* to ensure consistency with the proposed amendments to the *Canada Marine Act* and to give the Appeal Tribunal jurisdiction in respect of reviews and appeals under the administrative monetary penalty regime in proposed sections 129.01 to 129.19 of the *Canada Marine Act*.

K. Coming Into Force

The provisions of Bill C-23, with the exception of the consequential amendment set out in clause 64 (repealing section 11.1 of the *Marine Transportation Security Act*), come into force on a day(s) to be fixed by the Governor in Council (clause 66).

COMMENTARY

During second reading debate on the bill in the House of Commons on 3 and 4 December 2007, opposition spokespersons were generally supportive of the bill in principle, although several NDP members indicated that they would be seeking amendments at committee stage to reflect a number of concerns over certain areas of the bill.

In a news release issued on 30 November 2007, the Association of Canadian Port Authorities welcomed the proposed amendments contained in Bill C-23. “We have long argued that, while the Canada Marine Act has been good for Canada’s major ports, changes such as those proposed by the Association of Canadian Port Authorities (ACPA), and now accepted by the Government, were needed to ensure that ports were ready for the tremendous growth expected in trade over the next 15 years,” commented Sean Hanrahan, President and CEO of the St. John’s Port Authority and chair of the ACPA for 2007. Referring to those proposed amendments that provide access to federal funding programs in the areas of infrastructure, security and environment, a more streamlined process for property-related transactions, and revised borrowing powers and processes, the news release noted: “These elements are critical for Port Authorities in the coming years as all ports continue to build new infrastructure in key gateways and trade corridors.”