

November 21, 2018

The Honourable Marc Garneau, P.C., M.P.
Minister of Transport
Place de Ville, Tower C
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister Garneau:

Re: Ports Modernization Review

Over the last number of months, PortsToronto has been an enthusiastic participant in the Canadian Ports Modernization Review as we believe that the review presents a unique opportunity to look at how ports operate throughout Canada and share best practices and information that can ensure that Canadian ports remain competitive, collaborative and innovative.

As outlined in the “Purpose and Objectives” section of the *Ports Modernization Review: Discussion Paper*, the review focuses on how Canadian ports can best advance five key objectives. I would like to take this opportunity to provide information regarding how PortsToronto has made advancements in these areas, which is detailed below. PortsToronto has also attached, in Schedule “A”, our formal Ports Modernization Review Submissions.

I. Supporting the Competitiveness of Canada’s Economy by Facilitating the Movement of Goods and Passengers

The Port of Toronto is one of Canada's major inland ports and handles global cargo from destinations as far away as Germany, South Korea, Australia and South America. Located minutes from Toronto’s downtown core, the Port provides a seamless network of cost-effective intermodal links to road, rail and air transportation, serving as a unique and crucial piece of economic and transportation infrastructure.

In 2017, the Port of Toronto experienced its most successful year in more than a decade moving more than 2.2 million metric tonnes of cargo that is essential for Toronto, providing salt for our roads, sugar for our food sector, and concrete and aggregate for our booming construction industry. Additionally, marine cargo handled at the Port of Toronto generated \$377.7 million in economic activity and 1,566 jobs in Ontario in 2017 as confirmed in a new report – *Economic Impacts of the Port of Toronto* – published in September 2018 by Martin Associates. Of these 1,566 jobs, 482 jobs are directly generated by the marine cargo and vessel activity at the marine terminals at the Port of Toronto. As a result, these 482 individuals used

\$24.5 million in earnings (from wages and salaries) to purchase goods and services, to pay taxes, and for savings. The report also shows that a total of \$42.9 million in provincial and federal taxes were generated by cargo and vessel activity at the Port of Toronto, with \$11.7 million generated at the provincial level and \$31.1 generated at the federal level.

The Port of Toronto also welcomed a record 16 passenger ships to the Cruise Ship Terminal last year, bringing more than 5,600 passengers to Toronto. Next year, 35 passenger ships are expected to make Toronto a port of call, bringing approximately 11,000 visitors to Toronto from May to October 2019.

From an environmental perspective, the approximate 2.2 million metric tonnes of cargo delivered by ship last year to the Port of Toronto resulted in approximately 54,000 fewer, 40-tonne trucks on Toronto's already congested roads and highways.

Finally, while not a marine port, Billy Bishop Toronto City Airport, which is also owned and operated by PortsToronto, generates more than \$470 million in Gross Domestic Product (GDP) each year and supports 4,740 jobs, including 2,080 directly associated with the airport's operations. In 2017, Billy Bishop Airport welcomed 2.8 million passengers and held its ranking as the ninth busiest airport in Canada. Billy Bishop Airport also won a series of passenger-driven awards, including being named one of the top airports in North America in both the Airports Council International's (ACI) Airport Service Quality Awards, Conde Naste Traveller Award and Skytrax World Airport Awards.

II. Strengthening Relationships with Indigenous Peoples and Local Communities

PortsToronto works with all levels of government, First Nations groups, local stakeholders, residents and businesses along Toronto's waterfront with the common goal of helping to keep the water's edge vibrant. One such current project is the rehabilitation of an aging pier on the Toronto Island. Although this pier does not belong to our organization, PortsToronto has offered to remove it at its own cost. PortsToronto is also part of a working community group associated with the site, which will recommend a future vision for the project through study and public consultation.

PortsToronto has a strong and productive relationship with the Mississaugas of the New Credit First Nation (MNCFN). PortsToronto is in frequent contact with MNCFN representatives, meeting five to six times annually, regarding collaboration on such infrastructure projects as the dock wall rehabilitation, and airfield rehabilitation project at Billy Bishop Airport, and often connecting City of Toronto and Waterfront Toronto staff with MNCFN representatives on items relating to Toronto's waterfront.

In our capacity as owner and operator of Billy Bishop Airport, PortsToronto engages in regular and productive dialogue and consultation with many community groups and stakeholders. In 2010, as strong community supporters, PortsToronto voluntarily established the Community Liaison Committee (CLC). Since its inception PortsToronto has held 30 meetings of the CLC where representatives from neighbourhood associations, local businesses and elected officials are encouraged to attend and discuss approaches to ensure balance between airport operations and the surrounding community. In September 2018, a presentation from MNCFN representatives was delivered at the CLC meeting regarding the history of traditional territory. The presentation was very interesting and we have since asked MNCFN to present to the PortsToronto board of directors in the coming months.

In 2018, PortsToronto began an update of the Billy Bishop Airport Master Plan, which involves a commitment to robust public consultation that has resulted in more than 70 meetings with community groups and stakeholders and two public meetings with a third planned for late 2018 or early 2019.

PortsToronto takes great pride in being part of the community in which it operates and since 2009 has invested more than \$10 million into community organizations and environmental initiatives such as Lake Ontario Waterkeeper, Redpath Waterfront Festival, Waterfront Neighbourhood Centre and Evergreen Brickworks.

Every year, PortsToronto participates in *Doors Open*, a popular city-wide event dedicated to celebrating built heritage, architecture and design. In 2016, Billy Bishop Airport ‘opened its doors’ for the first time as part of *Doors Open* to offer the community and visitors to Toronto the opportunity to learn more about the important role the airport plays in making connections and creating gateways, both within our city and around the world. From showcasing state-of-the-art infrastructure and design such as our award-winning pedestrian tunnel to offering guests a behind-the-scenes look into the daily operations of the airport, *Doors Open* at Billy Bishop Airport has consistently ranked as being one of the top places to visit with more than 24,000 people touring the airport over the course of the one-day annual event.

Through these various initiatives, PortsToronto continues to build and maintain productive relationships and a strong connection with neighbours and stakeholders through open dialogue, transparency, public participation and two-way communication. This extends to the online environment where PortsToronto is very active on multiple social platforms including Twitter, Facebook and Instagram. These platforms have become de facto customer service vehicles with the community, passengers and stakeholders often asking for information over social media. As of October 31, 2018, we had 16,452 followers on Twitter, 15,922 on Facebook, 1,877 on Instagram and 1,457 on LinkedIn which contributed to an engagement rate of 98,000 engagements and 19.7 million impressions in the past year.

III. Promoting Environmentally Sustainable Infrastructure and Operations

PortsToronto is a leader among ports and airports in sustainable business operations and has made significant investment in infrastructure, process and reporting in this area.

Each year, PortsToronto publishes an annual Sustainability Report that details efforts to reduce our environmental impact and employ measures to support a strong and healthy environment. This includes significant investment in such programs as Bullfrog Power, which powers all of PortsToronto’s operations including the port and airport – the only port authority in Canada to do so – and initiatives to maintain a safe and navigable Harbour such as the removal of millions of pounds of debris from Toronto’s Harbour to prevent flooding and the completion of phase two of a fish and wildlife habitat at the Leslie Street Spit that PortsToronto began creating in the 1950s through in-filling activities. PortsToronto is exceptionally proud of the measures it has implemented to ensure sustainable business operations and we consider ourselves to be a leader in this area.

By its nature, the marine Port of Toronto supports greater sustainability in business. Increased imports through the port have a positive impact on the environment and traffic congestion given the approximate 2.2 million metric tonnes of cargo delivered by ship last year took approximately 54,000, 40-tonne trucks off Toronto’s already congested roads and highways. In

fact, one tonne of freight can travel 240 kilometres on a single litre of fuel by ship, whereas it can only travel 30 kilometres on the same amount of fuel by truck.

The Port of Toronto is also a certified member of the Green Marine environmental program which is a voluntary initiative promoting a culture of continuous environmental improvement for ports, terminals and shipyards. The Port of Toronto has continually risen in the ranks of this initiative and currently holds a 4 rating, out of 5, that recognizes its leadership position in the areas of reducing GHG emissions and an effective energy performance plan.

IV. Enhancing Port Safety and Security

PortsToronto ensures Toronto's Port and harbour are safe and navigable for cargo ships, visiting cruise ships, harbour tour vessels, recreational boaters and human-powered watercraft. This is accomplished through a number of PortsToronto's activities including the deployment of navigational markers, annual dredging of approximately 40,000 cubic meters of debris from the Keating Channel so that neighbouring City of Toronto properties do not flood, as well as the Harbour Hotline which is available to the public 24/7 to alert PortsToronto to any debris that is an immediate danger to navigation.

PortsToronto is currently developing an Enterprise Risk Management (ERM) Framework to manage and mitigate risk under a structured, consistent and continuous process across the organization in order to enhance decision-making, corporate governance and accountability. This framework will enable PortsToronto to seize opportunities to achieve objectives and integrate risk management as part of our business strategy and planning.

PortsToronto is the lead and on-the-ground agency for the Canadian Coast Guard, Transport Canada and the Ministry of Environment and Climate Change. For more than twenty years, PortsToronto has led the Toronto Marine Emergency Response Council (TMERC) by hosting the annual TMERC Safety Day, in collaboration with the Toronto Police Marine Unit and Toronto Fire Marine Unit, where more than 250 crew and officers from the Toronto harbour tour fleet partake in hands-on emergency training.

PortsToronto has seven International Ship and Port Facility Security (ISPS) Code Security Plans that we manages for our cargo, cruise ship and airport ferry operations. In addition, PortsToronto also has accredited ISPS code facilities that undergo five-year certificate renewals and annual security inspections by Transport Canada. PortsToronto also leads annual Transport Canada mandated drills and exercises for the other seven privately-owned ISPS Code marine facilities. In 2018, the port's marine cargo and cruise ship properties underwent a \$140,000 security camera upgrade.

In addition, the Port of Toronto was recently involved in Transport Canada's Pilotage Act Review, Transport Canada's Ocean Protection Plan and on-going training for the Transport Canada Marine Enforcement Officers Program.

V. Optimizing Governance and Accountability

PortsToronto has long adhered to best practices around governance, financial reporting, and executive and Board expense disclosures. This includes designing a new User Group Director Nomination process that harmonizes the nomination framework established in our Letters Patent with the federal government's open, transparent and merit-based process for public

appointments. This User Group Director Nomination process was endorsed by Transport Canada and has been suggested as a best practice for other Canadian Port Authorities. Additionally, in an effort to continuously improve our governance practices, PortsToronto has recently revised our corporate by-law, updated our director orientation program and Board self assessment process and developed a conflict of interest reporting protocol applicable to Board members and management. We also recently revised our Corporate Governance Manual, consisting of the Board Mandate and Committee Charters, to reflect best practices from other industry leaders and we have made these materials available to the public on our website.

In addition, PortsToronto's Board of Directors and Chief Executive Officer's expenses are posted on the PortsToronto website – a practice that we have adhered to since 2009.

In conclusion, thank you for your department's work in undertaking this review as it provides an opportunity to share best practices with all Canadian Port Authorities and identify opportunities for greater innovation, growth and investment so that the Port of Toronto can remain an important asset for the City of Toronto, and continue to play an important role in the national transportation system, and important contributor to the Canadian economy.

PortsToronto applauds the work the Association of Canadian Port Authorities has done to produce a submission to the Ports Modernization Review on behalf of Canada's 18 Port Authorities and we attach as Schedule "A" our own individual submission to the Ports Modernization Review.

Sincerely,



Geoffrey A. Wilson
Chief Executive Officer

Cc: PortsToronto Board of Directors
Patrick Gosselin, Director Ports and Seaway Policy, Transport Canada

Schedule "A"

PortsToronto's Ports Modernization Review Submissions

In order to permit Canadian Port Authorities, and in particular the Toronto Port Authority (operating as PortsToronto), to continue to contribute to the competitiveness, growth and prosperity of Canada's economy, PortsToronto makes the below submissions to Transport Canada's Ports Modernization Review.

Although there is some overlap between our submissions noted below and the submissions made by the Association of Canadian Port Authorities ("ACPA") on behalf of all Canadian Port Authorities, our submissions are intended to be specific to PortsToronto and, to the extent there is inconsistency between the ACPA submission and our submission, Transport Canada should consider our submission to be our position on the issue. We believe that when Transport Canada is assessing modernization considerations Canadian Port Authorities should be treated independently from each other based upon the community in which they operate, the complexity of their business, and their risk-management practices. We do not believe that a "one-size-fits-all" approach is appropriate when assessing how to modernize Canadian Port Authorities.

1. *Permissible Activities on Properties*

Background

The *Canada Marine Act* and our Letters Patent specify which activities PortsToronto and our tenants are able to carry out on our properties. Although there is considerable overlap, these activities are broadly grouped into (i) activities which are necessary to undertake port operations, and (ii) activities which are deemed necessary to support port operations. As currently drafted, these activities are focused on marine based activity and ancillary matters and do not reflect the evolving nature of Toronto's economy and the modern, non-marine based industries that are being drawn to the area in which PortsToronto operates, namely Toronto's south core area and the Port Lands. The restrictions on permissible activities are impeding PortsToronto's ability to maximize the value of our assets in order to remain financially self-sufficient and to continue to be a critical part of Toronto's modern economy.

Submission

All restrictions on the business activities of PortsToronto and our tenants on our properties should be removed.

As an alternative, restrictions on activities should be significantly reduced in order to permit activities which are in line with Toronto's modern economy. If the alternative is pursued, it is suggested that PortsToronto be provided with the ability to undertake all activities except for those specific activities to be enumerated in the Letters Patent. Consideration should also be given to differentiating between the permissible activities on Schedule B property (Federal Real Property) and Schedule C property (Real Property other than Federal Real Property) given that Schedule C property is owned or leased by PortsToronto on our own behalf.

2. Ability to Enter into Modern Commercial Arrangements

Background

Our Letters Patent do not provide PortsToronto with the power to enter into modern commercial business structures such as joint venture arrangements and public private partnerships (P3s). Examples include the inability to own less than 100% of the equity in a subsidiary, the funding limits imposed for subsidiaries, and the inability to buy or sell interests in a joint venture. These restrictions severely limit PortsToronto's ability to enter into typical, expected, commercial arrangements with interested counterparties. Accordingly, these counterparties seek other partners and our ability to remain financially self-sufficient is negatively impacted.

Submission

Restrictions on activities relating to entering into modern commercial arrangements should be removed from the Letters Patent.

3. Investment Restrictions

Background

The *Canada Marine Act* and our Letters Patent (by reference to the *Port Authorities Management Regulations*) prescribe restrictions on permissible investments that a port authority can make. The provisions of the *Canada Marine Act* limit the permissible investment instruments and the *Port Authorities Management Regulations* establish minimum credit ratings that are unnecessarily high. Each of these restrictions limits PortsToronto's investment returns and undermines our ability to remain financially self-sufficient. Examples include the fact that PortsToronto is not currently permitted to invest in preferred shares, senior debt or Principal Protected Notes. Given these restrictions a number of Canadian Port Authorities don't actually invest their excess cash resulting in sub-optimal returns to the Port Authority and ultimately to the Canadian public.

Submission

The list of permissible investment instruments contained in the *Canada Marine Act* should be expanded and the minimum credit ratings contained in the *Port Authorities Management Regulations* should be revised, in each case to provide for increased investment opportunities to support the ongoing objective of financial self-sufficiency. Further, port authorities with demonstrated enterprise risk management systems in place should be permitted greater investment latitude. Also, consideration should be given to requiring Port Authorities to invest excess cash instead of this being voluntary.

4. *Borrowing Limit*

Background

Our Letters Patent establish a borrowing limit which is set by the Minister of Transport. When PortsToronto borrows money it does so on its own behalf and not as an agent of the federal government. Increases to this borrowing limit must be approved by the Minister of Transport which is a slow, costly and onerous process. As a result PortsToronto is not positioned to respond to opportunities in a timely fashion and this undermines our ability to remain financially self-sufficient.

Submission

Borrowing limits should be eliminated. PortsToronto's ability to borrow funds on its own account should be determined by the financial markets.

5. *Acquisition and Disposal of Real Property*

Background

Port Authorities are not permitted to acquire or dispose of real property unless Supplementary Letters Patent are obtained. Although Transport Canada has provided guidance on the information and documentation that is required to be submitted in support of an application for Supplementary Letters Patent, there are no fixed timelines for obtaining Supplementary Letters Patent. In order to continue to be financially self-sufficient there are times when it is vitally important for a port authority to be able to promptly buy or sell real property and the lengthy and uncertain Transport Canada approval process impacts a port authority's ability to contract with other interested parties in a timely manner.

Submission

Eliminate the need for a port authority to obtain the approval of Transport Canada to purchase or dispose of Schedule C real property. As an alternative if Transport Canada approval is required there should be clear approval timelines which are adhered to. Additionally, if the alternative is pursued, there should be a differentiation between the approval process for Schedule B property and Schedule C property, with the process for Schedule C property being significantly streamlined.

6. *Board Member Appointments*

Background

PortsToronto's Board of Directors consists of nine members. One Board member is appointed by the City of Toronto, one member is appointed by the Province of Ontario, one member is nominated by the Minister of Transport and the remaining six members are nominated by the Minister of Transport in consultation with user groups identified in our Letters Patent, namely the commercial, recreational, airport and port operations user groups. Given that seven of our nine Board members are appointed by the federal government, it is imperative that federal appointments, whether the Minister's direct

appointee or the user group appointments, are made on a timely basis. A failure to have timely appointments results in governance challenges including a lack of continuity and quorum issues as members reach their nine-year maximum term and are not replaced. These issues distract from PortsToronto's ability to focus on its core businesses and undermines our ability to remain financially self-sufficient.

Additionally, the delays and uncertainty in the appointment process and the uncertainty surrounding if and when appointments will be made undermines both PortsToronto's credibility with applicants as their questions surrounding the timing of the process can not be answered by us and the federal government's credibility as the process is not viewed as being transparent by many applicants.

Further, delays and the lack of visibility in the appointment process frustrate the user group members who voluntarily commit their time to participate in the nomination process.

Submission

The federal appointment process should be streamlined to allow for more timely appointments. Transport Canada should provide clear appointment timelines to user groups and port authorities and adhere to those timelines when making appointments. Transport Canada should ensure that full consideration is given to user group nominations.

Additionally, consideration should be given to allowing a federally appointed director to serve more than the current nine year maximum in a situation in which the director's replacement has not been appointed. This will allow for much needed continuity and knowledge transfer as the composition of the Board changes.

7. *Additional Community Engagement*

Background

The legislative regime governing port authorities currently only requires a port authority to hold one public meeting each year – the Annual General Meeting. At PortsToronto we hold numerous public meetings each year and have found that these meetings help us to engage with the local community and to provide interested stakeholders with greater insight into our operations. Additionally, we have found that our website portal and social media channels are effective platforms for members of the public to ask questions about our operations and enables us to provide timely information to the public in answer to their inquiries.

Submission

The legislative regime be changed to provide that port authorities must host at least one public meeting each year in addition to their Annual General Meeting. Port Authorities be encouraged to have multiple sources for members of the public to ask questions about the Port Authority and its operations and receive timely answers and information.

8. *Annual Sustainability Reporting to Transport Canada*

Background

Protecting the environment and addressing the issue of climate change is a key priority of the federal government. Port Authorities, in their role of facilitating the movement of goods and people, play an important role in the transportation sector and, as such, must be leaders in promoting sustainable business practices.

Submission

Port authorities should be required to provide the Minister of Transport with an annual written report on their sustainability initiatives undertaken during the previous year.

9. *Recognition of PortsToronto as a Federal Presence in Toronto*

Background

As a federal business enterprise operating in the heart of downtown Toronto and owner of lands and submerged lands which are key components to public realm projects, PortsToronto is seen by many Torontonians as the federal government's presence in downtown Toronto. When the federal government makes investments in the City of Toronto such as the approximately \$400M committed to Toronto's Port Lands Flood Protection Program, the impact of such an investment on PortsToronto's properties should be assessed and PortsToronto should be consulted regarding the proposed investment to ensure alignment between the proposed investment and PortsToronto's mandate.

Submission

When the federal government is considering making investments in the city of Toronto consideration should be given to assessing the impact of such investment on PortsToronto's assets and operations and to aligning such investments with PortsToronto's infrastructure needs and investing in the city of Toronto through PortsToronto.

10. *Review of Letters Patent and Use of Regulations*

Background

In many respects the actual text of PortsToronto's Letters Patent are quite difficult to understand. There are a number of areas where there are cross-references within the Letters Patent and this results in a circular analysis when determining if a particular action is permitted. In addition, there are a number of instances in which there are internal inconsistencies within the Letters Patent and inconsistencies between the Letters Patent and the *Canada Marine Act*. This results in confusion and uncertainty for those who are required to interpret the Letters Patent and, on occasion, a Port Authority is required to engage external advisers to assist with the interpretation, and incur the associated costs. Given the

complexity of issuing Supplementary Letters Patent and amending the *Canada Marine Act* consideration should be given to moving certain provisions governing Port Authorities into Regulations pursuant to the *Canada Marine Act* in order to provide a more efficient means to make changes to the legislative regime.

Submission

PortsToronto's Letters Patent should be redrafted in concise, easy to interpret, plain language.

Consider the use of Regulations pursuant to the *Canada Marine Act* as a means to more quickly make changes to the legislative regime governing Port Authorities.