

Staff Report

Origin

The term of the current municipal appointee to the Board of the Fraser River Port Authority comes to an end on June 30, 2003. Mr. Graham Murchie is no longer eligible to hold the position due to term limits stipulated in the Letters Patent of the Port.

Findings Of Fact

The process for appointment to a Port Authority under the Canada Marine Act is set out in Attachment 1. The statutory provisions affecting directors are outlined in Sections 14 to 19 of the Act which is appended as Attachment 2.

Analysis

The appointment process for the municipal appointee to the North Fraser Port Authority should be initiated to facilitate a smooth transition on its Board. Advertisement of the vacancy on the City Notice Board should generate some interested candidates from the community who would then be vetted by the Council of Mayors.

Financial Impact

No budgetary impact.

Conclusion

Candidates should be sought for the municipal appointee position through advertising in the City Notice Board.



David McLellan
General Manager, Urban Development

DJM:djm

To: Mayor Brodie
 PC: Gail Johnson
 for information



APPOINTMENT PROCESS TO CANADA PORT AUTHORITY

ACTING CITY CLERK

1. The qualifications and term for the municipal appointment to a Canada Port Authority are set out in Section 14-16 of the Canada Marine Act.
2. The process to be followed in appointing a municipal representative to the Port Authority shall be as follows:
 - a. Where there is an existing incumbent in the position whose term is about to expire, the Council of Mayors representing the municipalities set out in the letters patent shall meet to decide whether or not the incumbent should be reappointed for a term not to exceed 3 years. If there is a simple majority of the Mayors voting in agreement on reappointment, that position shall be taken back to the municipal councils for ratification. If the incumbent receives the support of a simple majority of the municipalities, then that person will be reappointed for a term not to exceed 3 years.
 - b. Where a vacancy occurs and there is no incumbent, or where an incumbent fails to receive the support of the majority of the municipalities as set out in 2.a, the process shall be as follows:
 - i. The vacancy shall be advertised in one or more regionally circulated newspapers, with the qualifications and focus of the appointment outlined in the advertisement. The conflict of interest guidelines and other relevant information, will be provided to applicants. The cost of the advertising shall be paid for by the Port Authority.
 - ii. The Council of Mayors will (through a meeting, correspondence, a conference call, or other method) shortlist the applicants and interview the leading candidates.
 - iii. The Council of Mayors will then make a recommendation to the municipal councils as to the preferred candidate, along with the resumes of the leading candidates who were interviewed. Each municipal council will then vote on the recommendation and if the recommended candidate receives the support of a simple majority of the municipal councils, this candidate will then be appointed for the requisite term.
 - iv. Should the Council of Mayors not be able to agree on one candidate with a simple majority vote, then more than one candidate may be put forward to the municipal councils for a vote. Voting by Municipal Councils will continue until one of the recommended candidates receives a simple majority of votes cast.

(g) subject to paragraph (e), a conviction against, or a ruling, order or judgment in favour of or against, the Canada Ports Corporation in respect of the port may be enforced only by or against the port authority.

Fixing limits of port

(5) For the purposes of subsection (4), the Minister may fix the limits of a non-corporate port that is to be managed by a port authority and settle any question that arises in respect of the property, rights or obligations of the port authority.

1998, c. 10, s. 12; 2001, c. 4, s. 137.

Consequences for former directors and commissioners

13. (1) The directors or commissioners of the bodies that become port authorities under section 12 cease to hold office on the day referred to in section 18 and have no right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent of Her Majesty for ceasing to hold office by virtue of this Part.

Consequences for officers

(2) Neither the port authority nor Her Majesty in right of Canada is bound by any severance agreement entered into between a predecessor of the port authority and any of its officers after December 1, 1995.

Directors

Appointment of directors

14. (1) The directors of a port authority shall be appointed as follows:

(a) the Governor in Council appoints one individual nominated by the Minister;

(b) the municipalities mentioned in the letters patent appoint one individual;

(c) the province or provinces mentioned in the letters patent appoint one or two individuals as mentioned in the letters patent; and

(d) the Governor in Council appoints the remaining individuals nominated by the Minister in consultation with users selected by the Minister or the classes of users mentioned in the letters patent.

Tenure of office

(2) The directors are appointed to hold office for such term of not more than three years as will ensure as far as possible the expiration in any one year of the terms of office of not more than one half of the directors, the terms being renewable once only.

Not eligible

(3) No person is eligible to be appointed as a director within twelve months after the expiration of their term or renewed term.

Part-time

(4) The directors are appointed to serve part-time.

Remuneration

(5) The board of directors shall fix the remuneration of the directors, the chairperson and the chief executive

officer.

Quorum

(6) Subject to the letters patent, a majority of the directors in office constitutes a quorum at any meeting of directors and a quorum of directors may exercise all the powers of the directors.

Experience

15. (1) The directors of a port authority appointed under any of paragraphs 14(1)(a) to (c) shall have generally acknowledged and accepted stature within the transportation industry or the business community.

Knowledge or experience

(2) The directors of a port authority appointed under paragraph 14(1)(d) shall have generally acknowledged and accepted stature within the transportation industry or the business community and relevant knowledge and extensive experience related to the management of a business, to the operation of a port or to maritime trade.

Persons excluded

16. The following individuals may not be directors of a port authority:

(a) an individual who is a mayor, councillor, officer or employee of a municipality mentioned in the letters patent;

(b) an individual who is a member of the legislature of a province, or an officer or employee of the public service or of a Crown corporation of a province, mentioned in the letters patent;

(c) a Senator or a member of Parliament or an officer or employee of the federal public service or of a federal Crown corporation;

(d) an individual who is not a resident Canadian, as defined in subsection 2(1) of the *Canada Business Corporations Act*;

(e) an individual who is a director, officer or employee of a person who is a user of the port;

(f) an individual who is under eighteen years of age;

(g) an individual who has been declared mentally incompetent by a court in Canada or elsewhere; or

(h) an undischarged bankrupt.

Election of chairperson

17. The board of directors shall elect a chairperson from among their number for a term not exceeding two years, the term being renewable.

Term of office

18. Subject to subsection 19(1), where a port authority is continued under section 10 or 12, the directors or commissioners of the former local port corporation or harbour commission, respectively, continue to hold office as provisional directors of the port authority until the earlier of the day on which they are replaced or removed and ninety days after the date of the continuance.

<u>Ceasing to hold office</u>	<p>19. (1) A director of a port authority ceases to hold office when the director</p> <p>(a) dies or resigns;</p> <p>(b) is removed for cause by the authority that made the appointment, namely, the Governor in Council, the municipalities, the province or provinces or the other directors, as the case may be; or</p> <p>(c) is no longer qualified under section 16.</p>
<u>Effective date of resignation</u>	<p>(2) The resignation of a director becomes effective on the day on which a written resignation is received by the port authority or on the day specified in the resignation, whichever is later.</p>
<u>Power to manage</u>	<p>20. The board of directors is responsible for the management of the activities of a port authority.</p>
<u>Appointment of officers</u>	<p>21. (1) The board of directors of a port authority shall appoint a chief executive officer and may appoint other officers that they consider appropriate.</p>
<u>Chief executive officer</u>	<p>(2) The chief executive officer is not a member of the board of directors.</p>
<u>Personnel</u>	<p>(3) A port authority may appoint the personnel that it considers necessary for the operation of the port.</p>
<u>Duty of care of directors and officers</u>	<p>22. (1) Every director and officer of a port authority shall, in exercising powers and discharging duties,</p> <p>(a) act honestly and in good faith with a view to the best interests of the port authority; and</p> <p>(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.</p>
<u>Duty to comply</u>	<p>(2) Every director and officer of a port authority shall comply with this Part, the regulations made under subsection 27(1) and the letters patent and by-laws of the port authority.</p>
<u>No exculpation</u>	<p>(3) No provision in a contract or resolution relieves a director or officer from the duty to act in accordance with this Part, the regulations made under subsection 27(1), the letters patent or the by-laws or relieves them from liability for a breach of any of them.</p>

Legal Regime Applicable to Port Authorities

<u>Liability arising when acting as agent of Crown</u>	<p>23. (1) If a port authority or a wholly-owned subsidiary of a port authority is acting as agent of Her Majesty in right of Canada, the port authority or subsidiary must fulfil or satisfy an obligation or liability in respect of the port authority or subsidiary, as the case may be, arising from its exercise of, or its failure to exercise, a power or right or arising by operation of law. Her Majesty is not responsible</p>
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