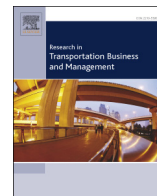




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A new direction or stay the course? Canada's port-specific challenges resulting from the port reform program of the 1990s

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ABSTRACT

This article examines the third wave of port reform in Canada. It analyses whether the third wave can be considered 'successful' by defining how success could be measured in the context of Canadian policy objectives. It provides context by exploring the current port situation and port policy. Using a content analysis methodology to examine port governance principles on web sites for the major ports, the study finds that not all ports live up to modern expectations of governance in a world where social media and web sites provide avenues to acquire social license. The article reviews the port-related findings of the 2016 Canada Transportation Act Review Panel, and contemplates what might be proposed in the developing swell of future port reform. The final section of the article examines whether a new direction is likely or whether the current course is likely to hold, and what conclusions and implications may be drawn for port reform more generally.

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1. An introduction to port reform in Canada

It is appropriate to think about port reform in Canada as a series of waves. In the beginning of Canada's history, Britain controlled the shipping activities of its colony and this continued well beyond independence from Britain in 1867. Britain did not relinquish its interest in shipping activities in Canadian waters until 1931 under the *Commonwealth Merchant Shipping Agreement* (McDorman, 1984). Throughout the discussion of port reform in this article, there is one constant: federal jurisdiction over ports in Canada is exclusive and the federal government controls ports, shipping and navigable waterways. Provincial jurisdiction over property and civil rights is specifically excluded, according to Chircop et al. (2016: 136).

It took a long time for Canada to gain control over its shipping activities, and it took Canadian policy-makers considerable time to develop a national transportation policy, which was successful with the passage of the *National Transportation Act, 1967*. According to Chircop et al. (2016), Canada's ports came under federal jurisdiction in 1868 but the first wave of port reform did not come until 1936, with the creation of the National Harbours Board (NHB), a Crown Corporation reporting to the Minister of Transport. This reform wave centralized and more tightly controlled five seaports in particular: Montréal, Québec, Vancouver, Halifax and Saint John (Gratwick and Elliott, 1992). It featured management system that was bureaucratic and centralized, with a standard set of port charges determined in Ottawa and applied across the country. There was a strong role for national government: it owned and controlled ports both large and small, and was responsible and accountable

for activities within port boundaries. There was no recognition that regional differences might be important to consider and no flexibility in how each port might compete, as a 'one approach fits all' management was determined for all ports. By the early 1980s, there were 15 ports under the control of the NHB; a further nine ports (Hamilton, Oshawa, Port Hope, Thunder Bay, Toronto and Windsor on the Great Lakes and Fraser, Nanaimo and Port Alberni on the west coast) operated under local harbour commissions, each was incorporated and operated under its own private act but all governed under an umbrella act, the *Harbour Commissions Act of 1964*. Small ports and government wharves were numerous and administered directly by Transport Canada, with the Minister of Public Works responsible for major repairs and investment.

By the late 1970s, the NHB ports were being widely criticized for their inability to adapt or respond to a changing competitive environment, particularly containerization. Port reform was implemented in the second wave in the form of *The Canada Port Corporation Act 1982*. Those seeking reform hoped that decentralization of managerial control to local or regional interests would help each port gain the economic development advantages it desired. This act provided for a parent board of directors of the Canada Port Corporation (CPC) in Ottawa reporting to the Minister of Transport and each NHB port became a Local Port Corporation (LPC). This legislative effort to move away from government command and control of Canada's largest ports did not deliver the local responsiveness and flexibility desired in the provinces. The reform effort was seen as inadequate (Ircha, 1997) and by 1995 there were seven unhappy LPCs in Canada reporting to the CPC who reported to the Minister of Transport.

A summary of these first two waves of reform is presented in Table 1, along with further literature that may be consulted should more detail be desired.

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Table 1
Canada's port reform progress.

Year (wave)	The legislation or event	Summary of government role	Literature described in
1936 (The first wave)	Creation of the National Harbours Board (NHB), a federal Crown Corporation reporting to the Government of Canada	15 NHB ports (control was centralized as NHB reported to the Minister of Transport); 9 harbour commissions existed outside this legislation (locally governed each with own act); small ports and wharves directly administered by Transport Canada.	Gratwick and Elliott (1992); Chircop et al. (2016)
1982 (The second wave)	<i>The Canada Port Corporation Act (1982)</i> moved port governance onto a more commercialized path	7 larger ports are commercialized with Canada Ports Corporation oversight. Transport Canada owns and operates small local ports.	Gratwick and Elliott (1992); Ircha (1997); Brooks (2007)
1998 (The third wave)	<i>National Marine Policy</i> sets the course with <i>Canada Marine Act 1998</i> implementation	Implementation of a policy of port governance (3 types); ownership of CPAs as ports of national strategic focus. Transport Canada moves to divest small local ports.	PWGSC (2001); Transport Canada (2003); Brooks (2004); Brooks (2007)

Source: Author.

A coherent policy for all ports finally came with the third wave of reform, being proposed in the *National Marine Policy* (Transport Canada, 1995). It noted the myriad laws that controlled ports in Canada. Page 11 of the document identifies five different regulatory regimes in place for ports: (1) the CPC provided oversight for seven LPCs and seven smaller divisional ports; (2) nine harbour commissions operated under three separate pieces of legislation; (3) Transport Canada directly administered 549 ports; (4) Fisheries and Oceans provided oversight for another 2000 recreational ports and fishing harbours; and (5) a number of private ports that received no direct subsidies handled about 10% of Canada's traffic at the time. To use a great British phrase, it was 'a dog's breakfast.' The time had come for a grand perspective on what Canadian port policy should and could accomplish, and how it should be streamlined.

The third wave has now been in place for over 15 years and, in keeping with the Brooks and Pallis (2008) framework for measuring port reform over time, is ready for re-examination. While Brooks (2007) explored Canadian port reform, that article was written less than a decade after the passage of legislation. Delmas and Tokat (2005) noted that transition often takes policy-makers more than 10 years to implement, and so 15 plus years seems a reasonable interval for this re-evaluation. However, before that third wave of reform is evaluated, the next section will provide greater detail on the port policy introduced by the *National Marine Policy* and its implementing act, the *Canada Marine Act, 1998*.

2. The third wave of port governance reform – 1995–1998

By the spring of 1994, Canada's dire financial situation had become apparent to the Government, and the policy decision was made to withdraw from government operation of transportation infrastructure while retaining ownership as a means of addressing Canada's fiscal challenge. Furthermore, Transport Canada's mission to make the transportation system affordable while ensuring it was safe, reliable and efficient was reaffirmed in section 5 of the *Canada Transportation Act, 1995*. The

times were interesting as a wave of new public management was rippling across many developed economies, and the fruits of reform of many public sector-controlled business activities in both the U.K. and the U.S. were becoming evident; Canada's own successes with the privatization of Air Canada and Canadian National Railway provided a new enthusiasm for devolution in its many forms.

The government paved the way for port reform through the release of the *National Marine Policy* document. This proposed a policy of 'commercializing' the ports most important to Canada's trade. The government would withdraw from operating the transportation infrastructure but retain ownership of it and the commercialized entity would be managed and operated by a separate, non-share, non-recourse government agency, which would make lease payments to the government for the use of the infrastructure.

As the *Canada Transportation Act 1995* did not apply to ports, although it did to the railways serving them, port-specific legislation was needed to charge ports with being financially self-sufficient and no longer able to access the capital capacity of the federal government. Therefore, to shift the burden of financing ports from the taxpayer to the user, the government introduced the *Canada Marine Act 1998*. Through this act the government retained ownership of existing port lands, deemed Canada Port Authority (CPA) ports as non-share federal agencies but specifically precluded them from being agents of the Crown in financial matters. LPC ports were required to become CPA ports, and some harbour commissions also chose to become CPAs. At this time, Transport Canada began the process of removing all but remote ports from Transport Canada's non-CPA inventory. (The characterization of each of the three types of ports is explained in Brooks (2004) while the process of reform is presented in greater detail in Brooks (2007).)

Hence, the reform process led to deproclamation of harbours and public ports that were no longer deemed important enough to keep as Canadian assets. In many cases, Transport Canada retained ownership of the harbour bed, enabling it to continue to collect harbour dues

Table 2
Types of ports in Canada (as of 30 June 2005 and 24 April 2015).

Type of port	2005	2015
Canadian Port Authorities (1)	19	18
Local/regional ports (2)		
Ports under provincial government jurisdiction	40	42
Ports transferred to federal government departments (not Transport Canada)	64	66
Ports transferred local interests	120	148
Local/regional ports remaining under Transport Canada purview	62	50
Remote ports (directly administered by Transport Canada)	26	21
Total remaining with a federal interest of some type	171	155
Total directly administered by Transport Canada (29 + 21)		50

Note: 1. On 1 January 2008, two CPAs and one harbour commission were amalgamated into one port authority (Port of Vancouver, rebranded as Port Metro Vancouver), hence the number of CPAs changed to 18 from 19 at the time.

2. Of the 549 Transport Canada directly administered ports in the National Marine Policy 1995, 211 were deproclaimed before March 1999 and 25 were demolished or Transport Canada's interest terminated by 30 June 2005, leaving 313 local/regional and 26 remote ports. By 24 April 2015, the ones where Transport Canada's interest was terminated or the port demolished grew from 25 to 32. Not included in these numbers are the additional 26 harbours found during archival research that have not been deproclaimed or the 51 partial divestitures where the harbour bed remains to be divested.

Source: The data for 2005 are as reported in Brooks (2007), sourced originally from Transport Canada's Ports Program Transfer Inventory as of July 2005. The 2015 numbers are based on data in Transport Canada (2016). The qualifying note 2 is based on the Statistical Addendum, Transport Canada (2015a), Table M3.

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