

ITEM 21

MANAGER'S REPORT NO. 83

COUNCIL MEETING Nov. 5/73

21. Re: North Fraser Harbour Commissioners

An enquiry was made at the October 29, 1973 meeting of Council regarding the legal status of the North Fraser Harbour Commissioners.

The powers of the North Fraser Harbour Commissioners are set out in the Harbour Commissions Act, being Chapter H-1 of the Revised Statutes of Canada 1970, which is attached.

This is for the information of Council.

CHAPTER H-1 OF THE NORTH FRASER HARBOUR COMMISSIONS ACT

CHAPTER H-1

An Act to provide for the establishment of harbour commissions

SHORT TITLE

1. This Act may be cited as the *Harbour Commissions Act, 1964-65, c. 32, s. 1.*

INTERPRETATION

2. In this Act

"Commission" means a harbour Commission established pursuant to this Act;
 "harbour" in relation to a Commission means the harbour for which that Commission is established;
 "member" means a member of a Commission;
 "Minister" means the Minister of Transport;
 "vessel" includes any ship, boat, barge, raft, dredge, floating elevator, scow, seaplane or other floating craft. 1964-65, c. 32, s. 2.

ESTABLISHMENT OF HARBOUR COMMISSIONS

3. (1) The Governor in Council may by proclamation establish a harbour Commission for any harbour in Canada that is not named in the *National Harbours Board Act*, or for any harbour for which a harbour Commission has not otherwise been established by Parliament.

(2) Every Commission established pursuant to this Act is a body corporate. 1964-65, c. 32, s. 3.

4. (1) The proclamation establishing a harbour Commission shall

(a) define the limits of the harbour for which the Commission is established;
 (b) state the corporate name of the Commission; and
 (c) fix the number of members of the Commission, which shall be not less than three nor more than five.

Alteration of harbour limits, etc.

(2) The Governor in Council may, by proclamation, alter from time to time the limits of a harbour for which a Commission has been established pursuant to this Act, change the name of a Commission and increase or decrease the number of members thereof, but not so as to decrease the number below three or increase it above five. 1964-65, c. 32, s. 4.

MEMBERS AND STAFF

Appointment of members of Commission

5. (1) Subject to this section, a majority of the members of a Commission shall be appointed by the Governor in Council and the remainder shall be appointed as follows:
 (a) where one municipality only adjoins the harbour for which the Commission is established, by the council of that municipality;

(b) where two municipalities only adjoin the harbour for which the Commission is established and the remainder consists of two members, one member by the council of each municipality; or

(c) where the number of municipalities adjoining the harbour for which the Commission is established exceeds the number of members in the remainder, by agreement among the councils of all of the adjoining municipalities.

Exceptional cases

(2) Where the Governor in Council determines that a municipality adjoining the harbour for which a Commission is established does not provide normal municipal services, the member or members of the Commission to be appointed as provided in subsection (1) by or by agreement with the council of that municipality shall instead be appointed by or by agreement with such of the following bodies as the Governor in Council may designate:

(a) the council of that municipality;
 (b) any organization or group of organiza-

tions representative of local interests in the vicinity of the harbour for which the Commission is established; or

(c) the lieutenant governor in council of the province in which the harbour is located.

(3) Where there is no municipality adjoining the harbour for which a Commission is established, the remainder of the members of the Commission shall be appointed by such of the bodies described in paragraph (2)(b) or (c) as the Governor in Council may designate.

(4) Where a member of a Commission to be appointed in the manner prescribed in subsection (1), (2) or (3) is not appointed within sixty days from the day on which the Commission is established under this Act or from the day on which the office becomes vacant, such member may be appointed by the Governor in Council.

(5) Each member of a Commission shall hold office during pleasure for a term not exceeding three years and at the expiration of his term of office may be re-appointed.

(6) No member of the council of a municipality adjoining a harbour for which a Commission is established and no member of the legislature of the province in which is located any harbour for which a Commission is established is eligible to be a member of that Commission. 1964-65, c. 32, s. 5.

6. (1) Each member of a Commission shall, before entering upon the duties of his office, take and subscribe an oath in the following form:

I, A B., solemnly swear that I will truly and impartially and to the best of my skill and understanding execute and perform the duties of member of the... Harbour Commission. So help me God.

(2) The oath described in subsection (1) may be administered by a member of the Commission previously sworn, the Chief Executive Officer of the Commission or a justice of the peace. 1964-65, c. 32, s. 6.

(2)

7. (1) The members of a Commission shall elect one of their number as chairman.

(2) A majority of the members constitutes a quorum of the Commission and a vacancy in the membership of the Commission does not impair the right of the remaining members to act.

Remuneration of members

(3) There may be paid to each member of a Commission out of the revenues of the Commission such remuneration as may be fixed by the Governor in Council. 1964-65, c. 32, s. 7.

Appointment of officers and employees

8. (1) The Commission may appoint a Chief Executive Officer and employ such other officers and employees as it deems necessary to carry out the purposes and functions of the Commission under this Act.

Salary of Chief Executive Officer

(2) The Chief Executive Officer shall be paid out of the revenues of the Commission such salary as may be fixed by the Commission with the approval of the Minister. 1964-65, c. 32, s. 8.

GENERAL POWERS

Jurisdiction within harbour

9. Subject to this Act, a Commission shall regulate and control the use and development of all land, buildings and other property within the limits of the harbour, and all docks, wharfs and equipment erected or used in connection therewith. 1964-65, c. 32, s. 9.

Powers to purchase, construct, sell, etc.

10. A Commission may
(a) with the approval of the Minister, where the amount involved exceeds such amount as the Minister may fix, and
(b) without the approval of the Minister, in any other case,
purchase or otherwise acquire land within the limits of the harbour or in the immediate vicinity thereof, and purchase or construct, and operate and maintain, docks, wharfs, buildings or other structures and machinery or other equipment for use in the operation and development of the harbour and may sell or lease such land, structures or equipment. 1964-65, c. 32, s. 10.

Administration of Crown and municipal property

11. (1) A Commission may administer and develop on behalf of Her Majesty in right of Canada or in right of any province, or on behalf of any municipality adjoining the harbour, any property owned by Her Majesty in right of Canada or in right of that province or owned by that municipality, as the case may be, within the limits of the harbour or in the immediate vicinity thereof.

(2) Notwithstanding anything in this Act, a Commission shall not lease any land administered by it on behalf of Her Majesty in right of Canada

(a) for any period of twenty years or less without the approval of the Minister, and
(b) for any period of more than twenty years without the approval of the Governor in Council. 1964-65, c. 32, s. 11.

12. (1) Subject to any other Act of the Parliament of Canada and any regulations made thereunder, a Commission may

(a) construct, purchase or lease and operate or maintain railways within the boundaries of the harbour on lands owned by or within the jurisdiction of the Commission;

(b) enter into agreements with any company for the maintenance of the railways referred to in paragraph (a) and for the operation thereof, in a manner that will afford all railway companies whose lines reach the harbour the same facilities for traffic as those enjoyed by that company; and

(c) enter into arrangements with railway, navigation, air or road transport companies for the facilitating of traffic to, from or within the limits of the harbour.

(2) Nothing in this section shall be deemed to constitute a Commission a railway company. 1964-65, c. 32, s. 12.

BY-LAWS

13. (1) A Commission may, with the approval of the Governor in Council, make by-laws respecting the management of its internal affairs and the duties of its officers and employees, and for the management and control of the harbour and the works and property therein under its jurisdiction, including by-laws respecting

(a) the regulation of the navigation and use of the harbour by vessels, including the mooring and berthing thereof and the discharging and loading of cargo;

(b) the regulation of all works and opera-

tions within the harbour;

(c) the regulation or prohibition of the construction of channels, docks, wharfs, piers, buildings or other structures within the limits of the harbour and the maintenance thereof, and the excavation, removal or deposit of material or any other action that is likely to affect in any way the docks, piers, wharfs or channels of the harbour or the lands adjacent thereto;

(d) the construction, operation and maintenance of

(i) elevators, pipes, conduits and other works or appliances upon docks, piers or wharfs within the limits of the harbour, and

(ii) pipes or lines of wire or cable across or under the bed of the harbour;

(e) the regulation or prohibition of the erection of towers or poles, and the stringing or laying of wires or cables within the harbour;

(f) the transportation, handling or storing within the harbour of explosives or other substances that, in the opinion of the Commission, constitute or are likely to constitute a danger or hazard to life or property;

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(3)

- (g) the maintenance of order and the protection of property within the harbour;
- (h) the punishment that may be imposed on summary conviction for the breach of any by-law, which punishment shall not exceed a fine of five hundred dollars or imprisonment for a term of six months or both; and
- (i) the regulation of all persons and vessels coming into or using the harbour, including the imposition and collection of rates to be paid upon such vessels and upon goods landed from or shipped on board such vessels, or transhipped by water within the harbour.

Idem

(2) Every by-law shall, at least ten days before its submission to the Governor in Council for approval, be served upon the clerk of each municipality adjoining the harbour for which the Commission is established. 1964-65, c. 32, s. 13.

BORROWING POWERS

14. For the purpose of defraying the expenses of constructing or improving wharfs, structures and other works within the limits of the harbour, a Commission may, on such terms and conditions as the Governor in Council may approve,

- (a) borrow money in Canada or elsewhere, and
- (b) issue debentures for sums of not less than one hundred dollars, payable in not more than forty years. 1964-65, c. 32, s. 14.

FINANCES

15. (1) The revenues of a Commission shall be charged with

- (a) the costs of collecting such revenues;
- (b) the expenses, including depreciation, incurred by the Commission in operating and maintaining the harbour and works and property owned, controlled, administered or managed by the Commission under this Act;
- (c) the interest and other charges incurred in connection with debentures issued or money borrowed by the Commission under this Act; and
- (d) any other expenses lawfully incurred by the Commission in carrying out its duties and functions under this Act.

(2) After providing for

- (a) the charges specified in subsection (1), other than depreciation, and
- (b) the appropriation to the funded reserves of the Commission of such amounts as may be approved by the Minister,

the revenues of a Commission remaining at the end of each fiscal year of that Commission shall be paid by the Commission to the Receiver General. 1964-65, c. 32, s. 15.

16. A Commission may, with the approval of the Minister of Finance, invest in bonds or other obligations of Her Majesty in right of Canada or any province or of any municipality in Canada any moneys in its reserves or any moneys not immediately required for the purpose of the Commission. 1964-65, c. 32, s. 16.

17. (1) A Commission shall

Inspection of accounts

- (a) keep accounts of all moneys borrowed, received and expended by it under this Act, and
 - (b) account therefor to the Minister within three months after the end of each fiscal year of the Commission,
- in such form and manner as the Minister may direct.

(2) All books, accounts, records and documents of the Commission shall be at all reasonable times open for inspection by the Minister or by a person authorized by the Minister for such purpose, or, in the case of a municipality having a substantial interest in the harbour, as determined by the Minister, by the auditors of such municipality. 1964-65, c. 32, s. 17.

Moneys obtained from use of Crown property

18. Where a Commission is authorized by the Governor in Council to develop, administer or lease any property owned by Her Majesty in right of Canada within the limits of or in the vicinity of a harbour, all moneys paid to the Commission in respect of that property shall, notwithstanding the *Financial Administration Act*, form part of the revenues of the Commission. 1964-65, c. 32, s. 18.

EXPROPRIATION

Expropriation

19. A Commission may, with the approval of the Governor in Council, take or acquire lands for the purposes of this Act without the consent of the owner where it is unable to agree with the owner as to the price to be paid therefor, and the provisions of the *Railway Act* relating to the taking of lands by railway companies are, *mutatis mutandis*, applicable to the acquisition of such lands by the Commission. 1964-65, c. 32, s. 19.

PAYMENTS OF RATES

Payment of rates

20. The rates imposed by by-law upon the cargo of a vessel shall be paid by the master or person in charge of the vessel, without prejudice to any recourse he may have by law against any other person for the recovery of the amounts so paid, but the Commission may demand and recover the rates from the owners, consignees, agents or shippers of such cargo. 1964-65, c. 32, s. 20.

SEIZURES

21. Where

- (a) any amount is due to a Commission for rates in respect of a vessel or goods, or
- (b) the owner or person in charge of a vessel or goods has in respect of that vessel or those goods violated the provisions of any by-law,

a Commission may, on the order of any county or district court or any magistrate having jurisdiction in the area in which the goods or vessel are located, seize that vessel or those goods. 1964-65, c. 32, s. 21.

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TRANSITIONAL

22. Any vessel or goods seized pursuant to section 21 may be detained until there have been paid in full

- (a) all amounts due and all penalties incurred in respect thereof;
- (b) all proper and reasonable costs and charges incurred in the seizure and detention; and
- (c) all court costs in respect thereof. 1964-65, c. 32, s. 22.

23. Where, in the opinion of the Chief Executive Officer of a Commission, goods seized by the Commission pursuant to section 21 will rot, spoil or otherwise perish, he may order the sale of those goods in such manner and for such price as he may determine and the proceeds of that sale shall be credited toward payment of the amounts described in section 22. 1964-65, c. 32, s. 23.

EVIDENCE

24. (1) A copy of a by-law of a Commission under its seal and purporting to be signed by a member of the Chief Executive Officer of the Commission is evidence of that by-law in all courts.

(2) A Commission may erect marks or signs to indicate the limits of its harbour and every mark or sign so erected is evidence of the limits of that harbour in all courts. 1964-65, c. 32, s. 24.

GENERAL

Pecuniary dealings

25. A Commission shall not enter into any transaction of a pecuniary nature directly or indirectly with any member of the Commission. 1964-65, c. 32, s. 25.

Limitation of actions

26. Proceedings in respect of any violation of a provision in any by-law made under this Act may be initiated at any time within one year after the time when the subject-matter of the proceedings arose. 1964-65, c. 32, s. 26.

Winding up of a Commission

27. The Governor in Council may order any Commission established pursuant to this Act to wind up its affairs and may by proclamation dissolve any Commission in respect of which such an order has been made; but such order or proclamation shall become effective only upon the expiration of ninety days from the date of the publication thereof in the *Canada Gazette*. 1964-65, c. 32, s. 27.

Development, etc., of Crown lands

28. The Governor in Council may authorize a Commission to administer and develop on behalf of Her Majesty in right of Canada any property owned by Her Majesty in right of Canada within the limits of or in the vicinity of the harbour on such terms and conditions as the Governor in Council may determine. 1964-65, c. 32, s. 28.

Navigable Waters Protection Act

29. Any work undertaken by or on behalf of the Commission affecting the use of any navigable waters is subject to the *Navigable Waters Protection Act*. 1964-65, c. 32, s. 29.

Existing Commission

30. (1) Subject to subsection (2), the Governor in Council may by proclamation declare a Commission established by an Act set out in the schedule hereto to be established pursuant to this Act as of the day fixed in the proclamation, define the limits of the harbour for which that Commission is so declared to be established, and declare the Act set out in the schedule establishing that Commission to be repealed as of that day.

(2) No proclamation shall be issued pursuant to subsection (1) unless the Governor in Council has received

- (a) a by-law passed by the Commission requesting the Governor in Council to declare the Commission to be established pursuant to this Act; and
- (b) a resolution or resolutions approving such by-law, passed by the council of any municipality having power to appoint or to participate in the appointment of a member of the Commission, or where there is more than one such municipality, by the councils of a majority of such municipalities.

(3) The persons who, on the day fixed in a proclamation issued pursuant to subsection (1), hold office as chairman or member of a Commission established by the Act set out in that proclamation shall be deemed to have been appointed chairman or member of that Commission respectively under this Act for the then unexpired portion of their terms.

(4) A Commission established by an Act set out in the schedule hereto that is declared by proclamation of the Governor in Council to be a Commission established pursuant to this Act shall be deemed for all purposes to be one and the same Commission, and from the day fixed in that proclamation this Act applies to and in respect of that Commission in all respects. 1964-65, c. 32, s. 30.

31. Notwithstanding anything in the *Government Harbours and Piers Act* or Part XII of the *Canada Shipping Act*, where that Act or Part would apply to any harbour but for the establishment pursuant to this Act of a Commission for that harbour, that Act or Part continues to apply to that harbour until the day on which any by-laws made by the Commission under section 13 of this Act become effective. 1964-65, c. 32, s. 31.

SCHEDULE

The North Fraser Harbour Commissioners Act, chapter 162 of the Statutes of Canada, 1913.

The Port Alberni Harbour Commissioners Act, chapter 42 of the Statutes of Canada, 1947.

The Belleville Harbour Commissioners Act, chapter 31 of the Statutes of Canada, 1952.
1964-65, c. 32, Sch.; SOR/65-157; SOR/65-221; SOR/65-249; SOR/67-2; SOR/67-120.