Association of Canadian Port Authorities | Association des administrations portuaires canadiennes

November 15, 2022

Senate Official Standing Committee on Official Languages

Re: Bill C-13

Dear Senators:

Thank-you for the invitation to address the committee on Canada Port Authority (CPA) concerns with Bill C-13. As requested, we have additional background information to share on our concerns with the legislation.

Canada's port authorities support the protection of Canada's official languages and are diligent about meeting their obligations under the *Official Languages Act (OLA*). Despite the challenges they experience in sourcing qualified bilingual staff and accessing training for existing staff, as outlined below, ports have increased their energies in this area in recent years, as part of their ongoing efforts to be accountable and transparent with users and local stakeholders.

As noted in ACPA's presentation, Canada Port Authorities have no concerns with the intent of Bill C-13 as a federal initiative designed to improve minority Official Language rights in Canada. Our concerns with Bill C-13 are primarily related to the additional powers the proposed amendments would confer to the Commissioner of Official Languages, given what CPAs are already experiencing with interpretations and practices around complaints under the current legislative and regulatory framework.

Number of complaints

One of the questions raised by senators in the session on October 31st was regarding the total number of complaints. We understand from our members that most of them have received Official Language complaints since ports began receiving complaints regularly, within the past 3-5 years. While the total number of complaints received is not always high –some ports may receive no more than a couple a year while others may receive 10 or more – the time and cost associated with handling each complaint can be quite onerous, as is successfully implementing the recommendations within prescribed timelines with the resources and budgetary constraints of our members

Moreover, as outlined in our presentation, the prospect of continued complaints, regardless of the best efforts of Canada's port authorities to be compliant with their *OLA* requirements, threatens to have a chilling effect on port engagement with local stakeholders. This is of particular concern given

that forthcoming amendments to the *Canada Marine Act* could entail additional requirements on consultation and communication between CPAs, their users, and local stakeholders. Flagging this potential conflict with the Government of Canada was a primary factor in deciding to raise concerns as part of the committee's work on Bill C-13.

Proposed New Powers and Administrative Monetary Penalties for non-compliance.

Bill C-13 proposes expanded and additional powers to the Commissioner of Official Languages regarding "Compliance Agreements and Compliance Orders" that the legislation suggests as appropriate. It is ACPA's view that there is potential for what have previously been "recommendations" to become "agreements" and "orders." The text of Bill C-13 states that the Commissioner "…may make an order directing that institution to take any action that the Commissioner considers appropriate to rectify the contravention."

Most of our members have been subject to *OLA* complaints in recent years. Several of these complaints were easily rectified but others have been quite costly and a significant drain on staff resources to support for many of our members.

In its review of Bill C-13, CPAs have provided ACPA numerous examples of recommendations the Office of the Commissioner of Official Languages (OCOL) has issued that are difficult or impossible to address. Here are some of them:

- There was a recent recommendation by the OCOL to "back tweet" years of historical English-only tweets, despite the port's legitimate concerns of public confusion and safety issues. Should a CPA, for example, "back tweet" in French a communication pertaining to a minor fire within its installations that occurred three years ago? Doing so, in our view, would create unnecessary confusion and concern for the public and a challenge for the specific port to manage and respond. There was no clear rationale for this recommendation.

- Our members greatly value the close relationships they have with the local communities and municipalities they interact with daily. Our members continuously strive to collaborate with local municipalities and other partners on a multitude of initiatives. Recently one of our members had to address a complaint regarding an English-only sign that was promoting a local land revitalization project on which the port had invested resources with other local partners. The sign in question was not erected within the CPA's lands nor under its purview. Considering that the lands in question were under the local municipality's purview, it is difficult to understand why the OCOL would recommend, as it did, that the rules of the *OLA* should apply.

- One consequence of the COVID-19 pandemic has been the development of online tools for communication and collaboration, which has a positive impact on the ability of ports to consult and collaborate more widely within its local community of port users and stakeholders. Whereas a port may formerly have held mostly in-person meetings to consult

on port plans and initiatives, these have moved increasingly online. The benefits of this to community and stakeholder engagement are obvious; many more individuals with an interest in the outcome of consultations are now able to participate. However, the development also means that individuals thousands of kilometers away are now able to access consultation materials – not to participate in the consultations but rather to police Official Language application in matters to which they have not demonstrated any other interest.

- Many of our members have also raised the significant rise in the number of complaints being filed that are frivolous in nature. One member received a complaint because two words of a 55-page document that had been posted on its website had mistakenly not been translated in French.
- Several of our members also were contacted by an individual who threatened to file complaints with the OCOL unless they were paid a monetary "settlement". We are not aware of any ports that acceded to this behaviour, nevertheless, it was a development that raised a great deal of concern among CPAs. OCOL is aware of this behaviour.

CPAs have always prided themselves in the way they have communicated transparency and accountability to their stakeholders. ACPA members want to be compliant, but the reality is that the more they try to meet their obligations, the more complaints they seem to receive. Accordingly, ACPA members believe that the proposed "New Powers and Administrative Monetary Penalties for non-compliance", including the suggested maximum monetary penalty of $25,000 in respect of a violation, have the potential to become highly problematic for CPAs.

Canada Port Authorities face additional burdens compared to airport authorities.

Unlike Canada's airport authorities, Canada Port Authorities are subject to Part VII of the *OLA* which is about the commitment of the Government of Canada "in enhancing the vitality of the English and French linguistic minority communities in Canada" and "fostering the full recognition and use of both English and French in Canadian society."

Given the nature of ports as businesses focussed on international trade, we do not believe it was a likely intent of the federal government that port authorities play an active role in promoting French in the community, in the way that a federal department like Canadian Heritage would. As with airport authorities, CPAs operate at arms-length of the federal government, with local management and governance, and have been provided distinct business mandates to deliver upon. The federal government has access to tremendous resources to deliver on its commitment to proactively promote French in the community, but CPAs -- like airport authorities -- do not.

In addition, airports can litigate in the language of their choice due to provisions in the *Airport Transfer (Miscellaneous Matters) Act*, which is not the case for CPAs now.

For practical reasons, these matters should be addressed by the Government of Canada, although amendments to the *Canada Marine Act* may be the more appropriate venue.

Ports should not be deemed a "Head or Central Office"

Part IV, Section 22 of the *OLA* states that "Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its "head or central office" in either official language." For all other offices or facilities, provision of bilingual services and communications depends on significant demand from the local community, or specific regulatory requirements under the *OLA*.

For federal institutions such as the Canadian Coast Guard, Fisheries and Oceans Canada or the Canada Revenue Agency, which have a "head office" in Ottawa as well as a significant presence throughout Canada, the "head or central office" rule makes sense. Unfortunately, for CPAs this is not the case as they are all deemed to be a "head office," notwithstanding that each port operates independently as part of the local community. This means they must provide a level of bilingual services like that of a government office in Ottawa but without the economies of scale of a federal department or agency headquarters or access to the large pool of bilingual talent located in the National Capital Region.

CPAs are administered by distinct boards of directors and workers from within their local communities. In many cases, it is unreasonable, if not impossible to implement 100% bilingual communications and services, particularly for smaller and remote ports but also ports that operate in areas of the country without access to bilingual employees. This is especially true when there is no local demand for those services, let alone significant demand.

Furthermore, even for non-remote CPA's, the "head office" rule requirement to translate all public-facing documents and consistently maintain the capacity to provide bilingual services or communications – even without demand for those services or communications – is counterproductive and undermines compliance with the *OLA*, as it forces CPAs to spread their resources very thinly, without regard for the actual bilingual demand for a particular communication or service from that port.

To be clear, CPAs support the objectives of the *OLA* and in particular the delivery of bilingual services where there is significant demand for those services. CPAs should be subject to the "significant demand" rule under the *OLA* instead of the "head office" rule. This change would greatly assist CPAs in supporting the spirit and intention of the Act and allow them to allocate resources where there is actual demand for bilingual services.

To address this concern would require either adding explicit language to the *OLA* or amending the *Canada Marine Act* to specify that a port managed by a CPA is not considered a "head or central office" and that the CPA is not considered to have a "head or central office" for the purposes of the *OLA*.

Accessing bilingual talent

While the federal government has tremendous pools of bilingual resources to tap into, that is not the case for all CPAs. From a purely human resources perspective, ports can find it quite challenging to recruit bilingual staff to support their operational needs. This issue is exacerbated in remote regions, where many CPAs operate, and where recruitment of French speaking employees is not possible because of the lack of qualified talent available. CPAs also face significant competition from federal government offices in local markets in recruiting bilingual talent.

Ultimately, ports that don't have resources (staff, money, or a combination of both) will be put in a position where they may be forced to engage less with users and local stakeholders to mitigate against the risk of Administrative Monetary Penalties and Orders. This goes against the continued efforts CPAs make to improve their transparency and accountability to port users and the communities they serve.

Language Training

Many of our members have shared that it has been difficult to provide their existing staff with the language training that would help ports to deliver bilingual services at their ports. While CPAs must adhere to federal legislation, their employees are not provided access to federal government language training, as CPAs are not considered a federal department, agency or corporation, as defined in Schedule I, I.1, II and III of the *Financial Administration Act* (R.S.C. 1985, c. F-11).

Clarification through the Canada Marine Act

As noted in our presentation on October 31st and outlined above, ACPA believes the most appropriate platform for many of these matters to be addressed may be through the clarification of reasonable Official Language requirements for CPAs through amendments to the *Canada Marine Act*, as we advised Transport Minister Alghabra earlier this year. ACPA remains open to discussion with Transport Canada on how best to clarify what reasonable expectations should be on Official Language requirements at Canada's port authorities.

Sincerely,

Daniel-Robert Gooch
President and CEO

cc:

Minister of Transport Omar Alghabra
Deputy Minister of Transport Michael Keenan