

**Submission by the
Canadian Labour Congress
to the
Port Modernization Review**

October 26, 2018



Introduction

The Canadian Labour Congress (CLC) is the voice on national issues for 3 million Canadian workers. The CLC brings together Canada's national and international unions, along with provincial and territorial federations of labour and 130 district labour councils. Members of CLC-affiliated unions work in all regions and virtually all sectors of the Canadian economy, including thousands of members who work in Canada's ports and their associated supply chains and communities.

The CLC welcomes the opportunity to participate in the Government of Canada's Port Modernization Review through this written submission. Canada's 550 port facilities and their integrated supply chains are vital to Canadian trade and our overall economy, directly handling 60% of Canada's commercial cargo and contributing over \$25 billion to Canada's gross domestic product. Canadian Ports currently provide over 213,000 direct and indirect well-paying, middle-class jobs that support families and communities across the country.

Given the importance of our ports to our economy and the livelihoods of hundreds of thousands of Canadians, it is important that they are structured and run in a way that facilitates and supports safe working environments, decent well-paying jobs, environmental sustainability, reconciliation with indigenous peoples, and sustainable healthy communities across our country.

Decent work today and into the future

As noted clearly in the *Discussion Paper* prepared for the Port Modernization Review "People continue to be at the heart of the marine sector's ability to support the economy and ensure the reliability of Canada's supply chains. For many years, the marine sector has been a source of quality jobs with good wages, stability and benefits."

Unionized workers, including those represented by the International Longshore and Warehouse Union (ILWU), the International Longshoremen's Association (ILA), the Canadian Union of Public Employees (CUPE), and the Unions of Canadian Transportation Employees (UCTE), currently enjoy good wages, benefits and pensions. These are the result of collective bargaining and a strong union presence in the workplace.

Unfortunately, these "quality jobs" that are at the "heart" of our marine sector are currently at risk. The improper implementation of new technologies, a lack of employer investment in training, and shortcuts that have undermined the health and safety of port workers and is denigrating both the quantity and quality of jobs in Canada's marine ports.

A worker-centered strategy for the integration of new technologies & automation

The CLC welcomes the introduction of new technologies and innovative improvements to Canadian industries and workplaces. New technologies not only hold the potential to increase industry productivity and global competitiveness but, if implemented correctly, can also improve working conditions, lead to healthier and safer work environments and can have positive economic impacts for both workers and their surrounding communities. Despite this positive *potential*, unions and workers in Canada's ports express concern that the integration of new technologies into the workplace is being done in a way that has failed to capitalize on this potential. In some cases, workers are denied training opportunities on the operation or maintenance of new equipment or technologies, and jobs are instead outsourced. In other cases, the integration of new technologies has led to the outright elimination of quality jobs. Lacking worker-centred strategies that address automation, AI and other new technologies, such innovations risk being used by employers to cut costs on the backs of workers and, in some cases, undermine the rights of workers to organize and bargain collectively.

In the face of the ever-accelerating global speed of change, Canada's unions recommend taking a measured approach to innovation in Canadian ports and suggest implementing a worker-centered strategy that brings workers to the table and gives them a voice in the implementation of new technologies. This is not a new concept and is one that has been successful in the past. For example, in response to rapid technological change in the late 80s and early 90s, the Ontario government created the Technology Adjustment Research Program (TARP) to ensure that workers would play a central role in economic and workplace transitions or re-organizations. It provided unions with the means to research the changes facilitated by new technologies and develop recommendations on how to introduce such technologies in a way that would have a positive impact for both workers and employers. Funded by the Ministry of Economic Development and Trade, TARP was administered by the Ontario Federation of Labour and included participation by sixteen trade unions, with research targeted to specific industries and workplaces ranging from manufacturing plants, to hospitals, to offices. Canadian unions see potential for the creation of a similar workplace-based research project funded by the federal government, with a specific stream that focuses on Canada's ports. There are also recent examples where worker-management "new technology committees" have been created to oversee the integration of new technologies into workplaces. This is discussed further below and in Annex 1.

Union's representing workers in Canada's marine ports have also expressed concern surrounding the "full automation" of marine ports. Compared to the scenario described above that addresses how new technologies will affect, and be integrated into, current

jobs and workplaces, in the case of fully-automated ports the risk is that quality jobs may be eliminated entirely.

The full automation of ports will eliminate hundreds of jobs, impacting not only the workers themselves but the sustainability of local communities and the broader economy. The investments needed for full automation are enormous and ports have already begun looking to publicly funded options, such as the Canada Infrastructure Bank or the Caisse de Dépôt du Québec. The use of public institutions to fund job-killing projects is unjustifiable and works against the best interest of all Canadians and our economy as a whole.

Alongside concerns surrounding the impact of full-automation on jobs and the economy, there is also a lack of evidence regarding the degree to which full automation will increase the efficiency and productivity of ports. Canadian ports are currently very efficient and there is little evidence that the full automation of ports will actually improve productivity and efficiency. The current “just-in-time” system in Canadian ports is highly regulated, with strict time-lapses and little leeway for delays. Under a scenario of full-automation, a technological problem, or even a glitch, along this carefully balanced and orchestrated system would not only ripple throughout the local transportation supply-chain, but across the supply-chains of our entire country and even beyond our borders.

Taking these concerns into consideration the ILA has recently negotiated a master contract that prohibits the development of fully-automated terminals and the use of fully-automated equipment for six years at US East and Gulf Coast ports. The provision also requires consultation with the union prior to the implementation of semi-automated equipment or technology. The contract’s section titled “New Technology Implementation and Workforce Protection” provides sample language that could be considered in Canadian ports and is included as an annex to this submission. The CLC recommends exploring similar provisions in contracts covering Canadian ports.

Lacking a negotiated commitment against the full-automation of Canadian ports, the government must develop a comprehensive strategy that fully considers and assesses how this high degree of automation will affect not only workers, but also port communities that are dependent on the wages of port workers, which are spent at local businesses and invested in local economies. Similar to the scenario described above (worker-centred approach for the introduction of new technologies), this too is not unprecedented. As Canada moves away from coal-generated energy, similar questions and concerns regarding job loss and the impacts on local economies have arisen for coal workers and their communities. In response to these concerns, in April 2017, the Minister of Environment and Climate Change struck the Just Transition Task Force for Canadian Coal Power Workers and Communities (Just Transition Task Force). Comprised of representatives from labour, industry, municipalities, and experts in

workforce development and sustainable development, the Just Transition Task Force has a mandate to make recommendations on how to assist affected workers and communities in the transition away from coal-fired power and to ensure that those most affected do not have to shoulder the transition alone.

Supporting affected workers and communities, and including these key stakeholders in determining what kinds of supports they require, must be central to any economic or workplace transition. Whether the transition is the result of technological change or environmental adaptation, ensuring that workers and their representatives are central to the transition plan is not only essential to supporting the needs of workers, but is also key to building the broad support needed for any ambitious economic, environmental or social transition.

The CLC recommends that the Government of Canada, in consultation with unions and labour representatives, carefully review, consider and identify the best practices from a range of past and existing models for economic and workplace transitions, including TARP and the Just Transition Task Force. Such analysis should be central to informing the best path forward and to establishing and implementing a worker-centred strategy for workplace transitions and re-organizations that have been facilitated by technological and economic changes in Canadian port systems.

Training and development

Central to the success of a worker-centred strategy for the integration of new technologies will be a commitment to, and investment in, training and apprenticeship. Beginning in the early 90s, Canada has witnessed two decades of declining employer investment in training. Investment in training decreased by 40% during this period, but fortunately, this trend appears to be shifting and overall investments have gradually increased since 2010. Unfortunately, this positive trend in employer investment in training in Canada's overall labour market is not reflective of Canadian ports. Unions representing port workers have indicated that most terminal operators do not currently upgrade trades persons on new equipment. Rather than training current workers on new technologies, they opt to contract out the work. Terminal operators also fail to take on a sufficient number of apprentices. For example, GCT Delta Port has 107 regular workforce heavy-duty mechanics, but only five apprentices

The issue of training and development is intimately linked to the discussion on technological change above. Willis Towers Watson found that while ninety percent of maturing companies expect digital disruption, only 44 percent are adequately preparing for it. Fortunately, there are some important examples of companies that are investing and engaging in the training and re-skilling of their employees, rather than re-hiring or

contracting out. AT&T, for example, initiated an extensive retraining program to ensure that its employees had the necessary skills the company would require into the future. This decision to invest in training not only benefits its workers but also the company itself. Bill Blase, senior executive vice president of human resources at AT&T, notes the high cost of turnover, as well as the fact that re-skilling allows the company to keep valuable institutional knowledge in place. The company now uses fewer contractors and instead recognizes and supports the growth of talent inside the company. The company has stated that this type of investment in training and employee engagement has led to more satisfied customers and increased profits.

The CLC recommends that Canadian ports increase investments in training, education and apprenticeships. The operators of Canada's marine ports must commit to providing current employees with the first opportunity to receive paid training on the operation and maintenance of new technologies and equipment in their workplace. Ports must also approach training proactively by identifying in advance the types of skills and jobs that will likely be needed in the future and preparing training programs for employees based on this analysis. Government investments and subsidies in ports (eg. environmental subsidies), must include provisions that mandate training opportunities for current workers and the hiring of apprentices.

Health and safety

Unions representing workers in Canada's ports have faced serious challenges in holding terminal operators accountable to their health and safety obligations under Part II of the Canada Labour Code, as well as expressing concern with certain parts of the Code itself, including the definition of danger.

The health and safety of workers is not something that should be taken lightly. In 2016, 240,682 Canadians lost time from work due to workplace injuries. Of these cases, 15,671 were in the transportation and storage industry. This figure only includes reported injuries that resulted in successful claims, so the actual number is much higher. That same year, 904 Canadians lost their lives due to workplace accidents or disease. Of this figure, 82 fatalities were in the transportation and storage sector.

Just this year Brother Everett Cummings, an ILWU member and port worker in British Columbia, was killed on the job. During a shift at Fraser Surrey Dock he was tasked with the repair of a heavy lift truck. The cab of the machine needed to be lifted to affect the repair. As Mr. Cummings worked on the machine, the mechanism that held the cab in place failed and came down on Mr. Cummings, asphyxiating him. His fellow workers were eventually able to free him, but first responders were unable to revive him. He left behind a wife and three small children. This accident could have been prevented if the

machine he was working on was kept in proper repair and if a safe work procedure was in place.

Far too often, terminal operators take shortcuts and fail to fulfill their obligations under Part II of the Canada Labour Code. Delays in both the issuance of Assurance Voluntary Compliance (AVC), as well as the completion of corrective actions specified in an AVC are far too common. Beyond issues with AVCs, which may be used to correct minor infractions but not in situations that constitute a danger, unions have also expressed concern with the approach of terminal operators to situations that do present a significant danger to the safety, or even the lives, of workers.

The CLC recommends that the Government of Canada increase efforts and resources dedicated to the enforcement of workplace health and safety in marine ports. Terminal operators must be held to the highest standard, with zero tolerance for delays or a lack of follow-up with AVCs and other measures or programs related to the health and safety of workers.

Unions representing port workers have also expressed concern with the current definition of danger under Part II of the Canada Labour Code, and its impact on the ability of workers to refuse dangerous work. The current definition of danger is the result of amendments to Part II of the *Canada Labour Code* that were brought forward in the *Budget Implementation Act 2013, No.2*, and came into force on October 31, 2014. The pre-2014 definition of danger read,

“any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.”

The post-2014 definition of danger reads,

“any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered.”

Canadian unions express concern that the definition of danger was changed without consultation, despite that fact that both employer and worker representatives had previously agreed to the pre-2014 definition. There is also concern that the addition of the word “imminent” has shifted the focus, in practice, to imminent threats. This focus affects where proactive and preventative efforts and measures are targeted, as well as

undermining the rights of workers to refuse dangerous work, both of which put workers at increased risk of injury or death.

The CLC welcomes the Labour Program's consultations on the current definition of danger and recommends that the definition in Part II of the Canada Labour Code be returned to the pre-2014 definition.

Security and the Rights of Workers

The labour movement has longstanding concerns regarding Transport Canada's marine transportation security requirements. Implemented following the attack on the World Trade Centre in New York on September 11, 2001, the regulations permit the Minister to gather information on the identities of workers employed in security-sensitive positions in ports, in order to determine their level of security risk to marine transportation. Denial of security clearance can lead to loss of employment. This longstanding concern is now expected to be exacerbated, with questions arising regarding the legalization of cannabis and data sharing with US Homeland Security.

Applicants for a security clearance must provide information regarding identity, residence, activities, travel, and the identity of a spouse or common-law partner. The Minister can then conduct subsequent checks and verification of the information, including: a criminal record check; a check of law enforcement files, including intelligence gathered for law enforcement purposes; a Canadian Security Intelligence Service indices check and, if necessary, a CSIS security assessment; and a check of the applicant's citizenship and immigration status.

Criminal record and law enforcement agency checks conducted on applicants examine not only criminal convictions, but also criminal charges that did not lead to a conviction.

The Minister may consider an applicant's association with a person who is involved with criminal or terrorist organizations, despite the fact that an applicant's association with such a person may be entirely innocent, and despite the fact that the applicant may not be aware of the person's criminal or terrorist activities.

Port workers are concerned that they are at risk of being unfairly regarded as potential security threats, and are subject to extensive background checks that intrude on their privacy. As a result of marital and family status and association with various groups for social, cultural, religious and political reasons, marine security regulations can restrict the ability of individuals to obtain obligatory security clearance and lead to loss of employment. If sensitive information is shared with foreign governments that have poor human rights records, they may also be exposed to personal danger.

Unions representing port workers have also expressed concern that the use of security clearances are not applied evenly and that there is a degree of bias as to whom is required to undergo this process. As such, clearances may be misused as a disciplinary measures against certain employees.

The International Longshore and Warehouse Union (ILWU) has pointed out that security checks on employees of this kind are not required by either the International Labour Organization or the International Maritime Organization, which are responsible for setting international labour and marine standards, or by the International Ship and Port Security Code. As in other countries, Canadian ports were already equipped with physical security measures, such as fencing, lighting, patrols, and x-ray and radiation screening, prior to the 2002 regulations coming into place.

Currently the Canadian Marine Workers Council, to which ILWU Canada is affiliated, has launched a constitutional challenge to the way Transport Canada is interpreting the Marine Transportation Security Clearance (MTSC) regulations. The case will be heard early next year.

The CLC recommends that the Minister of Transport meet and consult with affected port employees and their unions (ILWU, UCTE, ILA and CUPE), which are represented by the Canadian Maritime Workers Council, in order to explore ways to ensure that security consideration do not violate constitutional rights and do not lead to situations where individuals' employment circumstances are placed at risk because of associational and other *Charter*-protected activity.

Governance of Ports and Industrial Relations

The CLC expresses concern with, and opposes the program of privatization that has been underway in Canada's marine sector since the mid-90s. The 1998 Canada Marine Act that succeeded the 1995 National Marine Policy formed the basis for the current governance structure of Canada's marine ports and has facilitated the privatization of our port system. The Act commercialized federal ports of national significance by creating 18 Canada Port Authorities and began the divestiture of other ports that were owned by Transport Canada to local interests, including provincial governments, municipalities and private organizations.

Today, Canada Port Authorities are federally incorporated, autonomous, non-share corporations that operate at arm's length from the federal government. Although they are structured to operate on a commercial basis with a view to being financially self-sufficient, "they also fulfill important public policy objectives (supporting economic development) and regulatory requirements (safety, security, and environmental

protection),” as is recognized in this review’s *Discussion Paper*. Canada’s ports are public assets that require and deserve high levels of transparency, scrutiny and accountability in their operations.

Despite being recognized as public assets, there is a large disconnect between the federal government, Canada Port Authorities, and terminal operators. Once terminal operators are awarded the lease for marine ports, they are often given a high level of discretion over its operations. The federal government takes a hands-off approach and, although terminals are technically controlled by the Port Authority, there is no formal and transparent structure to monitor and enforce activities.

In order to increase the transparency and accountability of both terminal operators and Port Authorities, the CLC recommends that Port Authority Boards include labour representation. Labour representation on Port Authority Boards should be legislated by updating the definition of the Board’s composition in the *Canada Transportation Act*. The government should also explore the option to re-nationalize Canadian ports as a means to better realize the full potential of ports as public assets.

Unions representing port workers have also expressed concern with delays during arbitration and at the Canadian Industrial Relations Board (CIRB) due to a lack of government resources and too few arbitrators. These delays advantage the employer and further the imbalance of power between workers and employers. Delays mean that workers are obligated to continue working under poor conditions and contributes to increased worker unrest that not only affects workers but also impacts workplace efficiency.

The CLC recommends increasing resources and full-time equivalents (FTEs), including arbitrators, at the CIRB in order to decrease delays and to allow for more time to be allocated to each case.

Indigenous Peoples, Port Communities and the Environment

Indigenous Peoples: Across Canada, over 100 Indigenous communities live and practice their protected rights near ports. Despite the clear, yet diverse, impact of ports on indigenous communities, the level and type of engagement of Port Authorities with these communities varies greatly, and in some cases is virtually non-existent. In order to fulfill the government of Canada’s commitment to reconciliation and to ensure that the perspectives of Indigenous communities play a role in shaping the future of Canada’s ports, the CLC recommends that Port Authority Boards include Indigenous representation. Similar to our recommendation in regard to labour representation,

Indigenous representation on Port Authority Boards should be legislated by updating the definition of the Board's composition in the *Canada Transportation Act*.

Port Communities: Although ports contribute to their local communities through long-term socio-economic development, they also create challenges for local communities. As noted in the review's *Discussion Paper* "port operations as well as truck and rail connections can affect quality of life, for example through noise, traffic and poor air quality." For the most part, the socio-economic benefit often outweighs these negative impacts. Yet, the move towards the automation of ports threatens to disrupt this delicate balance for local communities. There is concern that if jobs are eliminated due to automation, and the amount of money that workers were previously spending in local communities dwindles, that communities will continue to experience the negative impacts without the same level of economic benefit. In order to ensure that port communities are not left behind due to the automation of ports, the CLC recommends the negotiation of community benefit agreements prior to the building of new ports or to the integration of new technologies that may lead to substantial job loss and negatively impact community revenues.

Because many issues impacting communities (eg. environment, zoning, street maintenance and repair, etc.) fall under the purview of a diverse range of levels of governments or departments, port communities have faced barriers in attempts to develop holistic plans for their communities. The CLC recommends that Port Authority Boards include a seat for community representation. Similar to our recommendation in regard to labour and Indigenous representation, community representation on Port Authority Boards should be legislated by updating the definition of the Board's composition in the *Canada Transportation Act*.

Environment: The CLC supports government efforts to reduce greenhouse gas emissions from all modes of transportation, including marine transportation, and supports investments in building more efficient trade and transportation corridors, including investments in marine ports. Recognizing the environmental and health impacts of pollution from marine ports, Canadian unions support efforts to reduce emissions and clean-up ports and their surrounding environments. Still, Canadian unions do not believe that we must choose between a healthy environment and decent jobs in a strong economy. We can, and must, have both. Unions representing port workers express concern that some climate change adaptation measures and some new technologies that are being integrated into ports to reduce pollution are simultaneously being used as a pretext for eliminating quality jobs. Linked to the above recommendation regarding a worker-centred approach to the integration of new technologies into the workplace, such an approach should also be taken regarding climate change adaptation measures and pollution reduction technologies. The CLC

further recommends that environmental subsidies provided to Canada's ports should be linked to worker-centred programs that prioritize job retention and workplace training.

Summary of Recommendations

1. In consultation with unions and labour groups, review, consider and identify best practices from a range of past and existing models for environmental, economic and workplace transitions, including TARP and the Just Transition Task Force, as well as employer-union negotiated workplace committees and strategies.
2. Create and implement a worker-centred strategy or task force that ensures workers play a central role in workplace transitions or re-organizations brought about by technological change or climate change adaptation.
3. Increase investments in training, education and apprenticeships for workers in Canada's marine ports.
4. Commit to providing current employees with the first opportunity to receive paid training on the operation and maintenance of new technologies and equipment in their workplace.
5. In negotiation with unions representing port workers, explore opportunities to include provisions in collective agreements or contracts that ban the full-automation of ports and require consultation with the union prior to the implementation of semi-automated equipment or technology.
6. Government investments and subsidies in ports (eg. subsidies for environmental upgrades), must include provisions that mandate training opportunities for current workers and the hiring of apprentices.
7. Increase efforts and resources dedicated to the enforcement of workplace health and safety. Terminal operators must be held to the highest standard, with zero tolerance for delays or a lack of follow-up with AVCs and other measures or programs related to the health and safety of workers.
8. The Minister of Transport should meet and consult with affected port employees and their unions in order to explore ways to ensure that security considerations do not violate constitutional rights and lead to situations where individuals' employment circumstances are placed at risk because of associational and other Charter-protected activity. This consultation should now also include the topic of cannabis legalization and how this will affect security considerations.
9. Update the definition of the Port Authority Board's composition in the *Canada Transportation Act* to include labour representation.
10. Explore opportunities to re-nationalize Canadian ports.
11. Increase resources and FTEs, including arbitrators, at the CIRB in order to decrease delays and to allow more time to be allocated to each case.

12. Update the definition of the Port Authority Board's composition in the *Canada Transportation Act* to include indigenous representation.
13. Update the definition of the Port Authority Board's composition in the *Canada Transportation Act* to include community representation.
14. Ensure the negotiation of community benefit agreements prior to the building of new ports or to the integration of new technologies that may lead to substantial job loss and negatively affect community revenues.
15. Environmental subsidies provided to Canada's ports should be linked to worker programs that prioritize job retention and workplace training.

Annex 1

The following provision is drawn from the USMX Master Contract Memorandum of Settlement between the United States Maritime Alliance, Ltd. and the International Longshoremen's Association, AFL-CIO:

L. New Technology Implementation and Workforce Protection

Article XI of the 2012 Master Contract shall be amended in its entirety to read as follows:

- (a) Management in partnership with the ILA shall protect the Master Contract workforce for the term of this Master Contract while improving efficient and capacity on the terminals.
- (b) There shall be no fully automated terminals developed and no fully-automated equipment used during the term of this Master Contract. The term "fully-automated" is defined as machinery/equipment devoid of human interaction.
- (c) There shall be no implementation of semi-automated equipment or technology/automation until both parties agree to workforce protections and staffing levels.
- (d) The following guidelines shall be followed for instituting workforce protections:
 - i. Define the types of technology and the effect on capacity and efficiency;
 - ii. Determine the manning for the new equipment;
 - iii. Identify the new work created by technology;
 - iv. Determine the possibility of reassignment within craft subject to approval by the New Technology Committee; and

- v. Provide necessary training.
- (e) In order to protect the workforce, there must be a determination of the number of positions affected (head count), rate of pay (Master Contract wages), and similar Master contract hours in remaining or new Master Contract positions.
- (f) Procedure:
- i. Local parties must negotiate implementation within 90 days with assistance of New Technology Committee Co-Chairs if necessary and in doing so adhere to the spirit of this Agreement as defined in subsection L(a) above.
 - ii. All local agreements are subject to review and approval by USMX and the ILA International.
 - iii. If no local agreement after 90 days, the ILA and USMX Subcommittee shall resolve open issues within 30 days.
 - iv. If the Subcommittee cannot agree, then two members each from the ILA and USMX Subcommittee shall have another 30 days to resolve the open issues.
 - v. If the Four-Member Panel cannot agree, then an Industry Advisor (George Cohen/J.J. Pierson) and the four members shall have 15 days to resolve all open issues.
 - vi. All agreements are final and binding.
 - vii. All negotiations, resolutions, and agreements are port-specific.
 - viii. All of the above time periods are subject to extension by mutual agreement of the parties.

lgf/cope225