

Statutory Framework for Setting Price Caps

Role of commissioner

38 (1) Without limiting any other power of the commissioner under this Act, the commissioner must, after considering public feedback obtained under this Act, regulate each ferry operator in relation to the core ferry services that are to be provided by that ferry operator and the tariffs, including, without limitation, reservation fees, that may be charged for those core ferry services, and must undertake that regulation in accordance with the following principles:

(a) the primary role of the commissioner is to balance, in the manner the commissioner considers appropriate,

(i) the interests of ferry users,

(ii) the interests of taxpayers, and

(iii) the financial sustainability of ferry operators;

(b) ferry operators are to be encouraged to adopt a commercial approach to ferry service delivery;

(c) ferry operators are to be encouraged to seek additional or alternative service providers on designated ferry routes through fair and open competitive processes;

(d) ferry operators are to be encouraged to be innovative and to minimize expenses without adversely affecting their safe compliance with core ferry services.

(e) and (f) [Repealed 2012-28-2.]

(2) For the purposes of subsection (1), the commissioner is to do the following in relation to each ferry operator:

(a) review the quarterly reports and annual reports of the ferry operator provided under sections 65 and 66 respectively to determine whether

(i) the ferry operator is providing the core ferry services, and

(ii) the weighted average of the tariffs charged in relation to the core ferry services applicable to each route group serviced by the ferry operator is within the price cap established for that route group;

(b) monitor the ferry operator's provision to the public of the information that is to be provided under this Act in relation to the operations and performance of the ferry operator;

(c) establish, in accordance with section 40, in advance of each performance term under the Coastal Ferry Services Contract, other than the first

performance term, the price cap that is to apply to each route group to which the contract applies;

(d) review and consider applications by the ferry operator for extraordinary price cap increases in accordance with section 42;

(e) review and consider applications by the ferry operator for reductions of service in accordance with section 43;

(f) review and consider applications by the ferry operator for route discontinuance in accordance with section 44.

(g) [Repealed 2012-28-2.]

(3) The commissioner must not regulate ferry operators in relation to ancillary services.

(4) Despite subsection (1), the commissioner may remove a designated ferry route from regulation under this Act if the commissioner considers that sufficient competition is present on that designated ferry route so that regulation is no longer necessary.

(5) Without limiting any other power of the commissioner under this section, the commissioner may order a ferry operator to

(a) prepare a plan to indicate how the ferry operator proposes to achieve an outcome, proposed by the ferry operator or the commissioner, that is consistent with the objectives of this Act or the applicable Coastal Ferry Services Contract,

(b) review any of the ferry operator's policies that the commissioner considers may not be in the interests of ferry users and taxpayers and do one or both of the following:

(i) explain the rationale for that policy;

(ii) indicate how that policy could be amended to better balance the interests of ferry users, taxpayers and the ferry operator, and

(c) undertake public consultation in relation to any services the ferry operator is providing or intends to provide or that the commissioner considers appropriate for the ferry operator to provide.

(6) If the commissioner makes an order under subsection (5) (a) or (b), the ferry operator must prepare the required plan, rationale or proposed amendment and have it approved by the commissioner.

Establishment of price caps for subsequent performance terms

40 (1) For the purposes of section 38 (2) (c), each ferry operator must, at least 18 months before the beginning of a performance term for which a price cap is to be set, provide to the commissioner, the Authority and the Minister of Transportation and Infrastructure information, satisfactory to the commissioner, respecting the following in

relation to each designated ferry route that is included within a route group for which a price cap is to be set:

- (a) the core ferry services that the ferry operator has provided, and reasonably expects to provide, in the current performance term;
- (b) the tariffs for core ferry services, including, without limitation, reservation fees, that the ferry operator has charged, and reasonably expects to charge, in the current performance term;
- (c) the service fees that have been paid, and that the ferry operator reasonably expects will be paid, by the government in the current performance term;
- (d) the revenues from all sources that the ferry operator has earned, and reasonably expects to earn, in the current performance term;
- (e) the following expenses that the ferry operator has incurred, and that the ferry operator reasonably expects will be incurred, in the current performance term:

- (i) the operating expenses, including amortization of capital costs, that the ferry operator has reasonably allocated to the designated ferry route;

- (ii) the portion of the ferry operator's administrative expenses that the ferry operator has reasonably allocated to the designated ferry route;

- (iii) the portion of the expenses applicable to the terminals serving the applicable designated ferry route that the ferry operator has reasonably allocated to the designated ferry route,

and the methodology by which those amounts have been allocated among its routes;

- (f) the requests for proposal issued, or other actions taken, in the performance term by the ferry operator in accordance with section 69, the responses received by the ferry operator to those requests or actions, any unsolicited proposals received in the performance term by the ferry operator for the provision of ferry services by additional or alternative service providers on the designated ferry route and the results of those requests, actions, responses and proposals;

- (g) any other records considered by the ferry operator to be relevant to the setting of the price cap.

(1.1) Each ferry operator must provide to the commissioner, with the information submitted under subsection (1),

(a) a plan as to how the ferry operator intends to provide services more efficiently in the upcoming performance term, and

(b) the most recent capital plan prepared under section 64.1.

(1.2) Promptly after receiving the information referred to in subsections (1) and (1.1), the commissioner must, subject to subsection (1.3), publish that material on the commissioner's website.

(1.3) The commissioner need not, under subsection (1.2), publish information that, under section 17 or 21 of the *Freedom of Information and Protection of Privacy Act*, the commissioner may or must refuse to disclose in response to a request made under that Act.

(2) The commissioner must, at least 12 months before the beginning of a performance term for which a price cap is to be set,

(a) review the information and plans provided to the commissioner under this section,

(a.1) make public a request for public comment in relation to the following:

(i) the reports maintained under section 68 (3);

(ii) the information and plans provided to the commissioner under this section;

(iii) any other information on the commissioner's website that relates to the commissioner's powers and duties under this section,

and review the comments received in response;

(b) make the determinations referred to in section 41 (3),

(c) prepare a report that describes the findings of the review under paragraph (a) of this subsection and the determinations made under paragraph (b), and indicate in that report the commissioner's preliminary decision about what the price cap for each route group will be for the next performance term,

(d) issue the report referred to in paragraph (c) to the ferry operator and the government, and

(e) publish the report referred to in paragraph (c) in a manner that the commissioner is satisfied will bring it to the attention of the public.

(3) At least 9 months before the beginning of the performance term for which the price cap is to be set, a ferry operator referred to in subsection (1) must submit to the commissioner the most current version of the Coastal Ferry Services Contract that is to apply in respect of that upcoming performance term to indicate the changes, if any, to be made to

(a) the core ferry services, and

(b) the service fees to be provided to the ferry operator by the government.

(4)After receiving the Coastal Ferry Services Contract referred to in subsection (3), and at least 6 months before the beginning of the performance term for which the price cap is to be set, the commissioner must

- (a)reconsider the preliminary decision included in the report referred to in subsection (2) (c) in the light of
 - (i)the Coastal Ferry Services Contract,
 - (ii)any additional information received by the commissioner from the ferry operator or from the government, and
 - (iii)any public comment received on the report, and
- (b)issue the commissioner's final decision on the application to the ferry operator and the government.

Principles applicable to price cap review

41 (1)[Repealed 2012-28-4.]

(2)In setting a price cap applicable to a route group, the commissioner must be guided by the following principles:

- (a)the price cap must allow for a return sufficient to enable the ferry operator to recover
 - (i)the portion of operating expenses, including all financing charges, that can reasonably be applied to the route group,
 - (ii)the portion of administrative expenses that can reasonably be applied to the route group, and
 - (iii)the reasonable capital costs that are to be
 - (A)incurred in relation to the route group, and
 - (B)amortized in accordance with generally accepted accounting principles on a straight line basis;
- (b)the price cap, when combined with all other price caps applicable to all route groups serviced by the ferry operator, must allow for a return sufficient to enable the ferry operator to
 - (i)meet its debt obligations, and
 - (ii)maintain access to borrowing rates that, in the opinion of the commissioner, are reasonable in all of the circumstances;
- (c)the price cap must take into account the anticipated productivity gain determined under subsection (5);
- (d)the ferry operator is, on an ongoing basis, to actively seek additional or alternative service providers to provide ferry services on the designated

ferry routes included in the route group in order to reduce the costs of providing those services.

(3) For the purposes of subsection (2) (a) to (c), the commissioner must, in setting a price cap for a route group,

(a) determine the portion of the following that, in the commissioner's opinion, acting reasonably, can reasonably be applied to the route group:

(i) operating expenses;

(ii) administrative expenses;

(iii) the expenses applicable to the terminals serving the designated ferry routes included in that route group,

(b) take into account, for the purposes of subsection (2) (a), only the portion of the expenses that the commissioner determines, under paragraph (a) of this subsection, can reasonably be applied to the route group,

(c) determine whether it was reasonable, in the commissioner's opinion, acting reasonably, for the ferry operator to have incurred capital expenses in relation to a designated ferry route included in the route group, and take into account only those capital expenses that

(i) are determined under this paragraph to be reasonable, or

(ii) had been approved under section 55,

(d) attribute to capital assets deployed within or in support of the route group a value that, in the commissioner's opinion, acting reasonably, is appropriate in all of the circumstances, and

(e) include in the price cap any reservation fees applicable to the route group.

(4) [Repealed 2012-28-4.]

Obligation to keep information confidential

54 Despite any obligation imposed on the commissioner under this Act to obtain, maintain or make available information or records, the commissioner, every deputy commissioner, every employee of the commissioner and every inspector must not disclose or be compelled to disclose any information or record that is obtained in, or that comes to the person's knowledge during, the course of the administration of this Act or the course of any inspection authorized under this Act, unless and only to the extent that

such disclosure is consistent with the *Freedom of Information and Protection of Privacy Act*.

Freedom of Information and Protection of Privacy Act

Disclosure harmful to the financial or economic interests of a public body

17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia;
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

(2) The head of a public body may refuse to disclose under subsection (1) research information if the disclosure could reasonably be expected to deprive the researcher of priority of publication.

(3) The head of a public body must not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

- (a) for a fee as a service to a person, a group of persons or an organization other than the public body, or
- (b) for the purpose of developing methods of testing.

Disclosure harmful to business interests of a third party

21 (1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
- (b) that is supplied, implicitly or explicitly, in confidence, and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure, or
- (b) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.