Laurentian Pilotage Authority

Review of the *Pilotage Act*

Submission in response to the discussion paper

Submission to
Marc Grégoire
Chairperson, *Pilotage Act* Review

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I. Executive Summary of Recommendations

The Laurentian Pilotage Authority (LPA) is pleased to contribute to the modernization of the *Pilotage Act* to enhance navigational safety and the efficiency of pilotage services. Shipping on the St. Lawrence and Saguenay Rivers plays a vital role in the economic development and competitiveness of Quebec and of central Canada. The navigational challenges of our waterways make expert pilotage a necessity in terms of both the safety and efficiency of the marine transportation system. It is therefore essential that we take this opportunity to build on our success and consider how pilotage can best support Canada's marine transportation system.

In this regard, the LPA agrees with the *Canada Transportation Act* (CTA) Review Panel Report and the *Discussion Paper on the Review of the Pilotage Act* that this is the opportune time to modernize the *Pilotage Act* and address its shortcomings. The LPA proposes a number of key recommendations that will address governance deficiencies related to the oversight of pilot corporations and other key challenges and issues. These proposed changes to the *Pilotage Act* will provide the LPA with modern and responsive tools and powers to better support safety, efficiency and the competitiveness of marine transportation in our region.

Recommendations:

1. Address current governance shortcomings by amending the *Pilotage Act* to make pilot corporations subject to legislative requirements regarding oversight, accountability and transparency. As recommended by the Bernier Royal Commission Report on Pilotage, this should also include amendments to the *Act* to provide Pilotage Authorities with oversight and supervisory powers over pilot corporations and their pilots.

2. Amend the *Pilotage Act* to clearly state that matters covered under the regulation-making powers of the Pilotage Authorities are of public order and cannot be included or modified by way of commercial service contracts entered into with pilot corporations. This includes precluding an arbitrator from selecting final offers that contain or address matters covered under the regulation-making powers of a Pilotage Authority.

3. Empower the Pilotage Authorities, through express legislative authority, to establish navigation safety regulations, practices and procedures related to the provision and execution of pilotage services. In order to enhance safety and increase the efficiency of pilotage services, it is imperative that these powers include means to introduce and prescribe the use of technology by pilots. The exercise of these regulatory powers would be subject to consultation with pilots, industry, interested stakeholders and Governor in Council approval.

4. Amend the *Pilotage Act* to permit Pilotage Authorities, where pilot corporations operate, to hire a limited number of licensed employee-pilots to ensure resident in-house expertise, the appropriate oversight of pilotage work and the ability to better meet its mission. For the LPA, legislative authority to hire up to 10 licensed employee pilots, with a maximum of 2 per district, would provide adequate in-house expertise.

5. The *Pilotage Act* should be amended to provide Pilotage Authorities, where pilot corporations and their pilots operate, clear legislative powers to conduct incident and accident reviews and determine if a pilot involved in an accident is fit or competent to return to active duty. This includes the authority to require a pilot, when appropriate, to undergo mandatory training and re-evaluation, prior to returning to active duty. Furthermore, the powers to suspend a license contained in the *Act* should be clarified to avoid an unfit pilot returning to active duty pending a hearing taking place and potentially endangering the safety of navigation.

6. In order to provide for a more efficient tariff setting process, it is proposed that sections 33 and 34 of the *Pilotage Act* be replaced with provisions similar to those found in sections 49 to 52 of the *Canada Marine Act*, while maintaining the same grounds for appeal to contest tariffs currently available under the *Pilotage Act*.

7. Amend the *Pilotage Act* to ensure that an arbitrator, in choosing one or the other of the final offers, takes into account the mission of the Pilotage Authority under section 18 of the *Act*, its corporate plan summary, including the requirement that an Authority be financially self-sufficient. The Canadian Transportation Agency, in turn, would also have to take the mission of the Authority into account, its corporate plan summary as well as the offer selected by the arbitrator. Alternatively, we would propose that the Agency's mandate be increased to oversee both the tariff and final offer selection process to ensure consistency in decision-making.

8. Provide the Pilotage Authorities with modern compliance and enforcement powers, including Administrative Monetary Penalties (AMPs) to ensure they can fulfill their objectives and mission according to the *Act*.

9. Examine whether the Crown corporation model or other alternatives such as the one used by port authorities, the Seaway or NAVCAN, may be more appropriate and best suited to the public interest, for managing and delivering pilotage services. This should include a study of the potential benefits of a full merger between the LPA and the Great Lakes Pilotage Authority. If the resulting benefits to clients, stakeholders and pilotage service delivery are clearly demonstrated, the LPA would be in favour of such a merger.

10. To ensure that the service delivery model best fulfills the needs of the marine transportation system, the *Act* should also be amended to empower Pilotage Authorities to decide whether to use employee-pilots or to enter into a service contract with a pilot corporation. However, the current practice of giving pilots the right to determine this issue has been in place since 1972 and the potential impacts of this new approach should be considered by the government before implementing such a change.

II. Introduction

Marine pilotage contributes greatly to marine navigation safety. In our opinion, pilotage is an essential service that prevents marine accidents and protects the marine environment against oil spills, while facilitating the flow of goods and passengers.

The number of accidents remains very low and there are generally very few delays caused to vessels as a result of pilotage services in our region. Given that safety of navigation is at the heart of pilotage, this demonstrates that the pilotage system works well in this respect.

However, it is clear that the *Pilotage Act* can be improved and modernized to reflect best practices, especially with regard to governance and requirements of accountability, transparency and compliance with the regulation-making process. A modernized legislative framework is essential to supporting safety, competitiveness, economic growth and prosperity, while at the same time allowing us to build on our excellent record.

III. Laurentian Pilotage Authority Overview

The LPA is one of four Pilotage Authorities established as a Crown corporation in 1972 pursuant to the *Pilotage Act*. As a Crown corporation, the LPA is subject to the *Financial Administration Act* and is accountable to Parliament through the Minister of Transport.

The LPA is responsible for providing safe, reliable and efficient marine pilotage services in waters in and around the province of Quebec. The navigational challenges of our waterways make expert pilotage a necessity in terms of both safety and efficiency of the marine transportation system. For this reason, most commercial navigation on the St. Lawrence and Saguenay rivers is subject to compulsory pilotage.

Navigational safety on the St. Lawrence and Saguenay Rivers and the provision of efficient pilotage services are the primary objectives of the LPA. To achieve this, our region is currently composed of three compulsory pilotage areas covering the St. Lawrence River between Les Escoumins and Montréal as well as the Saguenay River. The LPA conducts approximately 22,000 pilotage missions a year of which over 30% involve tanker vessels. Pilotage plays a vital role in our region. It allows shipping to be conducted on the St. Lawrence and Saguenay Rivers, bringing imported goods and allowing shipment of Canadian cargo to foreign markets on a 24/7, 365 days a year basis.

As permitted under the *Pilotage Act*, the approximately 200 pilots providing pilotage services on behalf of the LPA have chosen to organize themselves into two separate corporations. These corporations are privately held for profit companies separate from the LPA. Once in place, the *Pilotage Act* grants the pilot corporations an exclusive monopoly to operate in their respective territory. When pilots organize themselves in this manner, a Pilotage Authority is prohibited, by law, from hiring its own licensed employee-pilots for these territories.

IV. Current Legislative Framework Challenges

A. Governance

(i) Oversight, Accountability and Transparency

The fact that pilotage in Canada is only a partially regulated monopoly gives rise to several governance-related challenges. Pilotage Authorities are granted a monopoly by the *Pilotage Act*, but are subject to legislative requirements of transparency, cost control, are audited by the Auditor General of Canada, and are accountable to Parliament through the Minister of Transport.

Pilot corporations are also granted a monopoly by the *Pilotage Act*, but in their case, they are not subject to any of the above-mentioned legislative requirements or controls. As recommended by the Bernier Royal Commission Report on Pilotage, the legislative framework on governance and transparency should also be applicable to pilot corporations. In this regard, they should, for example, be required to answer to their Pilotage Authority, submit their annual financial statements to the latter and undergo financial audits by the Auditor General of Canada.

> "The corporation should be required to account for its mandate both to its Pilotage Authority and to its members. First, it should be required to produce annually, within 30 days after the close of the calendar year, a detailed financial statement of its special operations and should provide at any other times any other financial return or information that the Pilotage Authority may require; in addition, it should be obliged at any time to have its financial operations audited by the Auditor General of Canada or by any other person appointed for that purpose by the Pilotage Authority."
>
> Bernier Royal Commission Report, 1968, Part 1, p. 554.

The Bernier Royal Commission Report on Pilotage also recommended that pilot corporations by-laws be approved by the Pilotage Authorities.

> "Corporation by-laws (vide p. 552, subpara. (h) of this Recommendation) should be subject to the approval of the District Pilotage Authority."
>
> Bernier Royal Commission Report, 1968, Part 1, p.553.

The Bernier Royal Commission also recommended increased surveillance and reappraisal powers be attributed to the Pilotage Authorities over pilot corporations and their pilots. The Bernier Report concluded that since the Pilotage Authorities bear the responsibility for ensuring that adequate standards are established and maintained, it necessarily follows that they be accorded effective means of surveillance.

> "Increased statutory surveillance and reappraisal powers to be granted to the District Pilotage Authority."
>
> Bernier Royal Commission Report, 1968, Part 1, p.556

Unfortunately, these fundamental protections and governance and transparency objectives recommended in the Bernier Royal Commission Report were not fully achieved or implemented in the *Pilotage Act*. As a result, pilotage in Canada is only a partially regulated monopoly. Most of the pilotage system's shortcomings stem from the failure to implement these recommendations.

Therefore, it is clear that the pilotage system would be improved by amending the *Pilotage Act* to make pilot corporations subject to the legislative framework on governance and transparency recommended by the Bernier Royal Commission Report. As recommended by the Bernier Report, this should also include amendments to the *Act* to provide the Pilotage Authorities with oversight and supervisory powers over pilot corporations and their pilots.

(ii) *Pilotage Service Delivery Model*

With respect to national standards and harmonization of pilotage services, it is important to point out that the primary reason for the current differences in the way that Pilotage Authorities contract for and deliver services is not due to the existence of four Pilotage Authorities. In addition to the regional and local nature of pilotage, the differences are principally driven by the fact that the *Pilotage Act* allows pilots to choose whether to become employees of a Pilotage Authority or to organize themselves as a pilot corporation.

Where pilots choose to establish and operate as a pilot corporation, the capacity of a Pilotage Authority to manage and take final decisions on services delivery and pilotage

requirements is significantly reduced. Therefore, simply merging the four Pilotage Authorities into a single entity will not resolve this model's intrinsic flaws.

National standards and harmonization can be achieved by expanding the scope of the *General Pilotage Regulations* promulgated by Transport Canada to include measures that should be applied consistently across Canada. To ensure national consistency, the regulatory capacity of the Pilotage Authorities would then be limited to matters that are not covered by national regulations or would have to be compatible with them.

To ensure that the service delivery model best meets the needs of marine transportation and the public interest, the *Act* should be amended to empower the Pilotage Authorities to decide whether to use employee-pilots or enter into a service contract with a pilot corporation for all or part of a district. This proposal reflects the best practices and the normal way of operating for almost all public and private organizations. However, the current practice of giving pilots the right to determine whether to be employees or create a pilot corporation has been in place since 1972 and the potential impacts of this new approach should be considered by the government before implementing it.

A merger of common functions of the four Pilotage Authorities would lead to potential governance problems, a lack of clarity in the roles and responsibilities, and a loss of control for the LPA regarding the manner in which services are provided. Furthermore, as support staff interacts with operations on a daily basis, proximity helps resolve issues quickly and effectively.

However, we are in favor of a study to explore potential benefits and operational implications of a full merger between the LPA and the Great Lakes Pilotage Authority. The LPA would be in favor of such a merger provided that the resulting benefits to clients, stakeholders and pilotage services are clearly demonstrated. A merger would reduce the number of public actors involved in the management of the St. Lawrence Great Lakes system. Moreover, a full merger would avoid the above-mentioned governance challenges related to the merger of common functions, through clear reporting and accountability that would be possible in a fully merged organization.

On the other hand, we are opposed to a competitive pilotage system that would allow different private pilot groups to compete for the same work. We know of no model where this has worked well. The benefits resulting from competition can be achieved in the current system by introducing appropriate regulations that require services to be provided in a flexible, efficient and cost-effective manner, as recommended by the LPA.

In light of the above-mentioned objectives and challenges, it would be opportune to examine whether the Crown corporation model still meets the needs of the marine transportation system or whether other service delivery alternatives such as models used by port authorities, the Seaway or NAVCAN may be more appropriate.

(iii) Board of Directors Composition

Regardless of the service delivery model selected, the board of directors composition should be balanced and stakeholders should be well represented including pilots, the marine industry and independent representatives from the public.

It is also important that the Chairperson of the Board of Directors be a person with recognized governance skills and that he/she ideally understands and knows the marine industry and the context in which we work. This balanced approach to representation provides relevant expertise and grants greater credibility to the organization. It instills confidence that the opinions of persons' subject to the *Pilotage Act* and the public shall be heard and considered.

B. Regulation-Making Powers and the Regulatory Process

(i) Navigation Safety Regulations

Pilotage Authorities, where pilot corporations are operating, should be provided with clear powers to establish navigation safety regulations applicable during the provision of pilotage services. This would provide a balanced approach allowing the Authority to regulate the marine industry, that is subject to compulsory pilotage, and pilot corporations, which are private for-profit companies granted a legislative monopoly in the delivery of pilotage services.

However, the current *Pilotage Act* does not provide the LPA with clear and express powers to achieve these objectives. The current regulation-making power found in section 20 of the *Act* is concerned principally with the establishment of compulsory pilotage areas, prescribing ships subject to mandatory pilotage and the qualifications and issuance of pilotage licences and certificates.

In order to better fulfill our mandate, section 20 of the *Act* should be amended to expressly state that Pilotage Authorities may regulate navigation safety beyond requiring the use of a second pilot. This will enable the development and implementation of innovative and effective rules to achieve safety while providing efficient pilotage services at a reasonable cost.

(ii) Pilotage Practices and Procedures

The use of regulations is not always the most appropriate instrument given their nature, complexity and time required to amend them. Therefore, having other appropriate instrument choices and tools at our disposal is essential to meet our operational needs. In this regard, being provided with the same authority granted to port authorities to establish binding practices and procedures would be appropriate. More specifically, port authorities

can adopt and modify binding practices and procedures that must be followed by ships in their jurisdictional waters. This important operational tool and authority with respect to pilotage services is currently not available to the Pilotage Authorities.

This is why we also propose to include in the *Pilotage Act*, legislative authority similar to that granted to port authorities and found in subparagraph 56(1)(b) of the *Canada Marine Act*. This would authorize the LPA to establish binding practices and procedures to be followed by the pilot corporations and their pilots during the provision of pilotage services. The ability to establish binding practices and procedures would provide the LPA, which has contract pilots, with powers similar to those that can now be exercised by other Pilotage Authorities over their employee-pilots.

(iii) Prescribing the Use of Technology

The LPA is of the opinion that improving safety and efficiency can be achieved through the effective use of technology and innovation and should be a key priority and driver. Some important gains have been achieved through the acquisition of portable pilot units. However, our capacity to introduce new technologies and achieve efficiencies through their use by pilots is limited by the need to reach an agreement through service contracts with the pilot corporations.

Therefore, providing the LPA with the legislative tools or means to introduce and prescribe the use of technology, as well as ensuring that pilots acquire the requisite competencies to make the full use of such technologies, would be a welcomed tool to enhance safety and increase the efficiency of our services.

(iv) *Compliance with the Regulatory Process*

To comply with the regulation-making process and ensure that the public authority has the final say on applicable pilotage requirements, the *Act* should be amended to indicate that matters covered under the regulation-making power, and practices and procedures promulgated by Pilotage Authorities may not be included or amended through service contracts with pilot corporations or modified by arbitration decision.

The current practice of including navigation safety-related matters subject to regulation in service contracts with pilot corporations circumvents the federal regulatory-making process and inappropriately ties the hands of the LPA. Safety rules and procedures have also been imposed by arbitration decisions in cases where the LPA's decisions have been challenged by pilot corporations or have been covered in the final offer selection process imposed under the current legislation.

This usurps the Governor-in-Council's role in approving pilotage requirements and prevents the LPA in exercising its judgement in the public interest. This particular problem was recognized both by the then Minister of Transport in his letter to the LPA dated

November 15, 1999 and by the Canadian Transportation Agency in its decision of November 29, 2002 (Decision No. 645-W-2002).

> In that letter, the Minister stated, inter alia:
>
> "...The inclusion of issues subject to regulation in pilotage service contracts would make it appear that the Authority has circumvented the federal regulatory process...
>
> Provisions, such as these, which require regulatory approval should not be included in any future service contracts."
>
> Decision No. 645-W-2002

In its decision, the Canadian Transportation Agency commented that the Minister of Transport had indicated clearly that the LPA should not include any provisions in its service contracts that relate to the regulatory powers accorded to it under the *Pilotage Act.*

> "...conduct a thorough review of all contract provisions to ensure that all clauses relating to regulatory powers are removed in accordance with the Ministerial directive. The inclusion of such clauses in the service contracts is an improper delegation of the Authority's powers to the pilot corporations. In so doing, the Authority has limited itself as to actions or changes that it can make through regulatory amendments which it is mandated to do under the *Pilotage Act*." (Emphasis added)
>
> Decision No. 645-W-2002

Removing these types of provisions from existing service contracts requires the consent of pilot corporations. The LPA has been trying to address this issue by taking the position that service contracts should no longer include or be used to address matters coming within the scope of the regulation making power of the Authority.

However, this approach has been rebuffed by arbitrators and the Federal Court. The main rationale provided by the Federal Court in *Pilotes du Saint-Laurent Central Inc v Laurentian Pilotage Authority*, 2002 (FCT) 846 and relied upon in a recent arbitration decision for rejecting this approach is that the *Pilotage Act* provides Pilotage Authorities with concurrent powers to regulate and enter into commercial contracts for pilotage services. More specifically, the Court has held that the *Act* imposes no limit on the conditions or subjects that can be negotiated or imposed by arbitration decision.

We firmly believe that rules related to safety and efficiency of navigation should not be the subject of private service contract negotiations where these issues are intertwined with questions of compensation and remuneration of pilots. However, according to the Court, if

Parliament had intended to limit the scope of service contracts that could be concluded or imposed by an arbitrator, it could have done so.

This is the opportune time for Parliament to do exactly that, amend the *Pilotage Act* to clearly state that matters covered under the regulation-making powers of the Pilotage Authorities are of public order and cannot be included or modified by way of service contracts or by arbitral decision. Justice Bernier in the Report of the Royal Commission on Pilotage recognized the need for this protection and limitation.

> "... regulations made by a Pilotage Authority are subject to confirmation by the Governor in Council, a requirement which was imposed as a measure of control to prevent misuse or abuse of this important power. In support of the first recommendation – that control over regulation-making should be strengthened." (Emphasis added)
>
> Bernier Royal Commission Report, 1968, Part 1, p. 467.

The need for these protections and safeguards is self-evident: pilotage is compulsory, services are rendered on a monopoly basis, and the regime interferes with and impacts basic freedoms. As such, it should only be imposed when necessary, after consultation with impacted stakeholders, and only if it is in the public interest to do so.

This approach also ensures that the final say on what are the applicable rules and requirements for pilotage rests with the public authority and the executive government that are responsible to Parliament, after appropriate consultations with stakeholders, and not with privately incorporated for profit pilot corporations. That the final decision on determining compulsory pilotage requirements should rest with the Pilotage Authorities was clearly recognized by the Bernier Report.

> "In Districts where the pilotage service is considered essential public services, i.e., where the existence of the service and its adequacy and efficiency are matters of national concern, it is considered that the service should be fully controlled by the State. A vital national interest should not be a responsibility of third parties over whom the Crown has no control and who are primarily motivated by their own private interests and, even less, of those who provide services, i.e., the pilots themselves (because of the basic conflict of interests this would create). (...) There is also the additional reason that these private parties are not responsible to Parliament." (Emphasis added)
>
> Bernier Royal Commission Report, 1968, Part 1, p. 498.

C. In-house Pilotage Expertise

It is essential for the LPA to have access to objective in-house pilotage expertise in order to fulfill its mandate, including with respect to the development of credible and effective regulations, procedures and policies to ensure a proper balance between navigation safety and the efficient delivery of pilotage services. Whether related to questions of double pilotage, safe draught levels or restrictions to night-time departures, access to objective in-house pilotage expertise is critically important for the LPA to ensure good decision-making and the protection of the public interest.

However, the *Pilotage Act* prohibits Pilotage Authorities, where pilot corporations are operating, from hiring their own licensed employee-pilots for the same sector served by the pilot corporations. The LPA therefore finds itself having to rely exclusively on pilotage advice and expertise from pilotage corporations. This is far from ideal, given that pilot corporations are distinct organizations from the LPA with their own interests and priorities which are not always aligned with those of the LPA. Moreover, they are under no obligation to provide their expertise to the LPA.

The Bernier Report spoke clearly about the existence of this conflict of interest and concluded that Pilotage Authorities should therefore have the final say on pilotage requirements so as to ensure that decisions reflect the public interest. This is intended to avoid decisions being taken by pilot corporations who are in a conflict of interest position given that an increase or decrease in pilotage requirements has a direct impact on their income.

> "Since they are the expert on pilotage, they must be consulted and their assistance is necessary, but in view of the possible conflict of interests, responsibility for final decisions must rest with the State."
>
> Bernier Royal Commission Report, 1968, Part 1, p. 499.

In-house pilotage expertise would also make it possible for the LPA to develop and objectively test existing and new technologies and appropriately prescribe and regulate their use by pilots. This in-house pilotage expertise would also allow us to better defend our regulatory proposals or the exercise of our discretion when challenged by pilot corporations or the marine industry. The current lack of in-house pilotage expertise is a significant disadvantage and also deprives our Authority of expertise required before the courts and arbitrators.

Acquiring our own in-house pilotage expertise can be achieved by amending the *Act* to allow the LPA to hire a limited number of licensed employee-pilots or apprentice-pilots

(maximum of two per district) for the same districts where pilot corporations currently operate. To prevent creating conditions of competition, employee-pilots of the Authority could be integrated as part of a joint service under a single rotation system or work would be divided under a formula provided by law.

This approach has been used in the United States in compulsory pilotage areas on a boundary between states where two or more pilot groups operate a service. Moreover, this type of sharing and coordination of pilotage services between different pilot groups also takes place between pilotage services provided by the Great Lakes Pilotage Authority and the US Coast Guard on the Great Lakes.

D. Incident and Accident Reviews

The hallmark of a modern and responsive pilotage system also includes the ability to effectively review events leading up to an incident or accident and taking appropriate measures to address shortcomings to reduce the risk of reoccurrence. Waiting six months to a year for a Transportation Safety Board (TSB) report is not an option given that the pilot implicated in an accident can return to active duty within a few days.

Currently the LPA has very few legislative tools and powers at its disposal to properly review and address accidents to determine if a pilot involved in an accident is fit or competent to return to active duty. This problem is amplified by the fact that pilots in our region are not our employees and that our authority to implement an effective review mechanism has been challenged by CPSLC.

For these reasons, the legislation should be amended to expressly mandate and authorize the LPA to conduct reviews of incidents or accidents in its territory prior to a pilot being permitted to return to active duty. The legislation should also expressly authorize the Pilotage Authority, when appropriate, to require that a pilot undergo mandatory training and re-evaluation, prior to returning to active duty.

The powers of suspension set out in the *Pilotage Act* also need to be modified to expressly allow the ongoing suspension of a pilot pending a hearing and decision of the Board of Directors. The *Act*'s current wording suggests that the initial 15 days suspension can only be extended after a hearing. This creates a gap in the law that could result in an unfit pilot returning to active duty pending a hearing and a decision taking place and potentially endangering navigation safety.

E. Review of Pilotage Requirements

(i) Compulsory Pilotage Areas

The LPA regularly monitors and assesses whether pilotage areas or requirements need to be updated to reflect current realities. However, the simple passage of time, as suggested by the CTA Report, should not be the sole factor in determining whether to conduct formal reviews. Given the scope and size of our region and costs associated with the conduct of such reviews, this would not be a good use of limited resources.

However, a review should be initiated when there are significant changes in certain key parameters such as the volume and nature of marine traffic, or if port facilities are constructed or modified. Other factors that should trigger a review include the availability of new technologies, or where the Authority decides on its own initiative or at the request of stakeholders to initiate a review.

In this regard, the LPA is proactive and has undertaken a number of risk assessments pursuant to the Pilotage Risk Assessment Methodology (PRMM) developed and approved by Transport Canada. For example, in partnership with other stakeholders, a risk assessment on Post Panamax vessels was conducted which led to the removal of certain restrictions allowing ships of up to 44 meters in beam and 300 in length to navigate up to the Port of Montreal.

More recently, a review of the safe duration of a voyage by a single pilot was conducted, leading to a number of recommendations, some of which have been implemented. Following the Tanker Safety Report identifying the Golf of the St. Lawrence as one of the key areas most at risk, we announced the launch of a three-phase risk assessment starting with the Ports of Sept Iles, Cartier, Baie-Comeau and Havre St-Pierre.

It is our intention to continue to be proactive and identify opportunities to conduct reviews, when appropriate, to ensure that current requirements meet both the needs of safety and the provision of efficient pilotage services.

(ii) Double Pilotage and Navigation Restrictions

With respect to advances in technology, we believe that the existing technological tools are neither sufficiently developed nor will they be in the foreseeable future to reduce the need for compulsory pilotage in our region. However, a reduction of double pilotage requirements and restrictions on night-time navigation could be possible given current technological developments. In this regard, the issue of double pilotage can be reviewed based on vessels types, time of year and prevailing conditions.

A targeted assessment like the one mentioned above would be appropriate due to the arrival of new Portable Pilot Units (PPU) & Rate of Turn (ROT) technology. The captain's and

bridge team experience may also be relevant factors. This could also lead to the assessment of mitigation measures other than the placement of a second pilot on board a vessel. Such an approach can lead to innovative solutions which could increase efficiency, without compromising safety.

Lastly, a judicious and systemic management of marine traffic for the entire St. Lawrence River corridor would minimize delays and would result in an optimal flow of vessels. This could be another risk mitigation measure that could potentially reduce double pilotage and restrictions to night-time departures.

(iii) *Accessibility to Pilotage Certificates and Exemptions*

Generally, the LPA believes that a standardized approach with regard to the issuance of pilotage certificates is desirable, but specific details should be left to each Authority, given wide variability of navigation conditions and the nature of marine traffic in each region. Requirements for acquiring and maintaining a certificate should take local conditions into consideration.

Moreover, the certification process should be made more accessible and transparent through publication of guidelines and adoption of training and audit programs developed and implemented by Pilotage Authorities. The use of simulators to meet the minimum number of trips requirement and to test candidates' competency or certificate holders' should also be explored.

To ensure that candidates possess the requisite competencies, that the assessment process is objective and fosters public confidence, it is essential that the assessment of candidates be performed by the Public Authority as is currently the case.

With respect to waivers, the LPA is satisfied with the criteria and requirements set out in section 5 of the *Laurentian Pilotage Authority Regulations*. However, when a Pilotage Authority determines that all regulatory requirements for issuing a waiver have been met, everyone including the pilot corporations and licensed pilots should respect this decision.

Measures taken in violation of the *Act* to prevent or impede the issuance or use of waivers should be subject to disciplinary or administrative penalties.

(iv) *Pilotage Risk Management Methodology (PRMM) and Pilotage in the Arctic*

Given that the last review of the Pilotage Risk Management Methodology was done almost 10 years ago, a review and update of the methodology should be undertaken. The current process is long, cumbersome and very costly. Alternatives should be developed to deal with situations where issues may be less complex or where a quicker and less costly process might be appropriate. For example, we should consider the use of simulators to assess certain risk scenarios.

With respect to pilotage in the Arctic, traffic projections suggest that the number of vessels is growing but it is unlikely in the short and medium term that the Northwest Passage will become a very busy and reliable route. In part, this is due to the wide variability of conditions from one year to the next. Nevertheless, consideration should be given to conducting a PRMM in current high-risk areas.

F. Efficient, Timely and Flexible Tariff-Setting Mechanism

(i) Tariff-Setting Process

In the early 1990s, the *Pilotage Act* was amended to end parliamentary appropriations (funding) and require the Pilotage Authorities to be financially self-sufficient. This signaled the beginning of the obligation of Pilotage Authorities to operate according to a business-like model.

However, the legislation was not adequately amended at the time and failed to include a flexible and efficient tariff-setting system to allow the Authorities to effectively deal with quickly changing commercial, economic and traffic situations. Authorities rely on projections of future traffic levels and corresponding revenue and expenses to determine appropriate revenues and tariff levels to maintain their financial self-sufficiency. However, deadlines for submitting corporate plans and tariff proposals do not reflect business practices and hinders our ability to plan more accurately on the basis of actual market conditions.

From beginning to end, the tariff approval process can easily take 8 months or more. The tariff approval process is complex and involves multiple parties including Transport Canada, the Department of Justice, the Treasury Board Secretariat and ultimately the Governor in Council. Moreover, tariffs, once approved, become enshrined in regulation and cannot be adjusted downward (without undertaking the regulatory process again) to provide rebates or reductions to industry in situations where the Authorities have met their financial targets earlier than anticipated. Nor does the legislation allow special arrangements in terms of tariffs to help attract new business, or assist industry in remaining or becoming more competitive.

Adopting a tariff setting process similar to that applicable to port authorities under the *Canada Marine Act* would address many of the above concerns and makes it possible to implement tariff changes within 60 days rather than 8 months. Clients would be notified of proposed tariff changes using the same mechanisms set out in the *Canada Marine Act*, including through newspaper advertisements, letter or electronically. However, the current grounds of appeal for challenging tariffs found in the *Pilotage Act* should be retained.

(ii) Role of the Canadian Transportation Agency and Arbitrators

In 2002, an arbitrator awarded a large fee increase to the CPSLC. To help pay for this increase the LPA requested a tariff increase. The Canadian Transportation Agency turned down the request thereby making it impossible at the time for the LPA to maintain its financial self-sufficiency. As a result, the LPA was on the verge of bankruptcy and resulted in the intervention of the Governor in Council to overturn the decision of the Agency.

To avoid a reoccurrence of the situation in 2002, it is essential that the *Act* be modified so as to require arbitrators to take into account the Pilotage Authority's mission, its business plan, and the requirement for an Authority to be financially self-sufficient. As an alternative, we would propose that the mandate of the Canadian Transportation Agency be expanded to allow it to oversee both the final offer selection arbitration and the tariff setting process to ensure consistency in decision-making. The Agency, under this new scheme, would be required to take into account the mission of the Pilotage Authority, its business plan, the requirement that an Authority be financially self-sufficient, as well as arbitration decisions.

The above approach takes into account that the final offer arbitration process and the tariff setting mechanism involves entities that are granted a monopoly under the *Act* and is not simply a dispute or matter affecting two private parties. It is therefore appropriate for the decision-maker to consider the legislative objectives set out in the *Act* and the need to protect public interest.

More broadly, disputes between the LPA and a pilot corporation regarding the interpretation of existing service contracts are subject to the dispute resolution mechanism contained in the service contracts themselves. This process requires the parties to meet to try to resolve the problem and, if the dispute is not resolved, it is submitted to arbitration and governed by the *Commercial Arbitration Act*.

Disputes before an arbitrator are treated as purely commercial and private between the parties, although the manner in which the service contract is interpreted and implemented may have significant consequences for those subjected to compulsory pilotage. Despite the potential impacts on the marine industry, stakeholders are not heard in the arbitration process, and legislative objectives and the public interest are generally not treated as relevant factors in the arbitration.

As an alternative to the above dispute resolution mechanism, consideration should be given to granting the Canadian Transportation Agency a legislative mandate to mediate and, ultimately, arbitrate disputes regarding the interpretation of the service contracts between the LPA and pilot corporations. This corresponds to their mandate to monitor monopolies in the transportation sector and to ensure that legislative objectives and public interest are taken into account in the resolution of disputes.

G. Modern Compliance and Enforcement Powers

Ensuring that the pilotage legislation and regulations are respected is critical to achieving our stated objectives and mission of providing, for safety of navigation, an efficient pilotage service. In our opinion, the current compliance and enforcement provisions are inadequate and do not reflect modern best practices.

More specifically, enforcement tools under the *Pilotage Act* are limited to criminal proceedings for the imposition, on summary conviction, of small fines ranging from a maximum of $5,000 to $10,000. No other compliance or enforcement tool is available under the *Act*. Legislation should be modernized to include other tools, including the provision of modern compliance and enforcement powers such as Administrative Monetary Penalties (AMPs) to the Pilotage Authorities.

Similarly, the Pilotage Authorities should be provided with the ability to conduct inspections and investigations that will let them build a case for either recommending or imposing penalties.

Conclusion

Modernizing and strengthening the *Pilotage Act* and its regulations is key to ensuring that the LPA and our pilotage system are equipped with the necessary powers and tools to deal with operational challenges related to the safety and efficiency of navigation, and can continue to contribute to the competitiveness of the marine transportation system.

As highlighted above, it is now the opportune time to make legislative changes to the *Pilotage Act*. The proposed amendments will provide for appropriate oversight of pilot corporations and ensure that safety rules, practices and procedures related to the provision of pilotage services are subject to the rigours of the regulation-making process. In addition, clear legislative powers to conduct accident reviews, and when appropriate require mandatory training and re-evaluation of pilots, will also provide the LPA with essential new tools in meeting our safety mandate.

Modifying the current tariff setting process with one that is more efficient and flexible, and ensuring that the LPA is equipped with modern compliance and enforcement tools is also essential to achieving our stated objectives of safety and efficiency of our pilotage services.

These recommendations, if implemented, will make the pilotage regime fully accountable, transparent, and ensure that decisions and pilotage requirements reflect the public interest.

Fulvio Fracassi,
Chief Executive Officer