



BY EMAIL AND BY MAIL

December 11th, 2014

The Honourable David L. Emerson P.C.
Chairman
Canada Transportation Act Review Secretariat
350 Albert Street, Suite 330
Ottawa (Ontario)
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SUBJECT: Canada Transportation Act Review

Mr. Chairman,

The pilotage authorities of Canada are pleased to submit the enclosed joint submission to assist the panel in its important deliberations on the above-noted matter. Our joint submission highlights some of the key challenges facing the pilotage authorities, proposes solutions that we believe will further strengthen the pilotage system in Canada and improve the efficiency and safety of the marine transportation system.

We remain at your disposal to provide any further information that you may require on this matter.

Yours sincerely,

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Submission on the Canada Transportation Act Review

Present to

The Honorable David L. Emerson, C.P.

Chairman

Canada Transportation Act Review Secretariat

December 2014



Pilotage Authorities Joint Submission to the Canada Transportation Act Review Panel

This submission is respectfully submitted to the Canada Transportation Act Review Panel as a joint document prepared by the four Pilotage Authorities established by the *Pilotage Act* in 1972. For ease of reference, the Authorities shall be referred to as the PPA (Pacific Pilotage Authority), the GLPA (Great Lakes Pilotage Authority), the LPA (Laurentian Pilotage Authority), and the APA (Atlantic Pilotage Authority).

Canada's many waterways and the diversity of its coastlines and coastal communities make expert pilotage a necessity both in terms of safety and efficiency of the marine transportation system. For this reason, most commercial navigation in Canada is subject to obligatory pilotage. Therefore, a review considering ways to improve the efficiency and safety of the current marine transportation system must include, as a critical component of that analysis, the pilotage system and how it can be improved to better support economic growth and prosperity, while at the same time ensuring the safety of navigation.

To assist the panel in its deliberations on this important question, we have set out below, relevant background information related to Pilotage, highlighted some of the key challenges faced by the Authorities and proposed solutions that will further strengthen the pilotage system in Canada, and better contribute to the efficiency and safety of the marine transportation system.

Background

The *Pilotage Act* proclaimed in February 1972 established the four pilotage authorities to operate within defined Canadian waters. The object of each Authority under Section 18 of the *Act* is "to establish, operate, maintain and administer in the interests of safety an efficient pilotage service" within their respective areas of jurisdiction, which include the Pacific, Great Lakes, Laurentian and Atlantic regions. Each Authority is a Federal Crown Corporation and is covered under the *Financial Administration Act*.

The APA provides harbour or port pilotage throughout seventeen compulsory ports and many non-compulsory areas within the Atlantic Region. The LPA, GLPA, PPA provide both long-distance pilotage services as well as harbour/port pilotage services covering their respective regions. For the PPA, LPA and APA tanker traffic represents a significant component of pilot missions which is expected to increase.

The APA and GLPA have employee pilots who operate under collective agreements. For these two Authorities, the employee-pilot salaries represent a significant fixed cost

to be met in the event of a downturn in business. In order to attract and retain pilots, and to meet obligations under collective agreements, it is difficult to quickly reduce pilot numbers when there is a downturn. This can leave these Authorities vulnerable to downturns in business.

As permitted under the Act, all of the pilots in the LPA region have selected to be contractors, while the PPA has the great majority of their pilots as contractors. In an area where a majority of licensed pilots in a region elect not to become employees, the Authorities are prohibited from employing pilots. This raises unique and added challenges for these Authorities in terms of achieving their mandate, given that a management right to direct how the work is performed, dealing with under-performance, or other service or safety related issues does not apply to contract pilots.

To carry out their responsibilities, each Authority has been accorded certain limited powers under the *Pilotage Act*. This includes the ability under section 20 to make regulations, with the approval of the Governor-in-Council, covering matters such as: the establishment of compulsory pilotage areas; prescribing the ships subject to compulsory pilotage; pre-arrival notice requirements for ships; the establishment and emission of pilot licenses and certificates; as well as setting out the qualifications required to obtain a pilot license or certificate. In addition to these regulatory powers, section 33 of the *Act* also allows the Authorities to prescribe tariff regulations that are fair and reasonable and permits an Authority to operate on a self-sustaining financial basis.

Pilotage Act Deficiencies

The current *Pilotage Act* was introduced in 1972 and reflected most of the recommendations drawn from the Royal Commission on Pilotage undertaken by Judge Yves Bernier. The Royal Commission was set up in 1962 with its final recommendations being made in 1968 followed by the establishment of the Pilotage Act in 1972. The current *Pilotage Act* has seen some minor modifications over the years but has remained generally unchanged in forty years. In the same period, transportation in Canada and more specifically, shipping has changed significantly.

Budgetary restraints in the early 1990s required the Government of Canada to review all of its systems of providing services and in this case it decided that all Canadian Pilotage Authorities had to be financially self-sufficient and operate in a more transparent and commercial fashion. The Government amended the *Pilotage Act* in 1998 to stop all Parliamentary Appropriations to the Authorities, signaling to the Authorities and the users of the system that commercial and private industry practices should be adopted in the delivery of pilotage services in Canada.

In most commercial operations, tariffs may be changed in less than 30 days when conditions require changes. However, the legislation was not adequately amended and failed to include a nimble and efficient tariff setting system to allow the Authorities

to effectively deal with quickly changing commercial, economic and traffic situations. From beginning to end, the tariff approval process can easily take 8 months or more. The amount and complexity of the paperwork, the numerous steps involved in the approval process can be overwhelming and implicates the involvement of Transport Canada, the Department of Justice, the Treasury Board Secretariat and ultimately the Governor in Council. Delays can also occur when federal elections are to be held, or when higher priority regulatory changes are being worked on.

The Pilotage Authorities are particularly susceptible to traffic swings, sometimes related to world or national economies, and sometimes related to local industry that require timely adjustment to tariffs. At the GLPA, there have been traffic swings of over 10% in 18 of the last 30 years. At the APA, traffic has declined by 33% in the past ten years. In one recent tariff process (2013), the GLPA had to wait to implement a tariff increase previously approved by all the users, foregoing the collection of over \$469,000. This loss in revenue required the GLPA to increase its tariff the following year by 2% to be able to continue to balance its financial position.

The 2011 and 2012 tariff proposals for the GLPA received Governor in Council approval in late June of the year, four months after publication in Part I of the Canada Gazette. This delay for each year totaled \$700,000 of lost revenues. It must be understood that GLPA had received acceptance from 100% of the users for these increases and no objections were filed.

In the last three years, the APA has had a loss in revenue of \$328,000 due to delays in tariff implementation. For each year, the APA had consulted widely with its customers and no objections were filed with the CTA. Likewise, the PPA has experienced delays in the publication of its tariff with subsequent monetary losses \$260,000 as a result of those delays even though it had letters of support from industry for the requested tariff approval. The LPA has also experienced substantial delays in the approval of its tariffs. Most recently the tariff approval took over 8 months and resulted in a loss of \$ 225,000 for 2014 alone.

The delays in implementing the tariff changes are systemic, result in inefficiencies, and create obstacles to the proper financial and operational management of the Pilotage Authorities. Moreover, the tariff once approved becomes a 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.

Adapting the regulatory process for pilotage authorities' tariff changes to a process similar to the port authorities' framework would yield important benefits for the Authorities and the maritime industry. The Authorities could implement tariff changes within 60 days rather than 8 months, and make tariff adjustments when appropriate. In addition, such a framework would allow the pilotage authorities to offer rebates,

incentives or establish special arrangements to attract new business and assist in the competitiveness of our respective regions and the marine transportation system.

It is important to note that the above proposal for a timelier and more flexible tariff implementation process would not, in anyway, remove the safeguards and checks and balances intended to protect clients and the public interest. This would include the continued ability of industry or stakeholders to file objections with respect to any tariff increase or modification before the Canadian Transportation Agency.

In light of the apparent costly inefficiency, rigidity and other shortcomings of the tariff approval process under the *Pilotage Act*, the Pilotage Authorities would recommend a change to Section 33, 34, and 35 of the *Pilotage Act* to match the tariff approval process found in Sections 49 to 52 of the *Canada Marine Act*.

In addition to the tariff approval process, the *Pilotage Act* suffers from other major deficiencies that need to be addressed to better enable the Pilotage Authorities to fully contribute to the efficiency and safety of the marine transportation system. In this regard, a key shortcoming of the legislation is the lack of tools and powers provided to the Pilotage Authorities to effectively deal with and manage the work of non-employee contract pilots. As a result, there is no effective means to ensure that the work of contract pilots is carried out in accordance with pilotage authorities established policies, procedures and practices that meet quality standards both in terms of safety and efficiency. Attempts to include or address these issues and others in an adequate way in service contracts or stand alone agreements can be and has been rebuffed by pilot corporations. This has occurred on numerous occasions in the LPA region. This leaves few or no options to the Pilotage Authorities in question given the monopoly accorded to the pilot corporations.

The proposed solution is to provide new powers in the *Pilotage Act* authorizing the Pilotage Authorities with contract pilots to establish mandatory policies, procedures and practices and clarify existing regulations making authorities relating to the setting of safety standards applicable during the provision of pilotage services. This would provide the Pilotage Authorities with the necessary tools at their disposal to better manage the work of contract pilots and better contribute to the safety and efficiency of the marine transportation system, without having to change the non-employee or monopoly status of contract pilots. The LPA will be addressing this issue and other short comings in the legislation related to incident and accident reviews, training and evaluation of pilots, the role of arbitrators and the compliance provisions of the Act along with proposed solutions in its submission to this panel.

Conclusion

Pilotage in Canada is a corner stone of the marine transportation system and plays a critical role in contributing to the safety and efficiency of navigation and the protection of the environment. The *Pilotage Act* has been in place for over 40 years and we must seize this opportunity to modernize the legislation. This can be achieved by providing

the Pilotage Authorities with the needed tools to allow them to fully contribute to the safety and competitiveness of the marine transportation system. The proposed changes to the tariff setting mechanism will allow the Authorities to operate efficiently in a commercial environment, will allow the timely modification of tariffs to address both its needs and those of its clients, and permit the establishment of special arrangements to assist in attracting new business, thereby contributing to economic development and prosperity.

However, modifying the tariff approval process alone will not achieve the desired result. Addressing the other shortcomings of the legislation including the lack of tools and authorities available to ensure that the work of contract pilots is carried out in accordance with established policies, procedures and practices that meet quality standards both in terms of safety and efficiency must be a critical component of any proposed solution.

As discussed earlier, the type of pilotage provided by each of the Authorities and the nature of their relationship with the pilots has evolved differently in the four pilotage regions. All four Authorities are fully in support of amending the tariff setting regime as discussed herein, and support the need to amend the *Pilotage Act* to address the other substantive issues that relate to the contractual/employee pilot dichotomy.

We remain at your disposal to respond to any questions the panel may have on this submission or any other pilotage related matter.



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APPENDIX I

The schedule below is contained in the *Pilotage Act* and outlines the geographical area for each of the Pilotage Authorities.

SCHEDULE (*Section 3*)

Name: *Atlantic Pilotage Authority*
Head Office: Halifax, Nova Scotia
Region: All Canadian waters in and around the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, including the waters of Chaleur Bay in the Province of Quebec, south of Cap d'Espoir in latitude 48 degrees 25 minutes 08 seconds N., longitude 64 degrees 19 minutes 06 seconds W.

Name: *Laurentian Pilotage Authority*
Head Office: Montreal, Quebec
Region: All Canadian waters in and around the Province of Quebec, north of the northern entrance to St. Lambert Lock, except the waters of Chaleur Bay, south of Cap d'Espoir in latitude 48 degrees 25 minutes 08 seconds N., longitude 64 degrees 19 minutes 06 seconds W.

Name: *Great Lakes Pilotage Authority*
Head Office: Cornwall, Ontario
Region: All Canadian waters in the Province of Quebec, south of the northern entrance to St. Lambert Lock.
 All Canadian waters in and around the Provinces of Ontario and Manitoba.

Name: *Pacific Pilotage Authority*
Head Office: Vancouver, British Columbia
Region: All Canadian waters in and around the Province of British Columbia.

APPENDIX II

PROPOSED WORDING TO REPLACE SECTIONS 33 TO 35 OF THE PILOTAGE ACT

TARIFFS

Fixing of tariffs

33. (1) An Authority may fix tariffs to be paid to that Authority for pilotage and, without restricting the generality of the foregoing, may fix tariffs of pilotage charges for

- (a) the cancellation of a request for the service of a pilot;
- (b) the carriage of a pilot on a ship beyond the area for which the service of the pilot was engaged;
- (c) the detention of a pilot on board ship or otherwise;
- (d) travel and other expenses incurred by a pilot that are directly associated with an assignment to pilot a ship;
- (e) the use of a pilot boat;
- (f) the use of telecommunication, electronic, and portable navigation equipment; and
- (g) the service of a licensed pilot on board ship pursuant to a regulation made under paragraph 20(1)(f) requiring a licensed pilot to be on board.

Idem

(2) An Authority shall be deemed to have fixed a pilotage charge if it prescribes a manner for determining a pilotage charge.

Interest

(3) An Authority may fix the interest rate that it charges on overdue accounts.

Requirements to be met by tariffs

(4) The tariffs of pilotage charges prescribed by an Authority under subsection (1) shall be fixed at a level that permits the Authority to operate on a self-sustaining financial basis and shall be fair and reasonable.

Application to Crown

(5) The tariffs and interest rate may be made binding on Her Majesty in right of Canada or a province.

Tariffs continued

(6) A tariff that is in force in respect of a port or area on the coming into force of this section continues in force for a period ending on the date on which it is replaced by a tariff fixed under subsection (1).

Discrimination among users

(7) An authority shall not unjustly discriminate among users or classes of users of pilotage services, give an undue or unreasonable preference to any user or class of user or subject any user or class of user to an undue or unreasonable disadvantage.

Exception re commercially acceptable discrimination

(8) It is not unjust discrimination and it is not an undue nor an unreasonable preference or disadvantage for an authority to differentiate among users or classes of users on the basis of the volume of traffic provided or on any other basis that is generally commercially accepted.

Notice of new or revised tariffs

34. (1) Where an Authority proposes to fix a new tariff or revise an existing tariff for pilotage, it shall give notice of the proposal in accordance with this section and no tariff shall come into force before the expiration of sixty days after the last of the notices is given.

Contents of notice

(2) The notice shall

(a) set out the particulars of the proposal;

(b) specify that a document containing more details about the proposal may be obtained from the Authority on request; and

(c) specify that persons interested in making representations in writing to the Authority about the proposal may do so by writing to the address set out in the notice.

How notice is to be given

(3) The Authority shall

(a) have the notice published in a major newspaper published or distributed in the place where the pilotage services are performed;

(b) send, by mail or by electronic means, a copy of the notice to

(i) organizations whose members will, in the opinion of the Authority, be affected by the new or revised tariff, and

(ii) every user and other person who has, at least ten days before, notified the Authority of a desire to receive notices or announcements under this Part; and

(c) post an electronic version of the notice in a location that is generally accessible to persons who have access to what is commonly referred to as the Internet.

Exception

(4) The notice required by this section does not apply to any tariff accepted in a contract under section 35.

Complaints

(5) Any interested person may, within 30 days of publication of the notice per section 34(1), file an objection with the Canadian Transportation Agency that the proposed tariff of pilotage charges is prejudicial to the public interest, including, without limiting the generality thereof, the public interest that is consistent with the national transportation policy set out in section 5 of the Canada Transportation Act. The Canadian Transportation Agency shall consider the complaint without delay and report its findings to the Authority, and the Authority shall govern itself accordingly.

Governor in Council may vary or rescind

(6) Section 40 of the Canada Transportation Act applies, with such modifications as the circumstances require, to every report of the Canadian Transportation Agency made under subsection (1) as if the report were a decision made pursuant to that Act.

Tariff by contract

35. An Authority may enter into an agreement, that the parties may agree to keep confidential, fixing an amount to be paid to the Authority in respect of the persons and things set out in paragraphs 33(1)(a) to (g) that is different from the tariffs fixed under those paragraphs.