



PART IV



CANADA

report of the  
royal commission  
on PILOTAGE

*Study of Canadian pilotage*

*Gulf and  
River St. Lawrence*

*report of the royal commission on PILOTAGE*

NOTICE TO THE PUBLIC

PART IV

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CANADA

ROYAL COMMISSION ON PILOTAGE

*To His Excellency*

THE GOVERNOR GENERAL OF CANADA

*May it Please Your Excellency*

We, the Commissioners appointed pursuant to Order in Council dated 1st November 1962, P.C. 1962-1575, to inquire into and report upon the problems of marine pilotage in Canada and to make recommendations concerning the matters more specifically set forth in the said Order in Council: Beg to submit the following Report.

*Jus Bernier*

CHAIRMAN

*Robert K. Smith*

*J. J. Zemanick*

*J. W. Macdonald*

SECRETARY

June 10, 1970

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\*Capt. J. A. Scott served as Nautical Adviser to the Commission from March 1, 1963 until his accidental death November 29, 1963.

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## INTRODUCTION

Part I of the Report is a study of the present state of pilotage legislation in Canada and contains the Commission's Recommendations of a general character. Parts II, III, IV and V of the Report are complementary to Part I and should be read in conjunction with it. The plan of the full Report is outlined in the General Introduction, Part I, page xxv.

Part IV reports on the pilotage situation on the St. Lawrence River as far as Cornwall, and appraises the requirement for pilotage and the adequacy of the existing organization for the provision of pilotage services throughout this first part of the waterway formed by the St. Lawrence River and the Great Lakes Basin. The plan of reporting is basically the same as in Parts II and III, i.e., one section for each Pilotage District or separate region. However, by contrast with the situation in other Districts where each pilotage service is complete by itself in that it brings incoming ships to its final destination, the St. Lawrence River Districts provide one continuous pilotage service divided for organizational purposes into contiguous sectors. Hence, it became necessary to locate the Recommendations in a separate section at the end of Part IV (Section Five). Various remarks, comments and proposals suggest how various needs can be met in consonance with the Commission's General Recommendations.

The length of the section dealing with the Quebec Pilotage District is due to the concurrence of a number of factors. The pilotage service in this District is the most ancient in Canada and has always been both the most involved and the most important. Up to the advent of railway connections with the Maritime Provinces, the St. Lawrence River was the only practical access route to the populated areas of central and eastern Canada. To realize the importance of the service, it suffices to mention that in 1860 there were 280 licensed pilots in what is now the District of Quebec. The need for organizational changes to meet new requirements was always first felt in Quebec where the problems were most acute. It was frequently not appreciated that, on account of the number of pilots, the necessity for pilotage services and the length of pilotage trips, the organization of the service in that sector

was always far in advance of the times, which made it a testing ground for new features that were later adopted elsewhere, *inter alia*, controlled provision of services, pooling of pilots' earnings, pilots' associations and corporations, apprenticeship and winter navigation.

Pilotage developed in much the same way in the Montreal District and, when the Cornwall District established its organization, it was much influenced (often wrongly) by the existing situation in the Quebec and Montreal Districts. Therefore, these subject matters were studied in detail in Section One when they were first encountered; cross references were made when they appeared again in subsequent Sections.

It is also in the Quebec and Montreal Districts that the most extensive and comprehensive evidence was adduced at the Commission's hearings by the various groups of shipowners, by the Federation of the St. Lawrence Pilots and by a number of dissident pilots.

In Part IV, the study of the By-law provisions was made as if the 1969 amendment to the C.S.A., which validates *ab initio* the ultra vires regulations, had not been enacted, because this provision of the amendment is essentially of a temporary nature (17-18 Eliz. II c. 53 sec. 7). The situation remains, therefore, basically the same, especially since the amendment did not modify the regulation-making powers of the Pilotage Authority but left them as defined in Part VI of the Act. Hence, until a new Act is enacted, it is powerless to modify these regulations that have been temporarily legalized.

The reader's attention is drawn to two subject-matters which are of general importance and to which an appropriate cross-reference should be made in Part I:

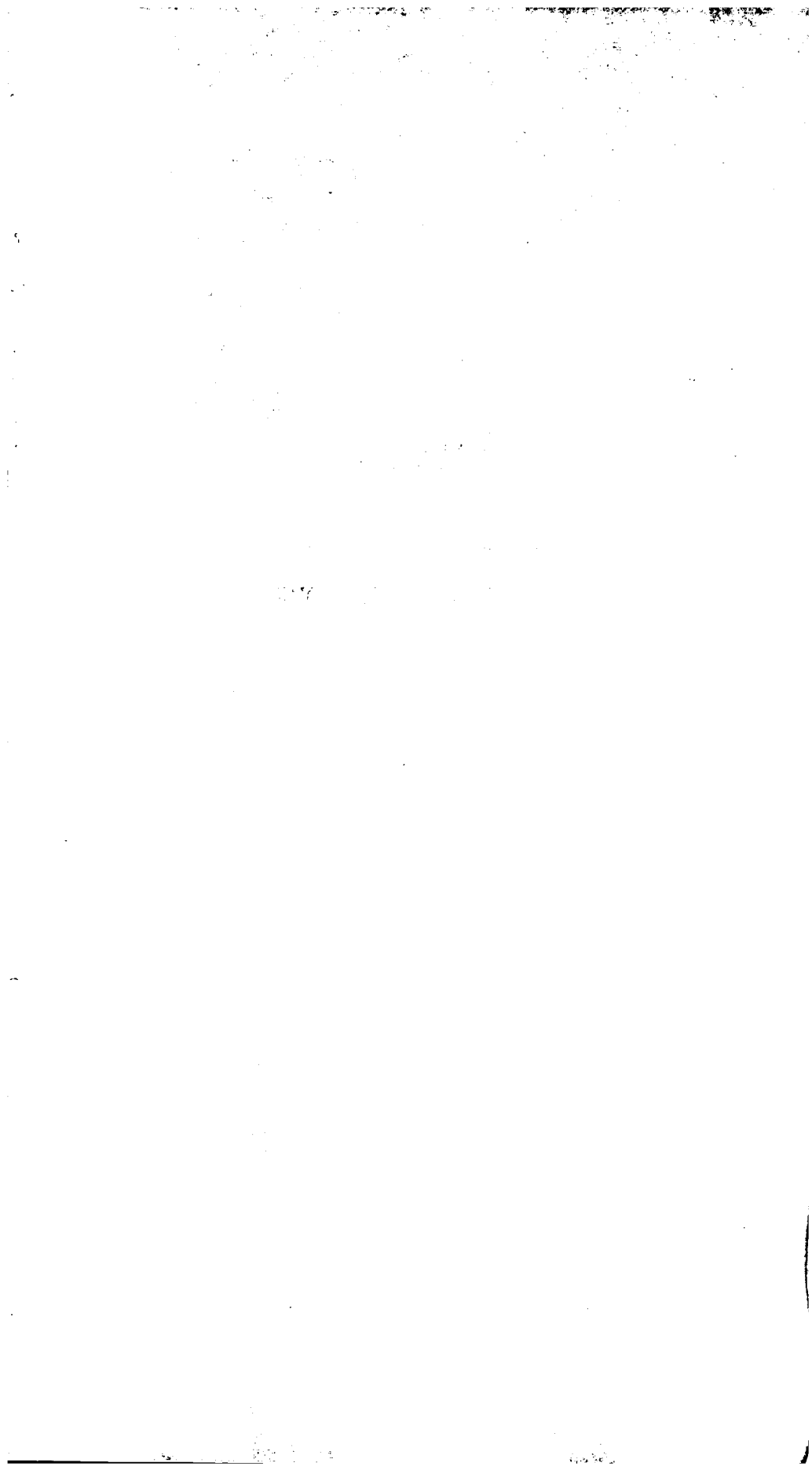
- (a) The Supreme Court of Canada in the case of *Baldwin v. Pouliot* (1969 S.C.R. 577) upheld the validity of the By-law provision which made it a regulation offence for a pilot to consume intoxicating liquor or a narcotic drug while on duty or about to go on duty (sec. 19, Quebec District By-law). This decision, therefore, negates the views expressed by this Commission on the matter in Part I, p. 395. However, the Commission's comments as to the desirability of such a drastic measure are still valid. In this case an opportunity was missed to have the basic issue passed on by the Supreme Court of Canada, i.e., the power under the Canada Shipping Act of the Pilotage Authority to act as a penal tribunal for discipline of pilots. Unfortunately, this pertinent issue was not raised by the plaintiff (Part I, pp. 373-402).
- (b) The grading of pilots is a necessary feature of pilotage organization in confined waters whenever navigational difficulties are extensive. Hence, in Part I, p. 263, where the subject-matter is introduced, a

*Introduction*

cross-reference should be made to this part of the Report where experience with the system is analyzed (pp. 251 and ff. and pp. 673 and ff.) and to Recommendation No. 7.

As far as reasonably practicable, the pertinent statistics have been brought up to date and organizational changes since the Commission's hearings have been included.



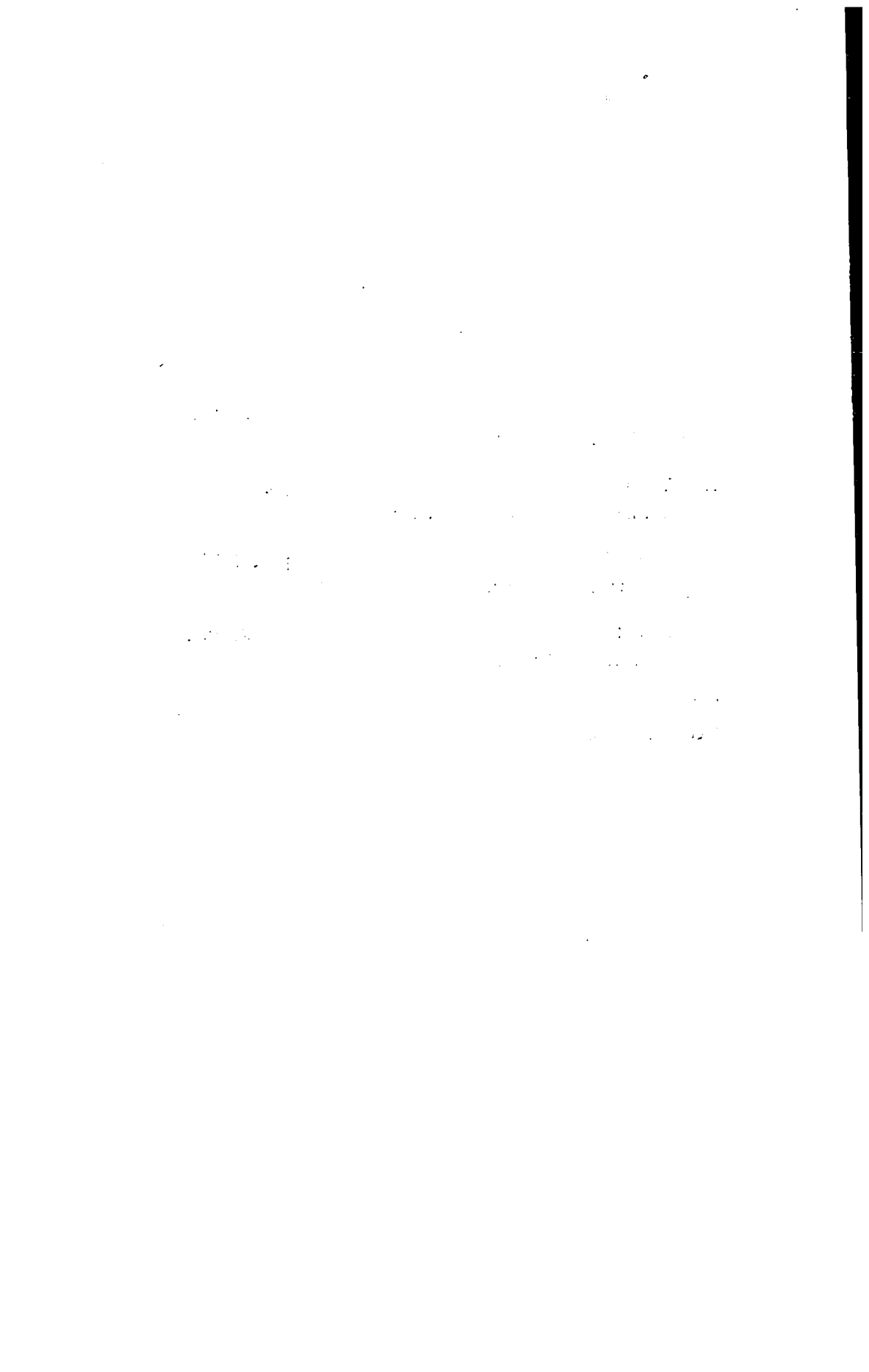




# Part IV

STUDY OF CANADIAN PILOTAGE  
GULF AND RIVER ST. LAWRENCE

SECTION ONE (Pilotage District of Quebec)	pp. 7-524
SECTION TWO (Lower St. Lawrence River Ports and Areas)	pp. 526-559
SECTION THREE (Pilotage District of Montreal)	pp. 563-867
SECTION FOUR (Pilotage District of Cornwall)	pp. 871-1001
SECTION FIVE (Recommendations)	pp. 1005-1028



# Section One

PILOTAGE DISTRICT OF QUEBEC

1950

1951

## Chapter A

# LEGISLATION

## 1. LAW AND REGULATIONS

### PREAMBLE

The Quebec Pilotage District (and to a lesser extent the Montreal Pilotage District) enjoys a special status as far as the law is concerned in that, on one hand, it is subject to certain special statutory provisions and, on the other, is excluded from the application of certain general provisions by the text itself or the context.

The organizational structure provided by the first federal pilotage statute, the 1873 Pilotage Act, was conceived solely in relation to ports, and the extensive pilotage conducted on the St. Lawrence River was treated in the Act as a case of exception by providing *ad hoc* provisions for the Districts of Quebec and Montreal. The present unsatisfactory state of the statutory legislation governing the Quebec District is due to the failure of those in authority to understand this essential limitation of the general provisions of the Act. Their indiscriminate and unwarranted amendments deleted most of the special provisions in an effort to make the District of Quebec conform to the other Districts under legislation that was essentially inapplicable. The other special provisions (retained largely for historical reasons) cover minor matters and are no longer justified since they are now totally out of context. In addition, they create problems for which there is no legal solution, much to the detriment of District administration. The immediate solution would be their deletion by an amendment to the Act. As a matter of fact, attempts were made in that direction, but they failed due to the strong opposition of the pilots who feared that in the process they would lose some undefined or hypothetical acquired rights (Part 1, p. 57 and pp. 111-112).

A better solution would be implementation of the Commission's General Recommendation No. 6 (Part I, p. 470), i.e., the enactment of a new Pilotage Act with provisions governing all general aspects of pilotage but leaving the particular needs of each locality to be dealt with through regulations.

The statutory provisions that apply specifically to the Pilotage District of Quebec, together with special legislation contained in various regulations, are studied in the following pages.

(1) SPECIAL PROVISIONS OF THE CANADA SHIPPING ACT AND  
ORDERS MADE BY THE GOVERNOR IN COUNCIL PURSUANT  
TO THE CANADA SHIPPING ACT

(a) *Creation of the District*

The creation of the Quebec Pilotage District as a federal Pilotage District dates from the first Pilotage Act passed in 1873 (sec. 5) which merely recognized and confirmed the existence of the District as does the present statute (C.S.A. secs. 322 and ff.).

Since its existence is confirmed and governed by a provision in the statute, it can not be abolished except by Act of Parliament. Furthermore, sec. 324 C.S.A. specifically deprives the Governor in Council of the power to rescind it (Part I, p. 57 and General Recommendations Nos. 8 and 17).

(b) *District Limits*

Sec. 322 C.S.A. also fixes its limits which are defined as follows:

"... that part of the River St. Lawrence from the western limit of the harbour of Quebec to an imaginary line drawn from the pilotage grounds off Father Point on the south shore and the anchorage grounds off Cape Colombier on the north shore of the River St. Lawrence together with those parts of all rivers, waters, harbours, creeks, bays and coves within the said limits where the tide ebbs and flows, and includes the River Saguenay."

The description of the eastern limit is clear and the only problem it may cause arises from the fact that it has not coincided with the *de facto* limit since the seaward board area was moved to Les Escoumins<sup>1</sup> (vide p. 119).

The definition of the western limit is not self contained. In order to ascertain it a search must be made for the proper description of the western limit of Quebec harbour. This is now found in the schedule to the National Harbours Board Act (1952 R.S.C. 187). It is a verbatim reproduction of sec. 6 of the "Quebec Harbour Commissioners Act 1899" (62-63 Vic. c. 34) referred to in subsec. 2(35) C.S.A. The western limit of the harbour is described therein as:

"... a line drawn from the western abutment of the roadway bridge which crosses the mouth of River Cap Rouge, in a direction S15°E astronomical, to an intersection with high water mark on the south shore of the River St. Lawrence, . . .".

On official charts the western boundary of the harbour is indicated by a line crossing the St. Lawrence from the mouth of Rivière du Cap Rouge to Pointe à Basile, i.e., about three miles west of the Quebec Bridge.

The harbour of Quebec is also part of the adjacent Pilotage District of Montreal, the eastern limit of which is the eastern limit of the harbour of

<sup>1</sup>The pilot station, which is located at Anse aux Basques, was named after the neighbouring village, the municipality of *Les Escoumins*. The spelling *Les Escoumains* refers to geographical features, i.e., the Les Escoumains River and the Bay of Les Escoumains, which are situated 2 miles east of Anse aux Basques. This correction should be made in Parts I, II and III of the Report where the spelling *Les Escoumains* was used.

Quebec (sec. 323 C.S.A.). Thus, the harbour of Quebec, in its entirety, is in the waters of both Pilotage Districts of Quebec and Montreal.

To ascertain the extent of the joint territory, reference must again be made to the schedule to the National Harbours Board Act where the eastern limit of Quebec harbour is defined, namely:

“ . . . a line drawn from the east side of the mouth of the River Montmorency, directly towards the Roman Catholic church of the parish of Ste. Pétronille on the Island of Orleans, and thence produced to an intersection with high water mark on the south shore of the River St. Lawrence.”

The eastern limit of the harbour is indicated on official charts as a line originating at the foot of Montmorency Falls, crossing over the western tip of Orleans Island at the beacon of Ste. Pétronille wharf and continuing on a straight line to the south shore of the river about 15 cables east of Gilmour wharf.

It would appear that the limits of the Quebec and Montreal Districts could be altered by the Governor in Council, despite the fact that these limits are defined in the Act. The last part of sec. 324 which deals with the Governor in Council's powers in this respect would not be affected by the exception contained in the middle of this section. In the interpretation of a text, a meaning has to be found for the text as it is arranged and constructed; in this case, the restriction would not have been inserted in the middle of the section if it were to apply to all three subjects which are dealt with. Section 324 reads as follows:

“The Governor in Council may create further pilotage districts and fix their limits and may rescind any district, other than the districts of Quebec and Montreal, created either by or under this or any other Act and may alter the boundaries of any pilotage district.”

The wording of this section confers on the Governor in Council power (i) to create Pilotage Districts with a specific limitation to “further districts” meaning Districts other than Quebec and Montreal which had been previously mentioned (secs. 322 and 323) and to fix their limits; (ii) to rescind Pilotage Districts “other than the districts of Quebec and Montreal”; and finally (iii) without restriction or qualification, to alter “the boundaries of any pilotage district”. The last named power was added in 1934 and should therefore be considered an amendment to any previous legislation.

The Department of Transport, however, has always taken the attitude that the limits of the Quebec and Montreal Districts can not be modified except through amendments to secs. 322 and 323 of the Act.

The question of the extent of the jurisdiction of each of the two Pilotage Authorities of Quebec and Montreal over the joint and overlapping territory of Quebec harbour is dealt with neither in the Act nor in the By-law of either District. However, since 1964 the Montreal General By-law has contained a set of rates for movages performed in the harbour of Quebec by the Montreal pilots. It is not stated which Pilotage Authority is responsible



for providing the pilotage services that have to be performed within the harbour limits, nor is it said to which Pilotage Fund the moorage dues owed by non-exempt ships that dispense with the use of pilots belong.

Prior to 1934, the situation was fully covered in the statute which placed the harbour of Quebec under the jurisdiction of the Pilotage Authority of Quebec for pilotage purposes. The Montreal pilots were permitted to use its waters only to the extent necessary to commence or terminate trips being performed or about to be performed in the Montreal District, i.e. proceeding to or from a berth in the harbour or changing pilots in the case of ships in transit. For instance, sec. 467 of the 1906 C.S.A. (corresponding to sec. 49, 1873 Pilotage Act and 447, 1927 C.S.A.) reads as follows:

" 467. If any master of a ship which is not an exempted ship removes such ship or causes such ship to be removed from one place to another within the harbour of Quebec, without the assistance of a licensed pilot for the pilotage district of Quebec, he shall pay to the Quebec Pilots Corporation the same pilotage dues as he would have been liable to pay if he had obtained the assistance of one of such licensed pilots.

(2) This provision shall not apply to the master of any ship actually proceeding to Montreal or elsewhere above the harbour of Quebec, in charge of a pilot for and above the harbour of Quebec."

The corresponding provision is now sec. 357 which deals with another subject altogether in a general provision covering the compulsory payment of dues for moorages (Part I, p. 217).) As amendments were made, the purpose of the provision was completely changed and the problem of jurisdiction over the joint territory of the harbour of Quebec (a unique situation created by the Act itself) consequently was left without a solution. This unsatisfactory situation was the result of failure to appreciate the purpose of the former sec. 467. It was abrogated in two stages:

- (i) first, through the 1934 Act (sec. 350) when all references to the District of Quebec and the harbour of Quebec were deleted from subsec. (1) quoted earlier, making it a provision of general application dealing in general terms with the application of the compulsory payment of dues for moorages;
- (ii) second, in 1956, by a further amendment (4-5 Eliz. II c. 34) when subsec. (2) quoted earlier was deleted and replaced by the present subsec. (2) of sec. 357, which deals with a different subject.

To date, no difficulty has been caused by this faulty legislation because the function of Pilotage Authority in both Districts is exercised by the same person, the Minister of Transport, who has continued to apply the former rules as if the provision which contained them had not been abrogated (vide Part I, pp. 49-50):

## COMMENTS

Rectification of the District seaward limit is covered in Recommendation No. 2, Section Five.

To define a District limit by reference to a description in another statute is unsound because legal and practical difficulties ensue, e.g., the northern limit of the New Westminster District (Part II, pp. 243 and ff.). It is quite possible that this procedure was followed in this case in order to ensure that the waters of the harbour of Quebec are always included in the Pilotage Districts of Quebec and Montreal without the necessity of amending the Act each time the harbour limits are modified, as now may be done under the National Harbours Act (subsec. 6(2)) merely by regulation. If this was the intention, it should have been expressed clearly in the law. A reference to a provision of another statute is to the provision that existed when the reference was made, unless an exception is clearly stated.

It is considered that the limits of a Pilotage District should not be defined by statute, but should be a subject-matter of regulations in order to provide flexibility for making necessary amendments easily and without delay. Such a definition should be self-contained (for further comments, vide Part II, p: 246).

For the Commission's comments and recommendations on contiguous Districts and joint territories, reference is made to Part I, pp. 49 and 50, and General Recommendation No. 9.

(c) *Pilotage Authority*

The Minister of Transport is the Pilotage Authority. The latest appointment to this office was effected by the Governor in Council pursuant to sec. 327 of the Canada Shipping Act on August 15, 1956 (P.C. 1956-1264, Ex. 1143).

Under the existing legislation, no one but the Minister of Transport (which includes the Deputy Minister (subsec. 2(69) C.S.A.)) can be appointed Pilotage Authority for the District of Quebec in view of the restriction on the general powers of the Governor in Council in this matter as stated in sec. 325 C.S.A. and the absence of other specific provisions in the Act.

The corresponding section of the 1927 version of the Canada Shipping Act contained a similar restriction concerning the four Districts of Quebec, Montreal, Halifax and Saint John, N.B. The Governor in Council was denied the right to appoint a local Commission in these Districts and the Act provided specifically for the composition of their Pilotage Authorities; for Quebec, it was the Minister in a mitigated way, i.e., with only the powers previously vested in the Harbour Commissioners of Quebec (sec. 395); for Montreal, it was also the Minister, but here again with only the powers that were exercised previously by the Montreal Harbour Commissioners (sec. 397); for Halifax and Saint John, N.B., the Act provided for local Com-

missioners and set out the procedure for their appointment or election (secs. 398 to 410 inclusive). Under these circumstances, the Governor in Council was not to interfere with the legislation affecting the Districts.

All the foregoing particular provisions were omitted in the 1934 C.S.A. Instead, the Governor in Council was authorized, if he so chose, to appoint a local Commission, both in Halifax and Saint John, N.B., as a result of the deletion of the names of these two Districts from the restrictive clause of sec. 315, now sec. 325 C.S.A. However, the restriction remained with regard to both Quebec and Montreal.

In view of the wording of sec. 317 of the 1934 Act (now 327), the Governor in Council could appoint the Minister as Pilotage Authority in all cases. In the absence of other provisions it must be concluded that, as far as Quebec and Montreal were concerned, the intention of Parliament was that the Minister should remain the Authority and that there could be no other form of Pilotage Authority for those Districts.

#### COMMENTS

When subsec. 327(1) C.S.A. is applied to the Districts of Quebec and Montreal, it appears to be meaningless since it deals with a discretionary power which does not exist for these Districts. Therefore, its applicability is questionable. The apparent cause is poor drafting when the 1934 C.S.A. was enacted. However, there is no reason why both sec. 325 and subsec. 327(1) C.S.A. should not apply to these Districts.

Prior to 1934, these provisions did not apply to the Districts of Quebec and Montreal since secs. 395 and 397, 1927 C.S.A., dealt with the question specifically by making the Minister the Pilotage Authority for both Districts. These two sections were not retained in the 1934 C.S.A. and the necessary correlation was not made in the general provisions, with the result that the legal situation was altered radically.

The problem will be solved if, as recommended by this Commission, a new Pilotage Act gives full power to the Central Authority to determine through Pilotage Orders the nature and composition of the Pilotage Authority (Part I, General Recommendations Nos. 1, 17 and 18). If it were to be decided otherwise and the provisions of sec. 325 were to be retained, the phrase "other than the districts of Quebec and Montreal" should be deleted.

#### (d) *Compulsory System*

The compulsory payment of pilotage dues is enforced in the Quebec District but no legal authority for its implementation can be found. The only provision to that effect is contained in the General By-law passed by the Pilotage Authority under sec. 329 C.S.A., P.C. 1957-191, dated February 7, 1957 (Ex. 429). Subsec. 6(1) reads as follows:

"The pilotage dues as set forth in Schedule A shall be paid in respect of all vessels unless exempted by the Act or by By-law."

Neither under sec. 329 C.S.A. (which does not cover the subject), nor under any other provision of the Act, has the Quebec District Pilotage Authority the power to impose this obligation on shipping.

It must either be provided for in the law or made a privilege of the Governor in Council. Through an exception resulting from the combined effect of secs. 324 and 326 the Governor in Council is denied this power for the Pilotage Districts of Quebec and Montreal, these not being Districts that he has the power to create. In fact, no decision of the Governor in Council on the subject has ever been promulgated through Order in Council.

Therefore, the authority for the compulsory payment of dues for the District of Quebec, if any exists, ought to be found elsewhere; however, there is at present no such provision in the Canada Shipping Act (Part I, p. 212).

Prior to 1934, the Canada Shipping Act specifically prescribed the compulsory payment system for the four Districts of Quebec, Montreal, Halifax and Saint John. The first part of sec. 455 of the 1927 Shipping Act reads as follows:

"455. Every ship which navigates within either of the pilotage districts of Quebec, Montreal, Halifax or Saint John, or within any pilotage district within the limits of which the payment of pilotage dues is, for the time being, made compulsory by Order in Council under this Part shall pay pilotage dues, unless . . ."

In the 1934 C.S.A., which repealed the previous legislation, the reference to the four Districts was deleted and the corresponding section reads as follows:

"337. Every ship which navigates within any pilotage district within the limits of which the payment of pilotage dues is, for the time being, made compulsory under this Part of this Act shall pay pilotage dues, unless . . ."

Sec. 345 of the 1952 C.S.A. is almost a verbatim reproduction.

The reference to the four Districts in sec. 455 of the 1927 C.S.A. was necessary because of the limitation contained in sec. 412 of the same Act, of which sec. 326 of the 1952 C.S.A. is, except for a point of style, a verbatim repetition. This section has remained unchanged in the various Acts from the first Pilotage Act of 1873, where it was sec. 17; sec 13 of the 1886 Act; sec. 430 of the 1906 Act; sec. 412 of the 1927 Act; sec. 316 of the 1934 Act and sec. 326 of the 1952 Act. The 1934 C.S.A. abrogated the previous statute. The saving provision of sec. 717 had no application because the compulsory payment system was not a matter for by-law or regulation but was part of the law that was repealed.

Sec. 331 C.S.A. is not pertinent because it merely provides for the continuation in force of a "valid and effectual by-law made by any pilotage authority prior to the 1st day of August, 1936". There could have been no such valid by-law because then, as now, the Pilotage Authority did not have the power to make by-laws respecting the compulsory payment of pilotage dues.

Therefore, one must conclude that since 1934 the payment of pilotage dues has not been compulsory in the Pilotage District of Quebec whenever the services of pilots are not used or requested.

This situation has been known for some time by all concerned. The question was publicly raised before the Standing Committee of the Senate on Transport and Communications, on February 25, 1959, in connection with Bill S-3 to amend the C.S.A. On p. 209 of the Committee proceedings of that date, Mr. J. R. Baldwin, then Deputy Minister of Transport and Pilotage Authority for the District of Quebec, summed up the situation as follows:

"I would merely state that this particular situation, which is one that has emerged through our study of the present Bill, was that there was under the 1927 version of the Canada Shipping Act a specific provision which supported the payment of compulsory pilotage dues in those two districts (Montreal and Quebec), for reasons not known to me, as this antedates our field of study. This subsection was omitted in the 1934 revision of the Act, and our legal opinion after checking other statutes is that it is exceedingly questionable in law, therefore, whether there is any legal basis at the present time for the compulsory payment arrangements that exist now in those two districts."

Re exemptions, see pp. 20-21.

(e) *Quebec District Pilot Fund (subsec. 319 (1) and secs. 366 to 370 incl., 1934 C.S.A.)*

Subsec. 329(1) and secs. 373 and 374 of the 1952 C.S.A. are not as yet in force, not having been proclaimed by the Governor in Council as required by sec. 734 C.S.A. The proclamation of these sections would have the effect of deleting from the statute all the provisions concerning the special status of the Quebec District Pilot Fund and of bringing it in line with the other Districts as far as the applicable statutory provisions are concerned. In accordance with sec. 735 C.S.A., the sections of the 1934 C.S.A. dealing with the Quebec Pilot Fund remain in force in the absence of the required proclamation, i.e., subsec. 319(1) and secs. 366 to 370 inclusive which provide that the Fund continues to be administered by the Corporation of Pilots for and below the Harbour of Quebec which enjoys, in that respect, the rights and powers of the defunct Quebec Trinity House (Part I, p. 16, C. 10 and Gen. Rec. No. 39).

The Pilot Fund (referred to in the District By-law as Pension Fund) is administered by the Corporation of Pilots for and below the Harbour of Quebec. Earlier, this Corporation had, in addition, the management of the pilotage service in the District. The passage of the 1934 C.S.A. marked the completion of the withdrawal of these managerial powers leaving the Pilots' Corporation with the sole function of administering the Pilot Fund.

In 1950, an amendment to the C.S.A. (14 Geo. VI c. 26 which was subsequently incorporated in the 1952 consolidation) represented the final step in the practical abolition of the Quebec Pilots' Corporation by transferring the administration of the Pilot Fund to the Pilotage Authority. However,

the implementation of these provisions was left to the discretion of the Governor in Council which he has not exercised to date.

Under the legislation now in force, three persons, in addition to the pilots and the beneficiaries, play a distinct rôle with regard to the Pilot Fund:

- (i) the Pilotage Authority, who determines the amount of the compulsory contribution which shall not be less than 5 per cent of the gross receipts of the District (sec. 367 (1934) C.S.A.);
- (ii) the Corporation of Pilots for and below the Harbour of Quebec, which in 1875 by 38 Vic. c. 55 sec. 4 was vested with "the same rights and powers that the Trinity House of Quebec" had heretofore, i.e., on April 8, 1875 (sec. 368 (1934) C.S.A.), and whose powers were modified by sec. 369 (1934) C.S.A. which restricted its investment powers to "such securities as are by law approved for the investments of money by trustees";
- (iii) the Minister of Transport, to whom the Corporation shall account for its administration within seven days after the first day of February in each year (sec. 370 (1934) C.S.A.).

The fund that was entrusted to the Quebec Pilots' Corporation is designated in sec. 368 (1934) C.S.A. as the one "created by the Act of the late Province of Canada, 12 Vic. c. 114 (Quebec Trinity House Act) and other Acts relating thereto" (Ex. 703), where provisions for the fund are as follows:

- (i) that the Decayed Pilot Fund would continue to exist and be administered by Trinity House (sec. 56);
- (ii) that from this fund Trinity House would give to every "distressed or decayed" pilot, his widow and children whatever relief or pension Trinity House deemed advisable (sec. 61);
- (iii) that any pilot who retired after reaching the age of 60 would be entitled to a pension from the fund (sec. 62);
- (iv) that the monies that had not been spent for the relief and subsistence of decayed pilots, their widows and children were to be invested.

It was left to the discretion of Trinity House to determine the amount of relief or pension which should be paid, and the terms and conditions upon which the beneficiaries were entitled to relief or pension were not subject to the formal by-law procedure of Trinity House which required the assent of the Governor after publication in the press (secs. 6, 7 and 8). With the transfer of powers in 1875 it then became a discretionary power to be exercised by the Pilots' Corporation.

However, the Pilots' Corporation regulated the entitlement to benefits and fixed their amount (By-law No. 2, Ex. 672). Pensions were provided for retired pilots and also for pilots' widows and orphans. No relief, however, was provided for "distressed" active pilots.

(2) PROVISIONS NOT CONTAINED IN THE CANADA SHIPPING ACT AND AFFECTING THE ORGANIZATION OF THE PILOTAGE DISTRICT

(a) *The Corporation of Pilots for and below the Harbour of Quebec Act (23 Vic. c. 123 (1860) as amended)*

This is a closed professional corporation, created by an Act of Parliament of the late Province of Canada, to which all the licensed pilots for the District of Quebec automatically belonged. Originally, the Corporation had the actual management of the pilotage service and of the compulsory pooling of the pilots' earnings but these powers were repealed in 1914 by 4-5 Geo. V c. 48 leaving it with only the administration of the Decayed Pilot Fund that it had inherited from Trinity House in 1875, as seen earlier.

The Corporation still functions for that sole purpose and all the licensed pilots are still automatically members. The rules for its administration are contained in its General By-law No. 1 (Ex. 672) which is subject to the amendment procedure set out in the 1860 Act, *inter alia*, to the sanction of the defunct Quebec Trinity House.

The Act also contained other provisions concerning the right of the Master to choose his pilot from those available on the list of assignment, the pilot so chosen not having the right to refuse irrespective of the number of trips he might have done, and the right of the Montreal Oceanic Steamship Company to choose four special pilots annually. These privileges were enumerated in secs. 31, 32 and 33 of the Act and were reaffirmed in the 1869 amendment (32-33 Vic. c. 43). These sections of the Pilots' Corporation Act have never been repealed and would appear to be still in force. (Vide also Part I, p. 18 and pp. 77 and ff.)

(b) *Payment of District Operating Costs*

In the Quebec Pilotage District the costs of establishment and operation, maintenance and replacement of the pilot stations and the costs of purchase, replacement and maintenance, operation and repair of pilot vessels are borne by the Crown through the Department of Transport. The only authority for the practice is contained in the annual Appropriation Acts. The District of Quebec is not mentioned in Treasury Board Minute 546571 of Aug. 27, 1959, P.C. 1959-19/1093 (Ex. 52) approving payment of these operating costs in other Pilotage Districts.

(3) PILOTAGE AUTHORITY'S ENACTMENTS APPROVED BY GOVERNOR IN COUNCIL

(a) *Appointment of Secretary-Treasurer and Payment of District Expenses (sec. 328)*

The Pilotage Authority in the District of Quebec has not the right to pay any of the operational costs of the District out of pilotage monies; it can

neither appoint a Secretary-Treasurer nor pay him a remuneration out of District earnings.

This unique situation is the result of a specific restriction contained in sec. 328 C.S.A. which excepts the Quebec Pilotage Authority from those who can exercise these powers. Therefore, in the Quebec District the Pilotage Authority must not incur any expenses and, if it incurs any, must find means to meet them other than pilotage monies which have to be turned over in their entirety (less Pension Fund deduction) to the pilots. This restriction was the consequence of a system that no longer exists but it was not through an oversight that sec. 328 was left unchanged when, on the occasion of the revision of the C.S.A. in 1934, what remained of the special organizational system of the Quebec District was done away with.

To appraise the situation the historical evolution of the legislation must be reviewed (Part I, p. 111).

At the time of Confederation, the Quebec District was the oldest and most important Pilotage District in Canada. It had over 280 pilots and its pilotage service was controlled jointly by two local public corporations, each one in its own field. On one hand, Trinity House was in charge of navigation on the River St. Lawrence up to and including Quebec Harbour. Administration of pilotage was only one of its functions and its rôle in this field was merely one of licensing, surveillance, rate-fixing and making the necessary regulations. To this was added the rôle of a full fledged court over all disputes regarding pilotage, either between pilots or between pilots and Masters and others. On the other hand, the pilots of the Corporation of Pilots for and below the Harbour of Quebec had the executive part of the service and its management. Trinity House incurred few expenses as far as pilotage was concerned and, in any event, had other sources of revenue. Therefore, it had no justification for becoming involved with pilotage monies (except with the Decayed Pilot Fund which it administered at that time). The Pilots' Corporation, on the other hand, provided at its own expense the pilot schooners at the seaward station of Bic and, through its administrators, was responsible for the orderly despatching of pilots, the collection of dues and their distribution in equal shares through a pool system, the first deductions from which were operational costs, i.e., District operational costs. The Secretary-Treasurer, who was one of the Pilots' Corporation's own appointees, was remunerated out of the earnings of the pool.

Trinity House and the Pilots' Corporation were both governed by special Acts of Parliament.

This was the situation at the time of Confederation. When the first Pilotage Act was passed in 1873, special provisions were inserted to recognize the Quebec District's own organization together with those of three other Districts, i.e., Montreal, Halifax and Saint John, N.B., the organizational systems of which, however, were quite different.



Two years later, it was felt necessary to amend the Act to authorize the various Pilotage Authorities to pay their operating expenses out of the pilotage monies which belonged to the pilots without having to seek the pilots' unanimous consent. An exception was made of the Quebec Pilotage District, to which the provision could obviously not apply, through sec. 3 of c. 28 of the 1875 statute, and it has been reproduced verbatim ever since. What is now sec. 328 was sec. 14, 1886 Act, sec. 431, 1906 Act, sec. 413, 1927 Act and sec. 318, 1934 Act.

To illustrate the earlier situation, sec. 91 of the 1873 Pilotage Act is worth noting. It reads as follows:

"Nothing in this Act shall be construed to give power to the Trinity House of Quebec to make regulations respecting the management or maintenance of pilot boats, or respecting the administration or distribution of the earnings of pilots and pilot boats, save and except insofar as relates to the administration of the Pilot Fund."

In 1875, Trinity House was abolished and replaced as Pilotage Authority by the Harbour Commissioners of Quebec (38 Vic. c. 55). In the Pilotage Act of 1886, subsec. 2 of sec. 15 reproduced the same limitation *mutatis mutandis*.

In 1905, by an amendment to the Quebec Harbour Commissioners Act (4-5 Ed. VII c. 34 sec. 2) the Harbour Commissioners were relieved of their duties as Pilotage Authority and superseded as such by the Minister of Marine and Fisheries, who inherited all their powers as such and no more (except the obligation to sit as a tribunal over pilotage infractions and disputes). This change was reflected in sec. 413 of the 1906 C.S.A. and the usual restriction was retained in subsec. 434.2:

"Nothing in this Part shall be construed to give power to the Minister to make regulations respecting the management or maintenance of pilot boats, or respecting the administration and distribution of the earnings of pilots and pilot boats."

The appointment of the Minister as Pilotage Authority was, however, the beginning of the slow process of transforming the Quebec special organization to conform with that of the other Districts. In 1914 following the Lindsay Report, 4-5 Geo. V c. 48 deprived the Pilots' Corporation of its powers, duties and responsibilities "with respect to the examination, management and control of pilots and pilot apprentices, and the control and management of pilot schooners, boats and other vessels, the collection of pilotage dues, and the management and the control of pilotage". These powers were vested in the Minister of Marine and Fisheries. The result was that the basic structure had not as yet been altered. The Pilotage Authority still retained a mere regulatory and supervisory role and the management of the service was still entrusted to someone else, i.e., the Minister as such, in lieu of the Pilots' Corporation. The fact that the same person, the Minister of Marine and Fisheries, filled both the office of Pilotage Authority and that of administrator and manager of the service did not mean that these extra powers were

given to the Pilotage Authority. These were kept two separate functions as the 1927 Act clearly indicates: by sec. 395 the Minister remained the Pilotage Authority with the same limitation as to powers, and the distinction between the two functions of the Minister regarding the District of Quebec was evident in the practice of substituting the name of the Minister for the name of the Pilots' Corporation (except for the Pilot Fund) as in sec. 460 and sec. 462 dealing with the collection of the dues which then read:

"shall be liable to pay, if in the Pilotage District of Quebec, to the Minister, and, if elsewhere, to the Pilotage Authority of the District . . ."

It was the Minister who might select the pilots to be Masters of the pilot schooners, who could pay the Directors of the Corporation and Masters of the schooners their usual extra remuneration but still out of the fund of the Quebec Pilots' Corporation (secs. 491 and 492, 1927 C.S.A.).

With the advent of the 1934 C.S.A., sweeping changes were made and all these distinctions were omitted. The section dealing with the Pilotage Authority for the District of Quebec was omitted, as were the provisions dealing with the special powers of the Pilots' Corporation that were exercised by the Minister. The dues were no longer payable to the Minister but, as everywhere else in Canada, to the Pilotage Authority (secs. 341 and 343). The only responsibilities and powers left to the Pilots' Corporation were those involving the trusteeship and administration of the Pilot Fund.

As of 1934, the Pilotage Authority for the District of Quebec was, therefore, given the same limited powers and responsibilities as the Pilotage Authorities of the other Districts. However, the Authority for the District of Quebec was deprived of the right to use pilotage monies for pilotage administration since Parliament had decided to retain the restriction which is now found in sec. 328 of the Act (sec. 318, 1934 C.S.A.). A provision which had been an obvious necessity before then made it impossible for the Pilotage Authority to meet the expenses involved in administering pilotage in this District unless it was intended that the Quebec District should benefit from the special privilege of always having its operational costs paid by the Crown (as was, in fact, the case and has been so ever since). The words "other than the Pilotage District of Quebec" had been omitted from the first draft of the 1934 Act, but the Quebec pilots succeeded in having them reinserted on the ground of an engagement made to them by the Minister of Marine and Fisheries in 1906 (pp. 50-52) to the effect that the Quebec Pilotage District's operational costs were to be paid out of public funds from then on (Senate debates, 1933).

As to the right to appoint a Secretary-Treasurer, this could be done indirectly through sec. 317 (now sec. 327 C.S.A.), i.e., a delegation of power effected to the Superintendent or to any other person by by-law sanctioned by the Governor in Council, but his remuneration could never be drawn from the District earnings.

COMMENTS

There is no valid reason at present to retain this exception in sec. 328 C.S.A. With regard to the payment of the operating expenses of the District and of the service, there should be no discrimination in favour of the District of Quebec. Financial assistance from public funds should be governed by general statutory provisions which should apply to all Districts, the public interest being the criterion. It is considered that this aim would be met if the Commission's General Recommendations Nos. 20 and 21 are implemented (Part I, pp. 521 and 524).

(b) *Delegation of Pilotage Authority's Powers (subsecs. 327 (2) and 329 (p) C.S.A.)*

No specific by-law has ever been made by the Minister as Pilotage Authority for the District of Quebec pursuant to subsec. 327 (2) C.S.A. for the purpose of delegating some of his powers to his local representative, the Superintendent, nor to anyone else. The Pilotage Authority, however, acting under subsec. 329(p) has created at the District level through provisions in its General By-law the office of Superintendent, called locally the "Supervisor of Pilots" (vide definition of Superintendent, subsec. 2(b) General By-law, Ex. 429). He is the Authority's local representative to whom are delegated the powers of actual management of the service at the local level, i.e., handling the pilotage earnings, the assignment of pilots and some limited disciplinary powers.

The selection of a Superintendent for Quebec, as elsewhere, is effected by the Public Service Commission filling a vacancy in the Department of Transport establishment. This selection has never been followed by an appointment emanating from the Pilotage Authority, nor was there any delegation of powers from the Pilotage Authority to the Public Service Commission to do this in its stead. To be valid, such a delegation, according to either subsec. 327(2) or subsec. 329(p) C.S.A. would have to be confirmed by Order in Council (vide Part I, pp. 289 and ff.).

(c) *Exemptions and Withdrawal of Exemptions (secs. 346 and 347 and subsec. 357 (1) C.S.A.)*

No By-law was made under subsec. 357(2) C.S.A. and there is no By-law of the Pilotage Authority made pursuant to either sec. 346 or sec. 347 C.S.A. still in force. The last one was P.C. 3415 of July 19, 1950, which was passed and approved under both secs. 319 and 339 of the 1934 C.S.A. (now 329 and 347 of the 1952 C.S.A.). This Order in Council which amended the General By-law of 1928 (Ex. 1448) was abrogated when the existing General By-law was approved.

In the existing General By-law made and approved pursuant to sec. 329 C.S.A., the question is dealt with as follows:

- (i) By subsec. 6(2), the relative exemptions provided by subsec. 346(e) of the Act concerning dominion registered steamships engaged in inland or coastal voyages are partly withdrawn. Full exemption is limited to vessels under 2,000 tons, and to those, whatever their tonnage, regularly plying inland waters and not beyond the eastern limit of the District. Vessels between 2,000 tons and 2,500 tons proceeding outside this limit but not beyond the Gulf are required to pay half dues if a pilot is not employed.
- (ii) Scows are specifically exempted by subsec. 2(n) of the By-law which states "vessel includes ships and ships in tow but does not include scows."
- (iii) No exemption is provided for small vessels under 250 tons as permitted under subsec. 346(c). Therefore, any small foreign ships of non-dominion registry, even yachts however small, are subject to the payment of dues (D.O.T. letter dated August 9, 1965, Ex. 1456(s)).

These provisions, however, are not effective since the payment of dues is not compulsory in the District (p. 14). (Re failure to quote the correct statutory authority, the meaning of the term *relative exemption*, the illegal extension of the application of Part VI C.S.A. by the device of the definition and use in the By-law of the expression vessel, vide Part I, pp. 248, 221 and 219 respectively.)

(d) *General By-law Passed under Sec. 329 C.S.A.*

The General By-law (Ex. 429) now in force was sanctioned by Order in Council P.C. 1957-191 dated February 7, 1957, which was subsequently amended as follows:

- P.C. 1959-1605, dated December 18, 1959;
- P.C. 1960-756, dated June 2, 1960;
- P.C. 1960-1601, dated November 25, 1960;
- P.C. 1961-425, dated March 23, 1961;
- P.C. 1964-1769, dated November 13, 1964;
- P.C. 1965-1172, dated June 23, 1965;
- P.C. 1966-779, dated April 29, 1966;
- P.C. 1967-698, dated April 13, 1967;
- P.C. 1969-1182, dated June 10, 1969.

The salient features of the internal organization provided in the General By-law, as amended, are as follows (references are to Part I where the subject-matter is dealt with):

- (i) The Pilotage Authority, in addition to its normal powers to regulate and supervise, also directs the service through its local

- representative, the Superintendent, i.e., distribution of work, collection and distribution of earnings, direction of pilots and apprentices, etc. (pp. 73 and ff.).
- (ii) The pilots are represented by a "Pilots' Committee" of six elected annually (pp. 82-84).
  - (iii) Pilots are recruited from candidates with prerequisite qualifications through an elaborate apprenticeship system (p. 252).
  - (iv) The number of pilots is determined by the Authority after consultation with the Pilots' Committee. The criterion is an annual workload of 70 trips per pilot (p. 257).
  - (v) Pilots are purported to be classified as to capacity in four grades (p. 263). Temporary licences may be issued in an emergency (p. 270).
  - (vi) The work is to be evenly distributed by the Superintendent through a despatching system based both on tour de rôle and pilot grades, with an assignment equalization rule (pp. 73 and ff.).
  - (vii) No system of regular leave is provided and leave can be taken at the pilot's discretion with the Superintendent's authorization.
  - (viii) The dues, although collected by the Authority, belong to the pilot who has earned them less the compulsory contribution to the Pension Fund. Consequently, there is no pooling of earnings at the Pilotage Authority level (pp. 84 and ff.).
  - (ix) The basic dues are computed on draught, tonnage and distance. The minimum draught for this purpose is set at 16 feet. There is a minimum of 2,000 tons and a maximum of 15,000 tons. There are two surcharges, the first for vessels over 10,000 tons or other vessels as the Authority may designate (Grade A pilots), and the second for winter voyages. The pilot boat charge at Les Escoumins is made a pilotage due for collection purposes. It is \$20 payable to the Receiver General of Canada through the Pilotage Authority (C. 6).
  - (x) No mention is made of the Pension Fund, except to make it mandatory for the Authority to retain and pay into the Fund compulsory contributions and dues collected when no pilotage services have been performed (pp. 98 and 99, and C. 10).
  - (xi) Vessels are required to give a minimum three-hour notice of requirement for a pilot (p. 230).

The grade system no longer exists legally in the Quebec District and all the pilots are now holders of the same unrestricted licence. Since the date they were declared to be ultra vires by the Exchequer Court, the By-law provisions purporting to institute the grade system are as inoperative as if

they had been repealed. The pertinent paragraph of the Exchequer Court's judgment in the case of *Gamache v. Jones et al* (Exchequer Court file No. B1334) rendered October 10, 1967, reads as follows (Ex. 1521 (b)):

"Judgment should and is therefore hereby issued declaring that section 15 (2a) of P.C. 1960-756 as amended by P.C. 1961-425, section 24 (1) and 24 (5) of P.C. 1960-756 (which revoked section 24 of P.C. 1957-191, the Quebec Pilotage District General By-law) are *ultra vires* of the powers of the Governor in Council and, therefore, invalid and that consequently plaintiff has the right since July 9, 1948, when he was licensed as a pilot to be a fully licensed pilot for the District of Quebec, to be treated as such and to be granted every right attending thereto including the right to pilot ships and vessels of any tonnage within the said pilotage district of Quebec."

This part of the Exchequer Court judgment was affirmed in appeal by the Supreme Court of Canada in a judgment pronounced October 1, 1968 (Ex. 1521(c)).

For the Commission's views on the grade system, reference is made to Part I, pp. 263, 264, 354 and 360. The Commission favours the grade system and considers that the proposed Pilotage Act should make it permissible.

## 2. HISTORY OF LEGISLATION

### (1) FRENCH PERIOD (1608-1760)

The history of pilotage is closely related to the history of Canada. The founding and development of the French colony at Quebec were rendered possible by the existence of the St. Lawrence River, which made the colony accessible to France upon which it almost entirely depended. This meant a constant movement of vessels between Quebec and France. Due to the lack of other means of communication the new colony developed along its navigable water courses and travel, therefore, involved navigating in restricted waters where conditions and hazards unknown to navigators on the high seas were met and where the assistance of persons familiar with the features and peculiarities of the rivers was a prime necessity.

From the earliest days of Quebec history it was the constant preoccupation of the Government to maintain a qualified group of pilots. When the Jesuits founded their college at Quebec in 1635, hydrography was one of the subjects taught. A few years later Intendant Talon requested the extension of the hydrographic course on account of the expected growth of the colony and the anticipated need for ships' captains to be well versed in that subject. In 1685, the need was urgent—five pilots had died in the three previous years—and further measures were taken to encourage these studies. For a number of years the course was given by lay teachers and finally by a series of Jesuits commissioned "Regius Professors of Hydrography". In 1717, the Council of Marine in France granted them authority to issue pilot certificates. In 1696, Governor Frontenac secured the appointment of Louis

Jolliet as *Teacher of Hydrography*. It was said of Jolliet that no man could better pilot a ship down the St. Lawrence and through the Gulf (*Hydrography at Quebec 1651 to 1759*, M. W. Burke—Gaffney, S. J., Ex. 1456(c)). In 1729, Testu de la Richardière, Port Captain of Quebec, was entrusted with the duty of training other pilots by taking them aboard the vessel he was piloting.

By an Ordinance of the "Intendant Gilles Hocquart" (Civil Administrator), on May 22, 1731, Sieur la Richardière was ordered to proceed, accompanied by Mr. Pierre Dizet, pilot, with "la gouëlette du Roy" *Thomas Marie*, and to make a survey of both north and south shores of the River St. Lawrence in order to find anchorage areas, to make soundings and record other observations that they deemed advisable for the safety of navigation of the King's vessels (Ex. 1466(o)).

There is some controversy about who was the first pilot in Quebec. In 1922, Mr. Pierre-Georges Roy, Provincial Archivist, in his searches through the Public Archives came across two private documents, dated 1646 and 1647, in which Abraham Martin of Quebec was described as "Royal Pilot in this country" and "Pilot of the River" (Ex. 1456(a)). Although there are no records to prove conclusively who was the first pilot on the St. Lawrence, it is said that Abraham Martin was the first Royal or King's pilot. His appointment is dated December 28, 1647, two years after he was granted land outside Quebec City, now known as the Plains of Abraham. Cape Martin on the lower St. Lawrence is also named after him. In May 1922, Canadian Pacific Steamships Limited erected a monument to his memory in Princess Louise Basin. References to the occupation of pilot are encountered in deeds and documents which designate and identify various individuals, e.g., the Marriage Registry shows that in 1634 a Noël Langlois, Pilot, married in Quebec (Ex. 1456(b)).

In the seventeenth century, there were three classes of pilot: *Hauturier*, *Côtier* and *Lamaneur*. The *Hauturier* pilot, the deep-sea pilot, also called "proper pilot", was a member of the crew, the second in authority after the Master. He was a fully qualified expert in charge of navigation aboard his vessel giving orders to the wheelsman, setting courses, keeping logs, etc. The prime qualification of the second group, called coastal pilots or, at Quebec, river pilots, was their knowledge of the coast, rivers and harbours. They did not navigate by compass and other instruments but by direct observation of the coast, shores and harbour features, so much so that it was said that in darkness and in fog there were no coastal pilots. They were not part of the complement of the vessel. The third category, the *Pilot Lamaneur* or *Locman*, was strictly a harbour pilot. It is said that his importance was secondary because when he was not available a fisherman could be used in his stead (Ex. 1456(b)). At that time, only the two first categories were at Quebec:

deep-sea pilots and river pilots, the latter being required to perform berthing, unberthing and movages in the harbour of Quebec as they still do.

When ships became larger, both in size and draught, river pilotage became a necessity. In the early part of the eighteenth century, an official acquainted with the navigation of the St. Lawrence boarded the King's ships and brought them to Quebec, and in 1731, for the first time, an official pilot was appointed by the Governor and was sent each season thereafter to a seaward boarding station, Isle Verte, to await the arrival of ships.

## (2) SUPERINTENDENT OF PILOTS AS PILOTAGE AUTHORITY (1760-1805)

With the English regime, pilotage became more strictly regulated by public administration. In various Acts, in addition to the requirements for the licensing of pilots, directives were included concerning the maintenance of the service, the conduct of pilots, their welfare, the tariff, etc. These Acts also contained stipulations regarding aids to navigation and rules and regulations for ships while in the harbour of Quebec.

In order to ensure that the provisions of the law were applied two new offices were created: Superintendent of Pilots and Captain of the Port.

The Superintendent of Pilots was responsible for safe navigation on the river; he had to place the buoys, erect and maintain aids to navigation, take soundings, etc., but his main duty was to ascertain that the pilots were performing the duties required of them by the law. He had the right to give them orders in this respect and, in case of disobedience or violation of the regulations by the pilots, it was his responsibility and duty to prosecute them. As far as the pilots were concerned, he was, in fact, what was later to be known as the Pilotage Authority.

The Captain of the Port was responsible for the harbour of Quebec. He had to make sure that the stipulations in the Act concerning the harbour were observed and it was his duty to prosecute any offenders.

The first ordinance was issued June 24, 1762, during General Murray's governorship in the early years of the English occupation of Québec (Ex. 1456(d)(1)). Its scope is seen in the preamble which reads as follows:

"By the Honourable James Murray, Esq., Governor of Quebec; Rules and Regulations to be observed by all Masters or Commanders of Vessels Sailing up or down the St. Lawrence to Quebec, the Branch Pilot and all other Pilots who have passed examination and have Certificates from me."

The Governor first stated that "For the ease and Conveniency of the Trade, and at the Request of the Principal Merchants of this place" he had appointed a branch pilot for the River St. Lawrence. In a report he wrote the same day he gave further details: he considered that a number of pilots were necessary for navigation up and down the river St. Lawrence and he had



appointed Mr. David Allegeo to "oversee and direct this useful branch of business. . . he is to inspect the same and operate under the rules and regulations set by his superiors."

The main features of the ordinance were the following: the establishment of two boarding and pilot stations, one at Bic to be manned from the beginning of the season to the middle of October, and the other at Ile aux Coudres to be manned till about the middle of December by pilots who would take charge of vessels from there to Quebec; pilotage was not compulsory but part payment of pilotage dues was demanded in the second section of the River, i.e., from Ile aux Coudres to Quebec, in that vessels which arrived at Quebec without a pilot aboard had to pay half the dues from Coudres to Quebec; vessels following the lead of a vessel with a pilot aboard saved one half the dues; Masters were requested to assist the pilots, to follow their directions when to weigh and where to anchor, and were not to oblige them to run any risk; pilotage dues were paid in Quebec both for inbound and outbound trips; the "person in charge" was to provide at his own expense a small vessel to carry pilots between Quebec, Coudres and Bic and his remuneration consisted of one fourth of the dues earned by the pilots and the whole of the dues paid by vessels that came up the River without pilots.

Governor Murray's ordinance was soon replaced by a more elaborate one issued by Governor Carleton, promulgated May 5, 1768 (Ex. 1456 (d)(2)). The basic organization was not substantially changed but the regulations were more detailed, no doubt to meet difficulties that had arisen.

The "person in charge" of the pilots and of safe navigation on the River is now called for the first time the *Superintendent*; the pilots are grouped by station, about 8 to 10 at Bic and at least 10 at Coudres, and the dues are pooled separately at each station for the benefit of all the pilots of the station, except a 25% deduction for the remuneration of the Superintendent; the dues are now payable in all cases after the completion of the service and are collected at Quebec by the Superintendent and by the pilot upon disembarking after the downbound trip; a premium is paid to the pilot who used the South Channel; the pilots are divided in three categories as to qualifications, i.e., those qualified for the stretch from Bic to Coudres, those from Coudres to Quebec and those fully qualified for the whole of the River; the branch or commission of every pilot has to mention for which of the two channels the pilot has passed his examination; the compulsory payment system is extended to the whole area, i.e., from Bic to Quebec; a new charge is levied on vessels for the cost of installation and maintenance of aids to navigation, i.e., buoys placed at the St. Roch Traverse.

The administration of the service was not without difficulties as evidenced by an entry in the Quebec Gazette of 1769. William Hogg, Master of a British warship, complained that two sloops had to take ten days to travel between Bic and Coudres because no pilots could be found, and the only one

they saw turned them down for a larger assignment. Captain Hogg gave the sloops assistance by putting seamen on board to act as pilots until they were able to obtain regular pilots at Coudres (Quebec Gazette 1769, No. 257, November 30, 1769).

In 1788, Governor Dorchester issued a further ordinance (28 Geo. III c. 5) dealing with two matters as indicated by its title:

“An Ordinance for regulating the Pilotage in the River St. Lawrence, and for preventing Abuses in the Port of Quebec.”

The internal organization of pilotage was modified in order to provide better service and a greater number of pilots to meet the increasing demand and with, for the first time, a regulated system of apprenticeship. The organization was based on working units of pilots, i.e., *companies* each composed of two pilots equipped with a suitable pilot boat and compelled to have at least one apprentice. The number of apprentices per company was not limited. When the apprentice joined the company he had to be between 14 and 16 years of age, and was to serve as such until he reached 21 years of age. After four years of apprenticeship, however, he could act as pilot for the benefit of his masters provided he had secured certificates of competency from the Superintendent and from two experienced pilots, other than his masters, and, thereafter, had been licensed by the Governor. On the other hand, the company was obliged to instruct the apprentices in all aspects of pilotage.

No fewer than four boats with their full complements had to ply constantly at Bic in rotation from April 25 to November 15, under the direction of the Superintendent, and their pilots were to be ready to conduct ships and vessels upriver. The Masters of vessels had the privilege of choosing from the first pilot boat that hailed them any of the pilots in the boat but, on the other hand, the pilots were not to give any preference to any vessel but had to board the nearest one. The pilot's licence automatically lapsed after one year's non-usage. The pilots were given the right of appeal against the disciplinary decisions of the Superintendent before Commissioners of the Peace in the weekly court.

The ordinance also contained numerous clauses regulating the conduct of vessels in the harbour of Quebec, e.g., anchorages, berthing, the disposal of ballast, lighting fires for heating pitch.

The penal aspect of the legislation clearly appears in the additional provision which made it the duty and responsibility of both the Superintendent of Pilots and the Captain of the Port to see, each in his own sphere, that the provisions of the ordinance were carried out and that offenders were prosecuted, failing which they themselves were liable to a penalty of twenty shillings for every wilful act of neglect on their part to perform this duty.

In their Brief to the Commission the Federation of St. Lawrence River Pilots expressed the opinion that one consequence of the 1788 ordinance was the creation of an excessive number of pilots and, as a result, lower revenue

for each pilot. This is not borne out by the facts since it will be seen later that in 1802 there were only 49 pilots for the section of the River below Quebec and the scarcity of pilots became so acute that emergency measures had to be taken in 1812 to recruit more pilots. The ordinance did not facilitate access to the profession which was open and remained so, but it controlled access by making apprenticeship a prerequisite.

Neither the 1788 ordinance nor the previous ones made any mention of pilotage between Quebec and Montreal, for the obvious reason that, at that time, Quebec was the only harbour on the St. Lawrence at which ocean-going vessels called. Water transportation between Quebec and Montreal was provided by schooners of 50 to 100 tons (*Le pilotage du Saint-Laurent de Québec à Montréal*, Ex. 1456(e)).

Governor Dorchester's ordinance was modified twice—in 1790 and 1797—but the amendments did not change its basic structure since the new regulations simply dealt with difficulties and abuses.

On April 12, 1790, 30 Geo. III c. 1 dealt with certain matters regarding the port of Quebec and the Captain of the Port and also made it mandatory for pilots, upon arrival at Quebec, to produce a certificate of behaviour while aboard, and their permissible stay at Quebec when not engaged was limited to eight days.

It was in this ordinance that the division of the St. Lawrence River at Quebec for navigation and pilotage purposes appeared for the first time, and that the terms *Port of Montreal* and *Pilots and Navigation of the St. Lawrence River below Montreal* were used.

The second amendment was effected in 1797 by 37 Geo. III c. 4, entitled "An Act for amending the Laws now in force, and for making more effectual Provision for the Pilotage of the River St. Lawrence, between the Bason of Quebec and the Island of Bic and for improving the Navigation thereof unto the City of Montreal."

There is no doubt that by that time maritime traffic had increased as the colony expanded and that some ships were proceeding past Quebec to Montreal. Larger, newer ships required greater skill and knowledge on the part of the pilots and the pilotage service was developing into an extensive organization. One result was that the channels between the Gulf of St. Lawrence and Montreal were improved and provided with additional aids to navigation.

Pilotage rates were increased and apprenticeship became more closely regulated. Indentures had to be recorded before a notary public and at least one voyage abroad in a "square rigged vessel" was required. The Superintendent was empowered to make standing orders for the conduct of pilots called "Rules and Regulations for the Conduct of Pilots" which had to be approved by the Governor. Up to that time the Governor's sanction had not been necessary. This is the origin of the by-laws that have been made by the Pilotage Authority since that time.

On July 1, 1802, according to the list given by the Superintendent of Pilots, Mr. A. J. Raby, to the Customs House, there were forty-nine licensed pilots on the list for pilotage between Bic and Quebec and twenty-three for pilotage between Quebec and Montreal (Bulletin des recherches historiques, 1918, Ex. 1456(g)).

### (3) PUBLIC CORPORATIONS AS PILOTAGE AUTHORITY (1805-1905)

#### PREAMBLE

As the colony developed, overseas maritime traffic increased to such an extent that it became urgent to improve navigation on the St. Lawrence and to develop the pilotage service. Since this was clearly too great a task to be undertaken by one government official, the Superintendent of Pilots, the authorities turned to England where similar problems were handled successfully by the public corporation system. Since 1515, the responsibility for controlling navigation on the River Thames had been vested in a public corporation, Trinity House, which was, in fact, a local Department of Marine outside the Government whose members were Captains in the Royal Navy and Masters in the Merchant Service appointed by the Government.

Following the English pattern the Canadian Government entrusted this task to similar public corporations from 1805 to 1905. Most of the terms of the governing legislation were of a general nature leaving to the corporations the task of providing for specific and up-to-date requirements by means of by-laws. The Government maintained only indirect and remote control over the activities of these corporations, e.g., at one period it retained the authority to appoint all the officers and members of the corporations, the right of prior approval of their by-laws and the sole power to issue, withdraw and re-establish the pilots' licences. Within the limits of their powers, however, the corporations could act or not as they saw fit and the Government's only recourse was to amend the Act governing them in order to force them to do a specific thing, e.g., in 1850, Trinity House was compelled in that fashion to place buoys to indicate the reefs in the North Channel and to facilitate the traverse from Cape Tourmente to Reaux Island (13-14 Vic. c. 99).

Such public corporations had most of the rights, powers and responsibilities that had previously belonged to both the Superintendent of Pilots and the Captain of the Port, i.e., as far as the pilots were concerned, the corporations regulated the free exercise of the pilots' profession. The powers over discipline and disputes on pilotage matters that were formally exercised by the Superintendent were now exercised by the corporations which, for this purpose, were constituted as courts of record with their own officers and procedure and with provision for an appeal to higher courts against their decisions.

The corporations were financially independent since there was legislation authorizing them to levy the funds necessary for their operations.

There were two such public corporations: (a) Trinity House of Quebec, which lasted from 1805 to 1875 when its only remaining powers, i.e., those of Pilotage Authority, were transferred to the Quebec Harbour Commissioners who had already absorbed all its other functions; (b) the Quebec Harbour Commissioners, who remained Pilotage Authority until 1905 when they were replaced in that function by the Minister of Marine and Fisheries.

The pilots also formed a corporation; in 1860, the Corporation of Pilots for and below the Harbour of Quebec was incorporated by Act of Parliament to bring the pilots into compulsory association and to manage the service. This was the first corporation of pilots in Canada and the only one to have such far-reaching legal powers.

It attained its apogee in 1875 when it inherited the trusteeship and administration of the Decayed Pilot Fund from the then defunct Trinity House of Quebec. After the Lindsay Commission, an Act of Parliament placed this corporation in 1914 under a sort of trusteeship of the Minister of Marine, and, when the 1934 Canada Shipping Act was passed, it was stripped of all its pilotage powers except administration of the Pilot Fund, which power it still exercises.

(a) *Trinity House as Pilotage Authority*

Trinity House was created in 1805 by an Act of Parliament (45 Geo. III c. 12) which repealed and replaced the previous legislation regarding navigation and pilotage. It was entitled:

"An Act for the better Regulation of Pilots and Shipping in the Port of Quebec, and in the Harbours of Quebec and Montreal, and for improving the Navigation of the River Saint Lawrence, and for establishing a Fund for decayed Pilots, their Widows and Children."

The Corporation was composed of nine Governor's appointees: the Master, the Deputy Master and seven wardens, of whom three resided in Montreal. The Captain of the Port, from then on called the Harbour Master, and the Superintendent of Pilots were *ex officio* two of the wardens. The latter was permitted to speak on pilotage matters only and both were forbidden to take part in the deliberations when the Corporation sat as a court because of their status as plaintiffs before the said court. A Harbour Master was also appointed for the harbour of Montreal but was not one of the Corporation wardens.

The word *port* as opposed to the word *harbour* meant confined waters leading to one or more harbours. Trinity House as Harbour Authority was responsible for the efficiency of the harbours situated within the port (the

port corresponded in a general way to a Marine Agent's district) and for maintaining and improving the channels and networks of buoys and other aids to navigation within the port. There was no corresponding term for what is now known as a Pilotage District; instead, the Pilotage Authority's jurisdiction was defined merely by describing the pilotage service over which its jurisdiction extended. From 1805 until 1936 when the last of these corporations on the St. Lawrence were abolished, they were on occasion Harbour Authority, Port Authority and Pilotage Authority all at the same time, but their territorial jurisdiction as Port Authority and Pilotage Authority did not completely coincide. For instance, the situation in 1839 was as follows:

- (i) *Quebec Trinity House* was the Harbour Authority for the harbours of Gaspé and Quebec. As Port Authority, its jurisdiction extended from the Gulf, including the Bay of Gaspé, up to and including Portneuf Basin above Quebec. As Pilotage Authority, its jurisdiction was limited to the pilotage service provided by the pilots for and below the harbour of Quebec, i.e., from the boarding area at the beginning of the confined waters off Bic up to the harbour of Quebec inclusive, but not in the rest of the port of Quebec as far as Portneuf.
- (ii) *Montreal Trinity House* was the Harbour Authority for the harbour of Montreal. As Port Authority, its territorial jurisdiction extended from Portneuf Basin to what was to become the boundary line between the provinces of Quebec and Ontario west of Montreal. As Pilotage Authority, it had no jurisdiction in that section of the port west of Montreal harbour, but directed all services provided by the pilots for and above the harbour of Quebec, i.e., between Quebec and Montreal, the harbour of Quebec being joint pilotage territory for that purpose.

In the 1805 Act (sec. VI), the port of Quebec and the harbours of Quebec and Montreal were defined as follows:

“. . . and the Port of Quebec for the purposes of this Act, shall be held and deemed to comprehend all that part of the River Saint Lawrence, between the Island of Bic, and anchorage thereof inclusive, up to the point of Saint Anne's, above the City of Montreal: and the Harbour of Quebec, shall for the like purposes, comprehend that part of the river, from Saint Patrick's Hole, to the river of Cape Rouge both inclusive; and the Harbour of Montreal, for the said purposes, shall comprehend that part of the said river from the bay below the current of Saint Mary's, inclusive, up to the said point of Saint Anne's.”

The mandate of this Corporation extended further than responsibility for supervising the pilotage service. It covered the whole field of facilitating safe navigation on the River by establishing and maintaining aids to navigation such as buoys, lighthouses, beacons and landmarks; by keeping the channels

clear; and by regulating and improving the harbours both of Quebec and Montreal. In order to carry out these duties and implement the general provisions of the Act, Trinity House was given authority to make the necessary by-laws (which, however, had to be approved and confirmed by the Governor) and to impose fines, suspensions and dismissals in case of infringements.

Parliament retained control of apprenticeship, pilots' qualifications and rates. The actual licensing was made a prerogative of the Government. The terms and conditions of apprenticeship were enunciated in the Act: the apprentice continued to be indentured to a Master Pilot but no longer to a "company"; the term of apprenticeship was increased to five years and two voyages to Europe or to the West Indies were required; the number of pilots was not limited but, as a check against an unwarranted increase, the number of apprentices per Master Pilot was limited to one. The pilots for and below Quebec had to be qualified for both channels and the full length from Bic to Quebec; candidates had to pass an examination "before such Branch Pilots, as shall see fit to attend the examination, and who may propose questions" and had to obtain a certificate from Trinity House after which the Governor would appoint the pilot "by warrant, or Branch under his hand and seal at Arms" either for the Harbour of Quebec and below or for the Harbour of Quebec and above.

At that time, there were two different groups of pilots under one Pilotage Authority but the District was soon divided by the creation of the Port of Montreal and of a separate Montreal Trinity House.

The Corporation had no responsibility for establishing pilotage rates: they were prescribed in the Act. This provision accounts for many of the numerous amendments to the Act. The regular service of pilotage included "14 days for the Pilot to remain on board, after the arrival of the ship or vessel", plus any additional time required by the Master, for which a detention charge was made. In 1869, this was reduced to 48 hours and the requirement was repealed altogether in 1873.

The principle that the payment of pilotage dues was compulsory was retained but it was relaxed to the extent that only half dues were payable if a pilot was refused, even when he had offered his services. Coasting vessels and river craft which did not go beyond the Gulf of St. Lawrence or the Labrador inshore fisheries were exempt. The dues belonged to the pilot who had offered or rendered his services.

Trinity House's only concern with pilotage dues was to ensure that the pilots made their compulsory contribution to the Decayed Pilot Fund which

the Act had created. This contribution of eight pence per pound of earnings was to be paid by each pilot to the Clerk of the Corporation twice yearly.

The Decayed Pilot Fund was the first relief and pension fund ever created by legislation for the benefit of the pilots in this country. The Fund was entrusted for administration to Trinity House as follows:

“And the said Fund is hereby vested in the said Corporation for that purpose, and shall be under the management of the said Corporation, who are hereby authorized and required to grant such relief out of the same, to distressed and decayed Pilots, and the Widows and Children of Pilots as the said corporation or a majority thereof, shall see just and proper, and the monies, which, at the end of each year, shall not be distributed for the said purpose, shall be vested in securities, bearing interest, upon immoveable property, according to the best judgment of the said Corporation, or a majority thereof.”

The powers and the procedure of the Court of Trinity House were set out in the Act. Its judgments were enforceable by way of execution on the assets of the defendant and, in case of *nulla bona*, by committing him to the common gaol of the district until the judgment was satisfied, but imprisonment was not to exceed one month.

The rôle of the Superintendent as prosecutor of pilot offenders was retained. While a cursory review of the Court records may leave the impression that the sole function of the Superintendent and of Trinity House was to act as prosecutor and penal tribunal, it must be remembered that up to 1860 the exercise of the pilots' profession was based on free competition among licensed pilots and that the excessive number of pilots encouraged repeated contravention of the regulations and by-laws. Analysis of the Court records indicates that such an impression is unwarranted. It must also be remembered that an authority without power to enforce is an authority denied, as happened when the Minister became Pilotage Authority in 1905.

The pilots in their brief (Chapter one, para. 27, Ex. 671) stated:

“Trinity House did not hesitate to impose numerous penalties, ranging from expulsion to heavy fines, for the most minimal infringements the majority of which dealt neither with professional ethic nor public safety but only with minor violations of administrative regulations.”

However, the actual picture is different. Mr. Pierre-Georges Roy, Quebec Provincial Archivist, published an analysis of the 1805-1846 Trinity House records regarding the 428 pilots who were licensed during those 41 years (Ex. 1456(g)). During that period, 69 per cent of the pilots were not subject to any disciplinary action. 11 licences were withdrawn for disciplinary reasons and of these 7 were later reinstated. Of the 193 charges laid, groundings and collisions through negligence accounted for 70 per cent, and the next most frequent offence was for piloting while suspended, as shown by the following table.



*Study of Quebec Pilotage District*

ANALYSIS OF THE EXTRACT OF TRINITY HOUSE RECORDS 1805-1846  
RE DISCIPLINARY MEASURES AND DROWNINGS CONCERNING THE  
428 PILOTS APPOINTED DURING THAT PERIOD (Ex. 1456(g))

	No. of Pilots	No. of Offences
No. of pilots on whom no disciplinary measures were exercised	297	
No. of pilots involved in 1 offence.....	89	89
No. of pilots involved in 2 offences.....	31	62
No. of pilots involved in more than 2 offences.....	11	42
No. of pilots drowned.....	37	
No. of pilots reported missing.....	4	
No. of pilots who lost their licence		
for disciplinary reasons.....	11	
for unknown reasons.....	1	
No. of pilots whose licence was later reinstated....	7	
	428	193

OFFENCES	No. of Offences
Groundings, collisions through negligence.....	130
Negligence to show flag, or number of boat.....	6
Abusive language.....	2
Refusal to take charge, to pilot.....	4
For piloting when suspended.....	10
Negligence to bring compass.....	1
Negligence to report vessels piloted.....	7
For anchoring at wrong, prohibited place.....	2
For piloting schooner <i>Leonard</i> .....	1
For going further down than indicated place.....	3
Careless and negligent when piloting.....	1
For leaving boat when in charge.....	3
For handling his apprentice roughly.....	1
Negligence to train his apprentice.....	1
For not taking his apprentice aboard when piloting.....	1
Negligence to make report.....	1
For dismissing his apprentice.....	1
For threatening his apprentice.....	1
For not reporting to Superintendent of Pilots.....	1
Infraction of the Rules.....	7
Misconduct when piloting.....	1
For leaving boat prior to the prescribed 48 hours.....	1
Suspensions—unknown reason.....	4
Fines—unknown reason.....	3
	193

The fines imposed on the pilots and their apprentices were credited to the Pilot Fund while those levied against other parties belonged to the Receiver-General. There was a right of appeal to the Court of King's Bench, whose decision was final except in cases where the interest in litigation exceeded five hundred pounds, in which case an appeal was provided to the Provincial Court of Appeals and to the Privy Council.

Trinity House soon experienced difficulty making the pilots pay their contribution to the Pilot Fund and the Act was amended in 1807 by 47 Geo. III to provide for a system of deduction at source by having the contributions collected from the Masters of vessels by the Naval Officer<sup>2</sup> at the same time he collected the port charges.

By 1811, there were many more ships requiring pilots and the apprenticeship system, limited as it had been in 1805, could not meet the demand. The situation was so serious that both immediate and long-range solutions had to be found. By an amendment to the Trinity House Act (51 Geo. III c. 12) the remedies were as follows:

- (i) The Governor was authorized during the term of five years as an immediate and temporary measure to appoint up to fifteen persons with the necessary qualifications to pilot vessels.
- (ii) The permissible number of apprentices per Master Pilot was raised from one to two.
- (iii) In certain cases, the apprenticeship period was reduced to four years.

As explained in the preamble to an 1812 amendment (52 Geo. III c. 12), contention soon arose between the two groups of pilots over the administration of the common Pilot Fund. Although the Fund consisted largely of the contributions of the Lower St. Lawrence Pilots, it was practically exhausted by the heavy and disproportionate demands of the other group. It was, therefore, felt advisable to create a separate fund for the pilots of Quebec and above. Thus one further step was taken in the division of the Quebec Pilotage District.

The 1822 amendment (2 Geo. IV c. 7) acknowledged the advent of steam by making steamboats subject to the payment of pilotage dues.

From 1829 to 1831 inclusive, four amendments were made to the Trinity House Act but they did not concern pilotage directly. Their purpose was to appropriate to Trinity House monies out of public funds toward the erection of lighthouses at Anticosti and Pointe des Monts, and also for stationing a floating lighthouse at the St. Roch Traverse (9 Geo. IV c. 24), 10-11 Geo. IV c. 13, 10-11 Geo. IV c. 34, 1-Will. IV c. 12).

<sup>2</sup>This was an officer appointed by the Government who was not a member or officer of Trinity House.

By 1831, the situation was the reverse of 1812: there was a surplus of pilots, possibly due to the combined factors of the emergency measures taken in 1812 and the change in the traffic pattern that followed the advent of steam vessels, i.e., fewer but larger and faster vessels. The competition among pilots became more acute and gave rise to many abuses. The situation was not new, however, because it was inherent in the free enterprise system. As early as 1808, when there was a scarcity of pilots and, therefore, no reason for such abuses, it was reported that the pilots were constantly contravening the by-laws by going far down the St. Lawrence at night to meet vessels. On July 23, 1808, a Captain Lambly sent a report to the Governor's Secretary recommending that he be allowed to cruise 10 or 20 leagues below Father Point and remove for punishment any pilots he might find already aboard vessels (Secretary of State's papers 1808, S74 Public Archives).

In 1831, the pilots sent the Government a petition containing their complaints against Trinity House. The petition was referred to the standing committee but was not recommended by them and, therefore, no further action was taken (Journal of the House of Assembly of Lower Canada Vol. 41, 15 November 1831 to 25 February 1832, 2 Will. IV). This is a pertinent extract from their recommendations:

"...praying that no Pilot should have the liberty of piloting any Vessel for a smaller sum than that which is fixed by Law; that, for the next fifteen years, no Pilots should be allowed to take as an Apprentice any other than the son of a Pilot; that all Pilots who have piloted a vessel from below to Quebec, in an able manner, should have the preference of piloting her from Quebec down the stream;"

Then followed complaints against the way the Decayed Pilot Fund was being handled by Trinity House:

"...that all Pilots Widows having very young children, should have a larger Pension than that which is allotted by Law from the Pilots Fund; all Pilots in case of sickness should receive a proportionate allowance from the same Fund, without being obliged to reimburse the same on the recovery of their health; and that in case of a Pilot losing his Branch, (a thing which by accident may happen to all Pilots, even the most experienced,) his wife and children should be allowed a Pension proportionate to his length of time and services."

In 1834, an amendment (4 Will. IV c. 25) introduced quarantine dues for pilots detained aboard vessels at the Grosse Ile quarantine station.

By 1832, shipborne traffic between Quebec and Montreal had become so important that it was felt desirable to divide the territory and responsibilities of Trinity House. By 2 Will. IV c.24 the Port of Quebec was reduced so as to terminate at Pointe du Lac, county of St. Maurice (in 1839 it was further reduced to the western limit of Portneuf Basin (Notre Dame de Portneuf) (2 Vic. c. 19) and the portion of the River upstream from that line became the Port of Montreal. The Montreal section of Trinity House became an independent corporation whose duties included trusteeship and administration of the Decayed Pilot Fund for the pilots for and above the harbour of Quebec.

Until the Trinity House Act was consolidated in 1849, only three of its amendments dealt directly with pilotage. In 1841 (4-5 Vic. c. 15), the excessive number of pilots was restricted but their acquired rights were preserved; the period of apprenticeship was extended to seven years; the number of overseas voyages required of an apprentice was increased to a minimum of three; the number of apprentices per pilot was reduced to one with the proviso that Trinity House must approve each pilot's right to take an apprentice. The amendments in 1846 (9 Vic. c. 4) and 1847 (10-11 Vic. c. 27) preserved the acquired rights of apprentices by recognizing their right to be governed by the by-law requirements that existed at the time of their indenture, notwithstanding the further requirements that were added through later by-law amendments.

Over the years, the large number of amendments, many dealing with the same subject, made the Act difficult to interpret and some of its provisions became obsolete.

In 1849, a new Act (12 Vic. c. 114, Ex. 703) was passed which, in addition to providing unity and clarity, contained basic, far-reaching changes and abrogated the 1805 Act, together with all its amendments, wherever it referred to Quebec Trinity House.

The 1849 Act was a substantial document containing one hundred and twenty sections. It dealt at length with the corporate structure of Trinity House and its various duties and responsibilities. Numerous sections dealt with the Corporation's powers to own property, to borrow money, to enter into contracts, and to expropriate land required for the erection of aids to navigation. In addition, there were provisions for the management and control of the harbour of Quebec and for the judicial powers of the Corporation.

This Act contained the most complete pilotage legislation to that date. The major change was the institution of compulsory pilotage including provision for the following: (i) vessels leaving the Port of Quebec without a pilot were liable to a fine equivalent to the dues they would otherwise have paid (sec. 53); (ii) when vessels on inward voyages entered the port limits the Union Jack had to be hoisted at the foremast until a licensed pilot had embarked, and non-compliance carried a penalty of ten pounds (sec. 54); (iii) when a boat flying a pilot flag was sighted, the Master was required to assist the pilot to embark and, if he failed to do so, he was liable to a fine not exceeding ten pounds in addition to the payment of the pilotage dues to the pilot concerned (sec. 55); (iv) a Master who had engaged a pilot or had promised to employ one but later refused was liable to the pilot for the amount of the dues (sec. 30).

It is of interest to note that in 1864 (27-28 Vic. c. 57) compulsory pilotage was extended to movages in the harbour of Quebec, excluding vessels proceeding to Montreal, under penalty of a fine not exceeding ten

pounds for failure to take a pilot, and that compulsory pilotage was abolished when the first Pilotage Act was passed in 1873.

In the 1849 Act the Government retained the right to appoint all officers and members of Trinity House. Appointments, including those of two Superintendents of Pilots instead of one as before, were during pleasure. The remuneration of the two Superintendents and of the Corporation officers was fixed by the Act and Trinity House was made liable for paying them out of its own revenues.

Ever since Governor Murray appointed a Branch Pilot to supervise the service it had been taken for granted that the Superintendents of Pilots would be pilots, but this was not clearly stated in the law. The 1849 Act dispelled any doubt: subsec. 2(6) prescribed that the Superintendents "shall be Branch Pilots" and would continue to benefit from the Decayed Pilot Fund to which they must contribute. If they ceased to be Superintendents, they automatically reverted to licensed pilots (sec. 60).

Parliament transferred the power to license pilots from the Government to Trinity House but the main requirements for apprenticeship continued to be laid down in the Act and Trinity House's power to suspend and withdraw licences was limited. The apprenticeship requirements remained as they were before except that four voyages to Europe were required, a copy of the notarial deed recording the indenture had to be filed with Trinity House and only those pilots who had proved to Trinity House their aptitude to teach were given a licence to take an apprentice, and then only one. It was also laid down that, in order to assist all the apprentices, Trinity House must organize two annual training cruises in the North Channel of the St. Lawrence "to explore the same" using its pilot boat with one of the Superintendents in charge.

Trinity House's authority to withdraw licences was limited to cases of non-usage and gross misconduct. Non-usage for two years without valid reason rendered the pilot liable to a fine of fifty pounds and a recurrence resulted in the withdrawal of his licence. For misconduct which caused the loss of, or damage to, a vessel or a serious delay, a licence could be withdrawn only if the pilot was guilty of gross negligence or drunkenness. If convicted of gross negligence, the pilot could be reinstated provided he passed the regular pilot's examination again, and, if convicted of drunkenness, his licence could be returned provided he gave satisfactory proof of two years' sobriety.

The limits of the "Port of Quebec" were changed and a new term, the "river", was added. The "Port of Quebec" comprised the area from the western limit of Portneuf Basin and included that part of the Gulf that fell within the limits of the Province of Canada. The "river" was that part of the

port that ended in the Gulf at an imaginary line drawn from east of the anchorage of Barnaby Island (near Father Point) and east of the anchorage of Cape Columbia (Cap Colombier) on the north shore. The "river" thus defined became in the Pilotage Act of 1873 (sec. 5) the Pilotage District of Quebec.

Licensed pilots were exempted from militia, jury and constabulary duties.

This new Act was amended many times because Parliament wanted to keep control over matters which were liable to fluctuate such as tariff, salaries of officers and exemptions (1850, 13-14 Vic. c. 96; 1855, 18 Vic. c. 161; 1869, 32-33 Vic. c. 41; etc.).

In 1850, legislation was passed (13-14 Vic. c. 99) to oblige Trinity House of Quebec to provide a channel to cross from the South Channel to the North Channel, which is now known as the North Traverse. The title of the Act stated that it was "to oblige Trinity House of Quebec to lay down Buoys to mark the Shoals in the North Channel of the River St. Lawrence and to facilitate the Traverse from Cape Tourmente to Isle-aux-Reaux." The Act added that it was "in consideration of the rapid settlement and increasing population of the Territory lying upon the banks of the Saguenay and upon the North shore of the River St. Lawrence, from the Black River downwards as far as Pointe-des-Monts".

#### (b) *Creation of the Quebec Pilots' Corporation*

The year 1860 marked a drastic change in the basic organization of the pilotage service, namely, the abolition, at the pilots' own request, of free enterprise competition among members of the profession and, in its stead, the assignment of pilots by roster, combined with the pooling of pilotage revenues.

The pilots took this major step to improve both their own position and the quality of the service, and thereby established a precedent which, despite bitter opposition from many quarters (particularly the shipowners), was subsequently recognized as one of the most efficient ways to organize pilotage. The pooling system they created has since been applied in most Pilotage Districts in Canada with the notable exception of their own District of Quebec where a later Act of Parliament (1914, Geo. V c. 48) compelled them to adopt another system.

In 1860, the number of pilots, which had been excessive for some years, reached 280 and the pilots suffered the bitter consequences of free competition in a profession where the number of members was not effectively controlled. Their lives were endangered and their earnings were threatened.

In his minority report Captain Adjutor Lachance, the pilot member of the Lindsay Commission of 1913, summed up the reasons for the formation of the 1860 Pilots' Corporation:

"In 1860, after the loss by drowning of 58 of their confreres<sup>a</sup> in the short space of two years, the 280 branched pilots united and unanimously asked the government to allow them to form in a corporation.

The principal reasons they gave to have an Act of Incorporation were:—

1st. To be able to acquire large schooners to keep the stations in a better manner and be always ready, in all sorts of weather, to render assistance to navigation.

2nd. To do away with that opposition of one against the other, who, sometimes in order to be first to meet vessels obliged them to go down as far as the entrance of the Gulf risking their lives in very small open boats.

3rd. To be in a position to collect the amount of their pilotage dues without being obliged to leave \$25 or \$30 off, in order to have the vessel down". (Lindsay Report, p. 23, Ex. 1325).

The 1860 Bill, known as the Taché Bill, was not passed without much debate and opposition. It was first proposed in 1854 at the request of two hundred of the pilots with thirty-seven dissenting. Opposition also came from several large commercial houses on the grounds "that it did away with competition, and that the proposal to pool all the pilots' earnings was a pernicious one, and would not develop genius but generate laziness" (Lindsay Report, p. 7, Ex. 1325). However, there was dissatisfaction even among shipowners on account of the long delays experienced at the Bic station by upbound vessels because the pilots were scattered in the Gulf, and by downbound vessels because pilot boats were lacking to disembark the pilots.

In 1860, by 23 Vic. c. 123 the pilots' request was granted and they were incorporated under the name of "Corporation of Pilots for and below the Harbour of Quebec". It was a professional closed corporation to which all the licensed pilots of the District automatically belonged. As stated in the Act, the pilots became responsible through their Board of six Directors for providing seaworthy schooners to cruise in the boarding area to permit the pilots to embark and disembark. They were also responsible for despatching. The pilotage dues were considered Corporation earnings which, after expenses had been deducted, were shared equally by the serving pilots on the basis of availability. This arrangement resulted in a compulsory partnership for the purpose of sharing equitably workload, expenses and income.

The pilotage dues of outbound vessels were paid to the Corporation in advance and the Customs Officer could not give clearance until he was satisfied payment had been made.

The right of the shipowner to choose his pilot was recognized. The Act granted to the Montreal Oceanic Steamship Company the right to choose four

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<sup>a</sup>This figure is accepted because it is taken from the Lindsay Report (Ex. 1325). There was a similar situation during the period 1805 to 1846 when 37 of the 428 pilots who were appointed by Trinity House were drowned and 4 reported missing (Ex.1456 (g)).

pilots who, when accepted, were excused from other pilotage duties. Masters, when downbound, were allowed to choose anyone whose name appeared on the tour de rôle list at Quebec. The pilot was obliged to report 48 hours after each trip at which time his name was placed at the bottom of the list to indicate his turn.

As might be expected, these privileges became a bone of contention and remained so until the "special pilot" system was abolished in 1960. The "special pilot" system made it difficult, if, not impossible, to share workload and remuneration equitably. It must have been a concession that the pilots were forced to make in order to appease the opposition and to obtain their incorporation. Trouble developed immediately, but by an amendment to the Act (32-33 Vic. c. 43, secs. 2 and 3, assented to June 22, 1869) the privilege of the Master to choose a pilot was reaffirmed in no uncertain terms and increased by extending it to the inward voyage as well, the Master being given the right to choose any pilot on board the schooner that hailed him. Sec. 3 stated that once "on the roster or rôle" the pilot was "liable to be so chosen and to serve whatever may have been the number of times he shall have previously served."

On December 11, 1869, application was made to the Government for the revocation of the 1860 Act and the abolition of the Corporation so that the pilots who were compelled to do more than their share could retain the dues they earned by this extra work. The Government did not grant the request and these provisions, which were never amended or repealed, would therefore appear to be still in force (*vide* Comments, Part I, p. 18).

Reverting to the 1860 Act, it provided that, subject to the approval of Trinity House and to publication in the press, the Corporation had the right to enact by-laws which dealt with internal administration, discipline of pilots, despatching, sharing and distribution of earnings, payment of expenses, etc. It had to make an annual financial report to Trinity House which also continued to exercise control as Pilotage Authority through its By-laws, the supervision of the two Superintendents and its powers to settle pilotage disputes and to take disciplinary measures.

There were very few amendments to the Pilots' Corporation Act. Sec. 21, which defined which earnings belonged to the Corporation, was clarified in 1862 (25 Vic. c. 70) to mean all the pilots' earnings including half of any fine to which they might be entitled as plaintiffs. A sanction was provided to ensure the observance of the By-laws of the Pilots' Corporation and there was also provision for the punishment by fine, suspension or withdrawal of licence of pilots who, through misconduct, negligence or drunkenness, delayed the departure of the vessels to which they were assigned. In 1869 (32-33 Vic. c. 43), the non-responsibility in torts of the Corporation for the



act, fault or negligence of a pilot was stated in the Act<sup>4</sup>. Finally, in 1875 (38 Vic. c. 55), the Corporation inherited the administration of the Decayed Pilot Fund from Trinity House and was required to render annual accounts to the Minister of Marine and Fisheries. In 1899, the schedule to the Quebec Harbour Commissioners Act (62-63 Vic. c. 34) carried an amendment to the Pilots' Corporation Act for the purpose of correlation only, the name of Trinity House being replaced by the name of the Quebec Harbour Commissioners. The next Act of Parliament that affected the Pilots' Corporation Act was the 1914 Act which, without amending or abrogating the 1860 Act, to all intents and purposes abolished the Corporation by depriving it of all its powers except those concerning the administration of the Decayed Pilot Fund.

These various changes in the status of the pilots made it impossible to continue the former apprenticeship system, particularly in view of the fact that the individual pilots no longer owned their own pilot vessels. This situation was corrected to some extent by an amendment to the Trinity House Act in 1864 (27-28 Vic. c. 57). The number of apprentices was not to be below a minimum of 36 and they were thereafter to be indentured to the Corporation of Pilots which was required to make them serve in turn on board vessels being piloted or on board the pilot schooners.

(c) *The Pilotage Act, 1873*

Until Confederation, the Province of Canada had been concerned with pilotage on the St. Lawrence only, but the new Dominion of Canada became involved in the pilotage problems of the Maritime Provinces, whose pilotage legislation, organization and practice were basically different.

The Pilotage Act of 1873 (36 Vic. c. 54) was the first attempt to establish uniform provisions for all Pilotage Districts. It laid down a basic organization but contained special provisions which recognized the existing systems in Halifax, Saint John, N.B., Quebec and Montreal. It incorporated rules that were, or could be, common to all and provided flexibility by giving the Pilotage Authority additional powers to make regulations covering local situations.

The basic organization provided by the Pilotage Act was a financially self-supporting District with self-employed pilots, either working as free entrepreneurs or in small partnerships (companies) under the supervision of a local board appointed by the Government as Pilotage Authority. Masters could not be compelled to employ a pilot but the payment of pilotage dues

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<sup>4</sup> The 1869 amendment was no doubt rendered necessary on account of the courts' decisions holding the Pilots' Corporation civilly responsible for damages caused by its pilots. One such case is reported: *Lotus* 1861, 11 L. C. R. 342 (vide Part I, p. 823). The suit for damages taken by the ship *Washington* against the vessel *Lotus* was dismissed. The court decided that it was sufficiently shown that the collision was occasioned by the sole fault of the pilot of *Lotus* and discharged the owners of *Lotus* of all responsibility, pointing out that they might have recourse against the pilot or against the Corporation of Pilots to which the pilotage dues belonged.

could be made compulsory. The term "Pilotage District" appeared for the first time; it meant the territory over which the Pilotage Authority had jurisdiction. Parliament delegated to the Governor in Council power to create and abrogate Districts, to fix and amend their limits, to appoint their Pilotage Authority and to determine whether the payment of the dues would be compulsory. Halifax, Saint John, N.B., Montreal and Quebec were exceptions to these rules in varying degrees.

Most of the special provisions in the Act concerned the Quebec District because its pilotage organization was unique. The existing reduced and limited powers of Trinity House were continued and the rôle of the Pilots' Corporation in the control and management of the service was reaffirmed. The pertinent sections of the Trinity House Act were not abrogated nor were they enlarged. This was specifically indicated by sec. 91:

"Nothing in this Act shall be construed to give power to Trinity House of Quebec to make regulations respecting the management or maintenance of pilot boats, or respecting the administration or distribution of the earnings of pilots and pilot boats, save and except in so far as relates to the administration of the pilot fund."

A special chapter in the Act (secs. 85 to 88 incl.) gave additional recognition to the part played by the Pilots' Corporation in the management of the service. In fact, this chapter amended the Quebec Pilots' Corporation Act by prescribing that certain pilots who carried out no pilotage assignments would continue to share in the pool and might even be eligible for a bonus because their contribution was to the common benefit of the pilots and the service, i.e., the pilots who were employed as Masters of the pilot schooners and the Directors of the Corporation. One of the Directors was required to be on duty and to be present in person at one of the pilot stations throughout the navigation season in order to supervise despatching. He was also required to keep a journal of events, a copy of which was to be forwarded monthly to Trinity House in lieu of a report.

The Act recognized the special status of the Quebec Decayed Pilot Fund by making the sections which dealt with pilot funds inapplicable to the Quebec District and thus avoided conflict with the pertinent provisions of the Trinity House Act. The compulsory contribution was fixed by the Act at 7 per cent of the pilots' earnings (sec. 81).

Compulsory pilotage was abolished by repealing the pertinent sections of the Trinity House Act and replaced by the compulsory payment of dues (secs. 49 and 57).

The Pilotage District of Quebec comprised what was referred to in the 1849 Trinity House Act as that part of the Port of Quebec known as "the river", i.e., from the basin of Portneuf inclusive to an imaginary line drawn from the eastern anchorage ground of Barnaby Island to the eastern anchorage ground of Cape Columbia (Cap Colombier) on the north shore (sec. 5).

These limits were fixed by the Act and, since the Act did not contain a provision similar to the one now embodied in the final lines of sec. 324 C.S.A., the Governor in Council had no authority to alter them.

The provisions regarding apprenticeship were deleted from the Trinity House Act and incorporated in special sections of the Act dealing with apprenticeship in the Quebec District (secs. 25 to 28 incl.). No changes were made except in the number of apprentices which could never be less than 36 nor more than 60.

Subsec. 18(5) was a new feature in that it limited the number of pilots on strength at Quebec to a minimum of 150 and a maximum of 200, but sec. 62 of the Trinity House Act, which gave a pilot the right to retire voluntarily at 60 and to receive a pension from the Decayed Pilot Fund, was abrogated. The licence automatically lapsed when the pilot reached the age of 65 but the Authority was allowed to issue new annual licences from year to year with no limitation as to age (sec. 36). The licensing of Masters and mates to pilot their own ships was not authorized for the Districts of Quebec, Montreal, Halifax or Saint John, N.B. (sec. 65).

Another new feature gave Trinity House, like the other Pilotage Authorities, power to fix the tariff but the Act specified that it was to be calculated to provide for a \$600 minimum net annual income per pilot on a three-year average. Otherwise, the tariff was not to be amended (sec. 18).

In the Trinity House Act most of the sections dealing with pilotage were deleted and the few that were retained dealt only with the special organization of the Quebec District, such as Trinity House's obligation to organize training cruises for the apprentices in the North Channel; the pilots' obligation to abide by the orders of the Harbour Master; the existence of the Decayed Pilot Fund and how its benefits were to be determined. All the provisions authorizing Trinity House to act as a Court of Justice with reference to pilotage disputes and the discipline of pilots also remained.

(d) *Quebec Harbour Commissioners Pilotage Authority as Successors to Trinity House*

The various Acts passed between 1858 and 1875 indicate that during that period the structure of the organization for the administration of navigation on the St. Lawrence River was the object of much controversy. In 1858, Trinity House was relieved of its function of administering the harbour of Quebec and this task was entrusted to another public corporation, the Quebec Harbour Commissioners, especially created for the purpose and composed mostly of non-Government appointees who represented the various parties interested in the harbour (22 Vic. cc.31 and 32). This marked the beginning of the decline of Trinity House.

In 1871, it was enacted (34 Vic. c. 31) that the Wardens of Trinity House, with the exception of the Harbour Master and one of the two

Superintendents of Pilots, should serve without pay. In 1872, an attempt was made to alter the Government-appointed character of Trinity House by increasing the number of members to include four elected by the Council of the Quebec Board of Trade and by making the President of the Pilots' Corporation a Warden *ex officio*.

Whether it became apparent that there was a duplication of organizations dealing with the same problems of navigation on the St. Lawrence or whether there were other reasons, it is a fact that Trinity House was abolished in 1875 (38 Vic. c. 55) and was superseded in all its functions, responsibilities, rights and assets, as well as liabilities, by its young rival, the Quebec Harbour Commissioners Corporation (except for the administration and trusteeship of the Decayed Pilot Fund which duties were then entrusted to the Pilots' Corporation). It was a return to the original situation that prevailed between 1805 and 1858 except that the name of the Corporation was changed and half its members were no longer Government appointees.

At the same time, the membership of the Harbour Commissioners Corporation was modified so that five of its nine members were appointed by the Governor and the remaining four were elected, one by the Board of Trade of Quebec, one by the Board of Trade of Lévis and two by the shipping interests. In addition, the Chairman of the Corporation of Pilots was a member *ex officio* but with respect to pilotage matters only.

The Harbour Master and the Superintendent of Pilots were no longer members of the Corporation and it was left to the Corporation's discretion to decide whether their services should be retained or dispensed with, but, if retained, it was specified their salaries would have to be paid out of Corporation revenues and not by the Government. In fact, the office of Superintendent of Pilots was abolished and was not reinstated until the Minister became the Pilotage Authority in 1905 (Ex. 1456(k)). As a corollary, in 1875, the Pilotage Act was also amended (38 Vic. c. 28) to reflect the change in the Pilotage Authority. At the same time, the right of the Quebec pilots to appeal against any judgment rendered by the Pilotage Authority was reiterated; such appeals were to be made in the Superior Court and the relevant sections of the Trinity House Act were to apply. As far as pilotage and the pilots were concerned, nothing really changed and exactly the same laws and by-laws continued to apply. It was the same organization but with different people as the Authority. The Harbour Commissioners remained the Pilotage Authority until replaced by the Minister of Marine and Fisheries in 1905, but they do not appear to have been very active in the field of pilotage.

By that time (1905), statutory legislation on pilotage was located in four different sets of statutes: the Trinity House Act of 1849, the Quebec Pilots Corporation Act of 1860, the Québec Harbour Commissioners Act of 1858 and the Pilotage Act of 1873. To a certain extent, this is still true today.

(4) PILOTAGE LEGISLATION (1877-1903)

Any uncertainty that might have existed as to the judicial functions of the Quebec Harbour Commissioners was dispelled in 1877 by an amendment to the Pilotage Act (40 Vic. c. 51 s. 6).

An 1882 amendment to both the Pilotage Act and the Trinity House Act (45 Vic. c. 32) dealt with the limit of time for initiating investigation into a complaint against a pilot's conduct. Undoubtedly there were still too many pilots since the Pilotage Authority was prohibited from granting any licence until their number was reduced below 125, subject, however, to the acquired right of the previously indentured apprentices to be granted a licence when qualified. The Authority was also given power to fix the number of apprentices having regard to the requirements of the service. Obviously, the Pilots' Corporation and the pilots whose licences were withdrawn had different opinions about the amount and the nature of their share in the Corporation's assets and, hence, sec. 9 of the amendment gave the Board of Directors of the Pilots' Corporation authority to make agreements and reach compromises.

In 1886, the Pilotage Act was consolidated (49 Vic. c. 80). No change was made in the organization of the District of Quebec, but the various amendments to the 1873 Act were incorporated, e.g., substituting the name of the Harbour Commissioners for Trinity House as Pilotage Authority, and naming the President of the Pilots' Corporation as a member of the Pilotage Authority.

The amendment passed in 1875 was also incorporated (38 Vic. c. 28 s. 3), the origin of the present sec. 328 C.S.A., which indirectly prescribed that the Pilotage Authority of Quebec is the only Pilotage Authority in Canada that does not have the right to pay its necessary expenses out of pilotage monies. This was in conformity with the special organization of Quebec whereby all such expenses were met by the pilots themselves through their Corporation, and Trinity House had its separate sources of revenue to cover its own administrative expenses. In addition, sec. 19 provided that any proposed by-laws of the Quebec Pilotage Authority had to be furnished to the Pilots' Corporation twenty days before their submission to the Governor in Council for approval.

In a volume published in 1888 containing the by-laws of the City of Quebec there is an appendix entitled "By-laws, Orders, Rules and Regulations of the Pilotage Authority of the District of Quebec" (Ex. 1456(f)). It is apparent that up to 1888 the Harbour Commissioners had not seen fit to replace the by-laws promulgated by Trinity House. It is interesting to note that they are composite by-laws which did not deal merely with pilots and pilotage but with all the other subjects that were within the competence of Trinity House or the Quebec Harbour Commissioners.

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Among the offences listed in the sections dealing with pilotage and pilots were: to stop or anchor alongside the moorings of Her Majesty's Ships; to take charge of a vessel other than their branches permitted; to fail to report any alterations in sand banks or channels, buoys or beacons that were out of place; to fail to appear before the Corporation when ordered to do so; to fail to warn a ship approaching shoals or other cause of danger; to abandon a vessel in the harbour of Quebec against the wish of the Master within 48 hours after arrival; to anchor a vessel within two cables of any wharf in the harbour and at other specified places.

The By-laws also dealt with the voyages that the apprentices had to make overseas and the "exploration trips" they had to make to the North Channel of the River St. Lawrence.

It was made an offence for the Master not to provide the requisite assistance to the pilot for "heaving the lead" and it was prohibited to engage pilots for a shorter distance than to Bic or to discharge the pilot before arriving off the anchorage at Bic.

In addition, the By-laws dealt with harbour regulations, such as on arriving in the harbour from sea the Master had to hoist the Union Jack at the peak until the vessel had been cleared; if immigrants were aboard, a special signal had to be flown; ballast could not be discharged except within certain designated limits; vessels could not be made fast to the shore except for the purpose of hauling ship to avoid delay; how vessels had to lie at certain wharves and how they were to be trimmed and rigged was defined; heating or boiling tar, pitch, was prohibited; lost anchors were to be reported; dirt, silt, or rubbish were not to be left on docks or landing places; lights were to be shown in various circumstances; there were special regulations for steamboats carrying passengers; gangways were to be made fast; certain wharves were designated for various categories of ships.

Many sections dealt with the same topics (except pilotage) regarding that part of the Port of Quebec known as the harbour of Gaspé (which the By-laws did not define).

The duties of the Harbour Masters were defined and the Bailiff, when not employed in his capacity as an Officer of the Corporation Court, had to observe steamboats and report to the Harbour Master any contravention of the By-laws. The By-laws also contained a tariff of fees for Advocates, the Clerk of the Court and the Bailiff.

On June 11, 1891 (Canada Gazette 1891-1892 Part I, p. 6), the Governor-General was requested to approve increases in tariff in order to bring each pilot's income up to \$600 per year guaranteed minimum.

In 1899, the new Quebec Harbour Commissioners Act (62-63 Vic. c. 34) effected a long overdue consolidation and revision of the many Acts and amendments dealing with pilotage and with the other powers of the Quebec Harbour Commissioners.



### *Study of Quebec Pilotage District*

In sharp contrast with previous legislation in this field, very little was said about pilotage although it dealt at length with the organization of the Corporation. The situation had changed from the time when there was no separate pilotage legislation because the Trinity House Act, among other things, constituted a pilotage code; since 1873 there had been a Pilotage Act embodying all general pilotage provisions as well as some specific provisions, e.g., those applying to the District of Quebec only. The new Quebec Harbour Commissioners Act contained only a brief allusion to the Corporation's function as Pilotage Authority and reference was made to the Pilotage Act for a definition of its powers and duties in that field.

The territory of the Port of Quebec was reduced in the east to what was previously the eastern limit of the "river". In the west it was extended to Deschambault and Richelieu Island so that the port no longer coincided with the Pilotage District. The limits of the harbour of Quebec were defined in sec. 6 of the Act and have not been modified since.

The shape of things to come was shown by the pilotage by-laws passed by the Quebec Harbour Commissioners November 21, 1901, and approved by the Governor in Council June 23, 1903, which represented a complete and a total delegation of power by the Pilotage Authority to the Minister of Marine and Fisheries and his Department (Ex. 1456(h)). It was apparent that, since 1901 at least, the Quebec Harbour Commissioners had ceased to perform their responsibilities as Pilotage Authority effectively and, therefore, obviously the next step was for the Minister to become Pilotage Authority in his own right. This, in fact, soon occurred. This delegation of powers appeared to identify both the Minister and his Department with the Pilotage Authority and resulted in a misapprehension which still exists.

In 1903, an Act of Parliament (3 Ed. VII c. 190, Ex. 903) incorporated an association of shipowners, shipping agents and other people interested in shipping under the name "The Shipping Federation of Canada Inc." with its main office in Montreal. The purpose of the organization was to deal with the questions and problems of common interest to the group and to serve as their official representative. The members represented mainly ocean-going vessels of foreign flags. The Shipping Federation was to be intimately involved in pilotage and the organization of the service.

#### (5) SAGUENAY PILOTAGE DISTRICT (1903-1905)

For a very short while, the Saguenay River became a separate Pilotage District. In 1903, by Ed. VII c. 48 s. 2 the Saguenay River was taken out of the limits of both the Port of Quebec and the Pilotage District of Quebec. On January 19, 1904, by an Order of the Governor in Council (Ex. 1456(l)),

the Saguenay River was made a separate Pilotage District under the name of "the Pilotage District for the River Saguenay", the limits of which were as follows:

"To embrace all the tidal waters of the River Saguenay and its tributaries and the waters of the River St. Lawrence at its mouth within a radius of seven miles from the front range light house at Pointe Noire, on the western side of the mouth of the river."

The Order in Council further provided for a Pilotage Authority composed of local appointees. Pilotage was made compulsory. This was illegal being contrary to sec. 13 of the 1886 Pilotage Act which limited the Governor in Council's power to making the payment of dues compulsory.

The Saguenay Pilotage District was short-lived and was discontinued some fifteen months later when its territory was reincorporated into the Port and Pilotage District of Quebec, i.e., reverting to the situation prior to 1903 (1905, 4-5 Ed. VII c. 34 s. 1).

The reasons for this sudden change of policy are not known and for our purposes need not be investigated further. What the pilots recall of the matter was that "the pilotage was in the hands of one firm, two men were engaged at two or three hundred dollars a year to make the pilotage in that river, the ships were charged full tariff, and the difference went in the profit and loss account of the said firm" (Pilots' answer to the Lindsay Report, Ex. 1456(k)).

(6) TRANSITION PERIOD (1905-1934) THE MINISTER  
PILOTAGE AUTHORITY AS SUCCESSOR TO TRINITY HOUSE

(a) 1905 Act

When "An Act respecting the Port and Pilotage District of Quebec" (4-5 Ed. VII c. 34) received assent July 20, 1905, the Minister of Marine and Fisheries became officially the Pilotage Authority for the Pilotage District of Quebec—an office which he had actually held unofficially for a number of years. The Quebec Harbour Commissioners were superseded by the Minister as Pilotage Authority with the proviso that the Minister was not to have judicial powers. These were to be exercised under the Shipping Casualty Act 1901 or, in cases not covered by the Act, by a tribunal or by an officer designated by the Minister.

It is possible that the change was prompted by local representations and by the desire to improve both the service and the lot of the pilots, but the legislation of the time indicates that it resulted from a concerted policy of centralization and that the endless local disputes and complaints were used to justify this policy. The appointment of the Minister as Pilotage Authority appears to have been simply one phase of the overall plan.

It is worth noting that a precedent had been established a few months earlier in the District of Montreal where, on October 24, 1903, the Minister was made the Pilotage Authority replacing the Montreal Harbour Commissioners (3 Ed. VII c.48), and that, in 1904, the Pilotage Act had been amended to incorporate this new feature in the general provisions of the Act applicable to all Districts. This was the origin of the present sec. 327 of the Canada Shipping Act. At that time, two conditions had to be fulfilled before the Minister was appointed Pilotage Authority: there had to be a recommendation by the shipping interests of the port concerned or by the Council of the Board of Trade; the Governor in Council had to be satisfied that the appointment was "in the interest of navigation". The first condition was deleted in 1919 by 9-10 Geo. V c. 41.

Whether or not it was a result of a similar policy of centralization, it is worth noting that in 1912 the Quebec Harbour Commissioners Corporation lost its representatives from local interests when 2 Geo. V c. 44, provided that "the corporation shall consist of three commissioners appointed by the Governor in Council upon the recommendation of the Minister of Marine and Fisheries, and they shall hold office during pleasure". Thus, the Corporation became strictly a Government agency, although autonomous, just as Trinity House had been up to 1872. The change in the Pilotage Authority in Quebec must have caused little excitement because it simply legalized the *de facto* situation.

(b) *1906 Canada Shipping Act*

In 1906, all these laws related to navigation were incorporated in one single Act, the first Canada Shipping Act. As far as pilotage was concerned, this Act was merely a consolidation and there were no changes in pilotage legislation or in the organization of the Quebec Pilotage District. The various sections were simply brought up to date, e.g., the Pilotage Authority for the District of Quebec continued to have only a regulatory role, despite the fact that the Authority was the Minister (subsec. 434(2)).

However, the 1905 statutory appointment of the Minister as Pilotage Authority had caused many fundamental changes in the organization and administration of the service:

- (i) The pilot station was moved eighteen miles further downriver, i.e., from Bic to Father Point, outside the District limits as then defined by sec. 4. of the 1886 Pilotage Act. Nevertheless, the description of the District remained unaltered until this irregularity was corrected by sec. 312 of the 1934 C.S.A.
- (ii) The Department of Marine and Fisheries took over, at public cost, the pilot vessel service at the new location. Hence, the Corporation had to sell its three schooners. Because they had been built espe-

- cially for pilotage service, they had very little commercial value and their sale brought only \$2,575, although they had cost the pilots \$24,509.
- (iii) The Department also committed itself to pay out of public funds the cost of board and lodging for pilots waiting at Father Point or Chicoutimi. Up to then, the pilots had lived aboard their schooners at the station and food could be obtained at low cost. The new pilot vessels did not provide living accommodation and the pilots had to find board and lodging ashore at Father Point at much higher cost.
  - (iv) The Government also assumed responsibility for the expenses of the two pilot stations at Quebec and Father Point.
  - (v) In order to reduce the number of pilots, because then they were in excess of requirements (in 1904 they were at the maximum strength permissible, i.e., 125 pilots, sec. 24, 1886 Pilotage Act and sec. 443, 1906 C.S.A.), the Department, again out of public funds, granted an extra \$300 pension to all pilots who would retire upon reaching the age of 65, or when found physically unfit, in addition to the pension provided out of the Decayed Pilot Fund (P.C. 2179 of 5 Dec. 1906, Ex. 1456(i). In the 1963-64 Department of Transport estimates p. 426, vote 115, the payment of four such pensions was still provided for. Before 1905 when there was no age limit, a pilot was allowed to work as long as he was in good health, and men were often seen on the active list at 78 or even 80 years of age (Ex. 1456(k), p. 20).
  - (vi) The office of Superintendent was re-established. He was the local representative of the Pilotage Authority, paid out of public funds but selected from the pilots.
  - (vii) All the pilots were re-examined to ascertain their qualifications and their knowledge of the compass and the charts of the river between Father Point and Quebec.
  - (viii) The pilots lost their representation on the Pilotage Authority. Sec. 93, 1886 Pilotage Act, which made the President of the Pilots' Corporation an *ex officio* member of the Authority, was no longer applicable since it was not retained in the 1906 C.S.A.
  - (ix) The pilots lost their automatic representation on the Board of Enquiry where, up to then, one pilot had always sat as an assessor. In the 1908 amendment (7-8 Ed. VII c. 65 s. 30) the assessors were to be appointed by the Minister at his discretion.
  - (x) The Quebec Pilotage Authority ceased to be a court of record—a power held by both Trinity House and the Quebec Harbour Commissioners when they were Pilotage Authority.

Items (ii), (iii), (iv) and (v) were agreed upon between the pilots and the Government in March, 1906, as compensation for the increased length of pilotage trips and in lieu of a tariff increase. At the same time, the pilots agreed to submit to an examination as to their qualifications, which in fact was held commencing March, 1906 (Ex. 1456(k), pp. 14-16 incl.).

In 1911, the Minister of Marine and Fisheries tried to make pilotage compulsory in the Districts of Montreal and Quebec by an amendment to sec. 473 of the 1906 C.S.A. When the matter came before the Committee of the House, the different interests for and against the Bill consulted with the Minister and mutually agreed to withdraw the pilotage provision from the Bill (Lindsay Report, Ex. 1325, p. 20).

The number of pilots was effectively reduced so that in 1912 there were 73 active pilots and 22 apprentices. Of the 33 pilots on pension, 20 were receiving the \$300 extra pension from the Government. On March 14, 1912, a By-law amendment increased the duration of apprenticeship to seven years; four ocean voyages had to be performed during the winter months and a mate's certificate coasting was required (Ex. 1464(d)). The apprentices were still indentured to the Pilots' Corporation. Their notarial document made reference to the Minister's authorization and contained a clause to the effect that the apprentice's right to be licensed when qualified could not be exercised until the number of pilots had been reduced below 75 (indenture deed of Apprentice Jos. Adélarde Bernier, Ex. 1456(m)).

However, the administration of the District became so deplorable that in the Lindsay Report it was said "... the conduct of affairs has been in a very mixed condition..." "The whole system is in the loosest and most unsatisfactory manner."

The advent of the Minister as Pilotage Authority was marked by new attitudes and policies in the administration of pilotage, with the result that the following state of affairs prevailed when the Lindsay Commission was appointed in 1913:

- (i) The C.S.A. and the General By-law were no longer respected as establishing the limit of the authority of those who administered the service, and the legislation imposed by Parliament was ignored by the very Department entrusted by Parliament with the duty of seeing that the provisions of the law were observed.
- (ii) The principle that a Pilotage District should be financially self-supporting was infringed. It was implicit in the appointment of the Minister as Pilotage Authority that District expenses would be paid out of public funds.
- (iii) The principle that pilotage should be locally directed and administered was perforce disregarded because the Minister, being unable

to be present in person in the Districts where he was the Authority, had to operate through the medium of local representatives to whom his powers were more or less delegated.

At that time, there was a series of accidents to vessels piloted by licensed pilots between Québec and Father Point, which culminated in 1912 in the stranding of the *Bellona*, *Gladstone* and *Royal George*, the double stranding of the *Beothic* and the stranding of the *Manchester Importer*. When it developed that most of these accidents were due to careless navigation by the pilots, the shipping interests placed the blame on the pilotage organization, the lack of navigation schools to train pilots, the closed pilot Corporation and the pooling system which gave equal income "to good as well as bad pilots".

On December 16, 1912, the Shipping Federation of Canada petitioned the Minister requesting the abolition of the Corporation of Pilots and the restoration of the free enterprise system in order to allow shipowners to engage their own pilots. They also urged that a Royal Commission be appointed. They further recommended that the number of pilots should not be limited, since this was not conducive to efficient pilotage because the great incentive for a man to perform his duty efficiently is the knowledge that there are others ready and able to replace him. Therefore, anyone able to pass the pilotage examination should be granted a pilot's licence.

(c) *Lindsay Report—1913*

On January 30, 1913, the Minister of Marine and Fisheries created a Commission under Part II of the Enquiries Act "to enquire into and report upon the law respecting pilotage and its administration in the pilotage districts of Montreal and Québec, and what changes, if any, are desirable therein". The three members of the Commission were: Chairman, Capt. H. St. George Lindsay, Commissioner of Wrecks, Department of Marine and Fisheries, Ottawa; Members, Thomas Robb, Manager and Secretary, Shipping Federation of Canada, and Capt. Adjutor Lachance, President, Québec Pilots' Corporation. The first meeting was held in Montreal February 12, 1913. The Commission made interim reports March 4 and March 17, and on April 9 rendered a divided report, Capt. Lachance dissenting. The Commission had heard 132 witnesses.

The Report is very disappointing in the paucity of its information. Unfortunately, the transcript of evidence was not deposited in the Public Archives and could not be located for consultation. The majority report on the Québec District covers six pages of the twenty-seven page document. The remaining pages contain a preamble, a brief *résumé* of the history of legislation, a report on the Montreal Pilotage District, the text of the two interim reports, some notes on the British Pilotage Bill of 1913 with reference to

compulsory pilotage, a list of the various Acts relating to Quebec Trinity House and the Pilots' Corporation and the minority report of Captain Lachance, which occupies the last four pages of the document.

The report on the Quebec District begins with an introductory remark that the Commission's recommendations are made with a view to improving the service so as "to get (the St. Lawrence route) rid of the reputation which it has at present with underwriters, and which is a handicap on shipowners and reacts on exporters and importers". Unfortunately, apart from pointing out that there had been quite a number of accidents to vessels in the hands of branch pilots which had culminated in a series of strandings in 1912, no explanation is given of what that reputation was nor what was the extent of the handicap to shipowners. No analysis is made of the incidence of these accidents in relation to the total traffic nor are their causes revealed. Hence, it is not known whether they were due to a lack of knowledge and skill on the part of the pilots or to their misconduct or to circumstances beyond their control, such as mechanical failure, etc.

Nowhere in the Report is there any criticism of the behaviour and conduct of the pilots nor of their qualifications; on the contrary, it appears that the shipping interests were quite satisfied.

However, the Commissioners recommended:

- (i) that the Pilots' Corporation be abolished;
- (ii) that the Pension fund be administered by the Minister;
- (iii) that the Superintendent be no longer recruited from the ranks of the pilots;
- (iv) that apprentices be indentured to the Minister and not to the Pilots' Corporation, and that public notice be given when vacancies occurred;
- (v) that pilots not be otherwise employed nor allowed to work outside the District;
- (vi) that the eye-sight test be standardized;
- (vii) that the number of pilots be limited to a minimum of 60 and a maximum of 70;
- (viii) that the retirement age be fixed at 65 years of age plus permissible extensions up to 70;
- (ix) that the tender at Father Point be improved and a launch be provided at Quebec;
- (x) that a chart of the Saguenay River be prepared;
- (xi) that the dues listed in the tariff be reduced to a more reasonable level;
- (xii) that there be only one Superintendent for both Quebec and Montreal Districts and that he be stationed at Quebec;

- (xiii) that a body of Commissioners be appointed with statutory powers to take charge of pilotage throughout Canada instead of the Department; the Commissioners' functions to be partly executive and partly administrative; the executive powers being "the making of orders—to be approved by the Minister and confirmation of Parliament—in reference to the constitution of all local Pilotage Authorities, and the limits of pilotage districts. The examination and settling of the by-laws made by the local authority, regulating pilotage at each pilotage port, and for each pilotage district, and recommending such by-laws for confirmation by the Minister".

The last recommendation was, in fact, the most important one. It implied that the administration of pilotage by the Department had not proved effective or, at least, that it could be greatly improved if it were taken away from the Department. Unfortunately, the grounds for the recommendation were not stated, perhaps because the Chairman of the Commission being an officer of the Department felt ill at ease criticizing publicly the administration of his Minister and his Department. It is strange that this important recommendation was relegated to an appendix and not listed with the main recommendations but was put in the Report in such a way that it could easily be overlooked. This proved to be the case and it appears that the question was never considered by the authorities. (Salient facts of D.O.T. files on Lindsay Commission, Ex. 1456(j).)

It appears that the "cure-all" remedy was to withdraw the management of the service from the Pilots' Corporation and abolish the pooling system. The recommended method of achieving these aims was to do away with the Pilots' Corporation.

The reasons advanced for this course of action are far from convincing and the Commission failed to recommend any alternative system of organization, unless the abolition of the Corporation implied returning, as advocated by the Shipping Federation, to the system that obtained prior to 1860 when the profession of pilotage was open and the pilots competed for assignments.

The first reason advanced was that the change would remove "the thoroughly vicious system of having a dual control," caused by having two Pilotage Authorities, i.e., the Corporation of Pilots, which exercised the real authority, and the Minister, whose authority was nominal only. In support of this assertion the report merely referred to the existing statutes, i.e., the Pilots Corporation Act, the Harbour Commissioners Act and the Canada Shipping Act, which defined the extent and limits of the duties and responsibilities and power of both organizations.

The Report overlooked the facts that the Quebec system differed from the basic system outlined in the Canada Shipping Act and that in Quebec the Authority was responsible for regulating and supervising while the actual



administration was performed by the Pilots' Corporation. If it was considered that the Minister's authority was in fact only nominal, the reasons for the discrepancy between the legal and the factual situation should have been investigated and described, e.g., it would have been interesting to know why the system that had worked well with Trinity House developed into a "vicious one" after the Minister became the Pilotage Authority.

The second reason advanced for the abolition of the Pilots' Corporation was that the system of pooling pilots' earnings "is pernicious, and removes all incentive to a man striving to reach the top of the tree, and gives no inducement to apprentices to become efficient, as all they require is to pass an examination and receive their branch, then take their share of the pool".

The Report failed to substantiate this allegation. Since the pooling system had been in effect for the previous 53 years, most if not all the pilots had been trained and qualified under it and the dire consequences that they attributed to such a system must by then have been obvious. Furthermore, all the pilots had been re-examined in 1906. On the contrary, it appears that the qualifications of the pilots could hardly be improved upon.

It is apparent that this recommendation was merely one phase in the long struggle between free enterprise and the "choice" pilot system advocated by the shipowners on one hand and a controlled pilotage profession and service and the roster system proposed by the pilots on the other. In 1860, the pilots had to compromise and accept the right of the Master to choose his pilot but this concession interfered with the compulsory pooling of earnings in that the chosen pilot was reluctant to work more often than the others if he drew the same share of the earnings. This is what prompted Mr. McIsaac of the Dominion Coal Company to say in his testimony, as quoted in the Report, that "it accounted for pilots stopping work after they had made a regular number of trips, and the result of it was, that the Company having the same pilot for the season, had to take an inferior man, or else pay the regular man a bonus to continue until the closing of navigation". If the Commissioners had investigated Mr. McIsaac's charge, they would have found that the chosen pilot had no right to refuse and, if he did, that the Company was at fault for not having laid a charge before the Pilotage Authority, and that the Company was also at fault for having paid the pilot anything more than the pilotage dues fixed by the tariff. Neither the Corporation of Pilots nor the pooling system could bear any blame for this situation.

This finding was, in fact, a retrograde step. The Governor in Council and the Department could not have been greatly impressed because a few years later they established in all major Pilotage Districts (except the Montreal and Quebec Districts) compulsory pooling of the pilots' earnings under

the control and management of the Pilotage Authority. Moreover, pooling is so much a part of an efficient pilotage service that it has been adopted the world over.

As a point of fact, the pooling system concerned only the pilots themselves, and before recommending the abolition of an arrangement which the pilots found greatly to their advantage a survey should have been made to ascertain what was the wish of the individual pilots. Such a survey would have shown that most pilots, if not all, would have advocated its retention and that only a few shipowners were not in favour. Subsequent events showed that such was the wish of the pilots and that, despite the abolition of their Corporation, the pooling system continued to function as unofficially organized by the pilots themselves.

The third and last reason stated in the Report for the abolition of the Corporation was that in 1905, when the Minister introduced the Bill which was to make him the Pilotage Authority, he had mentioned that he advocated the abolition of the Corporation. It is not necessary to discuss the value of such an argument.

For these three reasons the Report concluded that the Quebec System was "vicious" and that the pooling system was "pernicious".

The remainder of the Report is in keeping with the first part. It charged that the Pension Fund was credited with only a percentage of the direct pilotage earnings, that considerable sums of money were earned by the pilots in the shape of expenses and that the earnings of the pilots when acting as Masters of coastal vessels below Father Point were pilotage money. No figures were given and, in any event, these were matters that could have been controlled by an effective Pilotage Authority. It was illegal to charge vessels anything over the tariff and money given voluntarily was not a pilotage due but a gratuity. Furthermore, the Pilots' Corporation was accountable to the Minister for its administration and means were available to exercise efficient control if this was considered necessary.

The Lindsay Commission complained that the so-called by-laws of the District, which had been in use since the Minister took over in 1905, had never been promulgated. This was a flagrant breach of the provisions of the Canada Shipping Act and the circumstances and the responsibility therefor, which obviously lay with the Minister as Pilotage Authority and his Department, should have been investigated.

The Report stated that pilots were often employed otherwise than in the performance of pilotage duties and that on certain occasions there was a shortage of pilots. One branch pilot was Master of the Red Island lightship, another of the Government steamer *Lady Evelyn*, a third of the coasting steamer *Cascapedia*, and tour de rôle pilots often took command of vessels beyond Pilotage District waters.

The obvious remedy was available to the Pilotage Authority in the form of a proper amendment to the by-laws, and the Department itself was to blame for that state of affairs because it was one of the employers.

The Report found that the Corporation was apt to be accommodating to some of its members by keeping them on strength while they did no pilotage duty whatsoever and were apparently making up their time for pension purposes. These illegal favours were indeed abuses on the part of the Corporation if they were contrary to the by-laws, but the Pilotage Authority was in a position to correct the situation if it had thought fit to do so.

The majority report is not any more informative in its other recommendations.

However, in his minority report Captain Lachance is more elaborate and his findings are supported by references to the evidence. *Inter alia*, he expressed the pilots' disappointment that since the Minister took over as Pilotage Authority he had "not thought fit" to abide by the by-laws with regard to the training of apprentices and that, despite repeated requests from the pilots, a boat had not been provided to allow the apprentices to make their mandatory exploration trips in the North Channel and the Saguenay River under the supervision and direction of the Superintendent.

He pointed out that the Department had failed to comply with two of the Enquiry Commission's requests, i.e., to give the Commission a report on the general re-examination of all pilots held March 28, 1906, and a report of the acceptance as pilots of the group of apprentices who were admitted in July, 1904. These records were obviously of great importance to the Commission, one of whose primary duties was to assess the qualifications of the pilots who had been produced by the Pilots' Corporation system.

He also pointed out that responsibility for not having obtained approval for the by-laws did not rest with the Pilots' Corporation, and that in the previous ten years there were only 26 more or less serious accidents out of 10,800 vessels piloted.

In conclusion, he pointed out the source of the trouble, i.e., the conflict between the special pilot system and the tour de rôle system, by referring to the efficient service in New York Harbour where, in 1896, the Sandy Hook pilots formed a corporation based on the organizational principles of the Quebec Pilots' Corporation, including sharing their earnings. He said that "the only difference is that the owners, agents or captains have no right to choose their pilot, they must all take first on turn".

(d) *Answer of the Corporation of Pilots*

Such a superficial report could not be expected to satisfy the pilots and their reaction was a formal document entitled "Answer of the Corporation of Pilots to the Report of the Royal Commission" which they forwarded January 22, 1914, to the Ministers, Senators and Members of Parliament in an

effort to prevent the Report being implemented. The pilots charged that the Lindsay Commission was biased and that the real issue of safety of navigation on the St. Lawrence had not been investigated. They affirmed that every member of the Pilots' Corporation was satisfied with the pooling system "and would not like to be deprived of it". They noted that the system had been adopted by the Sandy Hook pilots and also by the 93 pilots of Cardiff, etc. They supported the legality of their stand by quoting the pertinent sections of the Canada Shipping Act (Ex. 1456(k)).

(e) *1914 Act*

However, despite the pilots' efforts, a law (4-5 Geo. V c. 48) was passed in 1914 depriving the Corporation of Pilots of all its powers "with respect to the examination, management and control of pilots and of the pilot apprentices, and the control and management of the pilot schooners, boats and other vessels, the collection of pilotage dues, and the management and control of pilotage". All these powers were vested in the Minister of Marine and Fisheries (not the Pilotage Authority) and the only authority left to the Pilots' Corporation was the management and disposal of the Pension Fund. The Pilots Corporation Act, however, was neither repealed nor amended; it was merely rendered partly inoperative by this subsequent legislation.

(f) *1915 By-law*

The by-law situation was quite confused, as had been pointed out by the Lindsay Commission. The only legal by-laws were those made by the Quebec Harbour Commissioners in 1901/1903. New by-laws drafted by the officers of the Department had been applied since 1906, despite the fact that they had never been approved by the Governor in Council. With the 1914 Act the By-law of the Pilots' Corporation regarding the management of the District became inoperative and new administrative directives had to be issued.

According to the legislation that existed at that time and until it was modified in 1934, there should still have been two sets of by-laws and regulations, one emanating from the Minister as Pilotage Authority, made and approved pursuant to the Canada Shipping Act, and a second set made by the Minister as manager of the service and issued pursuant to the powers that he derived from the 1914 Act and the Pilots Corporation Act. When the managerial powers of the Pilots' Corporation were transferred in 1914, the Canada Shipping Act was not amended and the status of the Quebec District Pilotage Authority remained unchanged and limited as before. This is quite apparent from the 1927 consolidation of the Canada Shipping Act. However, this distinction was not observed in the By-laws. From 1915 to 1934, General By-laws were made and sanctioned under the Canada Shipping Act as if the Pilotage Authority enjoyed full powers of control and managed both the District and the service, with the result that anything that concerned the actual management of the service was *ultra vires* and not enforceable.

*Study of Quebec Pilotage District*

The first of these By-laws, which was approved April 29, 1915 (Order in Council P.C. 908, Ex. 1456(n)), conferred on the Minister full control over the management of the pilotage service. The main new features were:

- (i) appointment by the Pilotage Authority of a General Superintendent and of Assistant Superintendents at Quebec to have immediate control of pilotage affairs in lieu of the Pilots' Corporation;
- (ii) a Pilots' Committee of six to replace the Board of Administration of the Corporation as representatives of the pilots;
- (iii) licences lapsing at 65 years of age but reissuable until the pilot reached 70 years of age when retirement was compulsory;
- (iv) licences withdrawable on the ground of incapacitation, upon receipt of a written and signed complaint the matter to be investigated by a person appointed by the Authority, the evidence taken under oath, with the pilot concerned being allowed to attend, to adduce evidence on his own behalf and to be assisted by legal counsel, the Authority to act upon the findings of the enquiry;
- (v) in the distribution of assignments the right of shipping interests to select their pilots retained although in a somewhat restricted way; regular line agents allowed to make arrangements with pilots to become their "special service pilots" who were not subject to the tour de rôle unless there was an emergency, the Superintendent or Assistant Superintendents to despatch pilots to vessels not provided with special service pilots giving the Master or agent his choice of the first three tour de rôle pilots on the list;
- (vi) the pilots not to be otherwise employed nor allowed to go outside District limits;
- (vii) billing for pilotage dues done by the Superintendent from source forms, i.e., information obtained by the pilots from the officers in charge of vessels, but payment to be made to the pilots individually, except for the Pension Fund contribution that was payable to the Customs Officer for remittance to the Pilots' Corporation. The factual situation was different; it appears that the Corporation continued to receive from the Superintendent the dues collected because on May 8, 1915, P.C. 1048 amended the By-law to specify that the payment of dues had to be made to the pilot "in person" (Ex. 1456(n)).

(g) *1916 Amendment to C.S.A.*

In a 1916 amendment to the C.S.A. (6-7 Geo. V c. 13) Parliament abandoned its control over apprenticeship in the Quebec District. The requirements for Quebec apprentices listed in the C.S.A., The Trinity House Act, etc., were abrogated and were declared matters that the Pilotage Authority would henceforth define in by-laws. The maximum number of pilots

continued to be set in the Act at 125, despite the Lindsay Commission's recommendation that their numbers should be reduced to a maximum of 70 and a minimum of 60.

(h) *1916 By-law*

In 1916, this change in the statute was reflected in the By-law which made full provision for the training of apprentices (P.C. 638, dated April 18, 1916 (Ex. 1456(n))). The same By-law provided for the appointment of "Assistant Superintendents at Quebec and Father Point" and made it no longer permissible for a pilot to obtain leave of absence for the purpose of taking another occupation at sea. However, sec. 32 of the 1915 By-law, which prohibited a pilot from being otherwise employed or from proceeding outside District limits, was repealed. This had been one of the recommendations of the Lindsay Commission but there had been protests by the shipping companies which employed pilots for navigation in the Gulf against its immediate implementation, and it was decided to give these companies time to reorganize (Ex. 1456(j)).

(i) *Robb Royal Commission—1918*

In 1918, the pilotage system in Quebec was investigated again, this time by a Royal Commission appointed to enquire into, and report upon, conditions in the Pilotage Districts of Miramichi, Sydney, Louisbourg, Halifax, Saint John, Montreal and Quebec and to recommend any changes found desirable.

Apparently, this enquiry was to investigate the state of pilotage in general and had not been prompted by any particular problem as far as the Quebec Pilotage District was concerned. It was originally convened to investigate the pilotage system and its administration in Halifax, Saint John, and Sydney (P.C. 264 dated February 1, 1918, Ex. 1456(t)). Its mandate was later extended first to include the Districts of Miramichi and Louisbourg (P.C. 458, February 28, 1918, Ex. 1456(t)) and then the Districts of Montreal and Quebec, as well as other matters concerning public safety (P.C. 786, dated March 28, 1918, Ex. 1456(t)).

The President of this Commission was Mr. Thomas Robb, Shipping Agent and Secretary of the Shipping Federation of Canada and one of the members of the 1913 Lindsay Commission. The two members were Mr. James Nunn Bales, Deputy Port Warden, Montreal, and Captain James W. Harrison, an employee of Furness, Withy and Co., Ltd., Halifax (Ex. 1456(t)). Messrs. Robb and Bales were also requested to carry out a similar investigation in the Pilotage Districts of Vancouver, Victoria, Nanaimo and New Westminster.

On the Quebec District situation the report is brief (Ex. 1328). It was found that the administration of pilotage affairs had greatly improved since 1913 due to the adoption of a system of record-keeping similar to that in force in Montreal.

The Commission found that, despite the Report of the Lindsay Commission and the 1914 Act (4-5 Geo. V c. 48), the Quebec Pilots' Corporation was still functioning and managing the service, collecting the dues, and deducting administrative expenses, i.e., staff salaries, office expenses, directors' indemnities, legal fees, rent, etc.

The Commissioners learned about the litigation between Pilot Joseph Paquet and the Pilots' Corporation concerning the rights of the Corporation to his pilotage earnings. Pilot Paquet had been ordered by the Quebec Court of Appeal to pay the Pilots' Corporation the sum of \$532.78 pilotage dues he had collected during the 1917 season up to July 2. The Corporation maintained that the collection of pilotage dues was a right of the Corporation because the Quebec Pilots Corporation Act had not been abrogated in that respect, while Paquet claimed that the dues belonged to him because the rights of the Corporation had been withdrawn by the 1914 Act. The Superior Court had dismissed the Corporation's action but its judgment was reversed in appeal. The Robb Commission felt strongly that the attitude taken by the Pilots' Corporation was contrary to the provision of the 1914 Act and also disregarded the Lindsay Commission's findings. Since Pilot Paquet was not financially able to pursue the case, the Commission recommended that the suit be brought by the Government to the highest tribunal in order to obtain a final decision.

The Commission further recommended the abolition of the \$300 special pension given to the Quebec pilots who were retired or about to retire on the ground that it was unwarranted and discriminated against the pilots of other Districts who had all requested the same privilege. It was noted that the aim of the Government in 1906 to reduce the number of pilots to 75 had been reached long before but that for some unknown reason the practice had been continued. It observed that "nothing but a strained interpretation of the Order in Council of December 5, 1906 can be advanced in support of continuing the practice once the number of pilots was reduced to 75".

The Commission recommended that part of the expenses of the District be paid out of the pilots' earnings and that the Pilots' Corporation be dissolved. It felt that the saving in the Corporation's own expenses would leave the pilots' remuneration unaltered.

Various recommendations were made about tariff, not affecting its governing principles but with reference to the amount of various items. In addition, the Commission protested against the \$12 bonus per trip still being paid by the shipping interests to the "special pilots", which aggregated about

\$5,000 in extra earnings in 1917, and rightly condemned this as a pernicious and illegal practice that should be discontinued.

The Commission also objected to the Crown paying for the board and lodging of pilots and apprentices while they waited at Father Point and Chicoutimi (which amounted to \$6,143.07 in 1917) on the grounds of discrimination against the pilots in other Districts. It recommended that a small increase in pilotage dues be granted in lieu.

The foregoing is the gist of the Robb Report as far as Quebec is concerned. For a Royal Commission, it was a very superficial investigation, unless the intention was merely to make a brief inspection of the Quebec District while the Commission was investigating the problems of other Districts. In *résumé*, it found that the administration was good, that the shipping interests were satisfied and that the only unsatisfactory features were that the Pilots' Corporation was still operating and the Government was showing favouritism by giving the Quebec pilots indirect subsidies that were not available elsewhere.

The Commission also made general recommendations of which the following were applicable to the Quebec Pilotage District:

- (i) the use and possession of intoxicating liquors be strictly dealt with;
- (ii) gratuities and solicitation by pilots be strictly prohibited;
- (iii) no pilot be allowed to perform any pilotage duties outside his own District;
- (iv) when Superintendents were appointed, new sets of by-laws be drawn up defining their duties with provisions for the management and conduct of pilots, etc.;
- (v) the system of apprenticeship, which had not been found satisfactory in the Pilotage Districts of the Maritime Provinces, be abolished not only there but also in the Quebec District (but not in the Montreal District); that public notice be given of vacancies; that candidates be duly examined; and preference be given to applicants with sea-going or coasting certificates;
- (vi) the management of the Pilots' Pension Fund be assumed by the Department;
- (vii) the pooling system be abolished because it "tends to maintain a monopoly for a body whose interests are not identical with the best public interests, when they are aware that they get a share of the pool whether they work for it or not, and whose services may not be so readily or cheerfully given as if the employment depended on efficiency and competency and the amount of work obtained depended upon each individual pilot". The solution suggested was that the Minister become the Pilotage Authority for all Pilotage Districts in Canada, "that the pilots be put on a salary which can



be adjusted to meet the requirements of the local district", that all pilotage services throughout Canada "be made and supported by the shipping", and that the earnings of all Districts be pooled in order that the pilots in Districts with low remuneration might receive adequate pay. The Commission expected that the Department would not find it difficult to persuade the pilots to agree to their proposals.

Unfortunately, once again the Report is not informative but merely contains recommendations and far reaching judgments which are made without the reader knowing, or being able to verify, whether they were warranted by the facts, e.g., abolishing the apprenticeship system in Quebec but not in Montreal and replacing the pooling system by making the pilots salaried employees. It would have been most interesting to know, for example, what the Commission discovered about the extent of the monopoly that the Pilots' Corporations had acquired through the pooling system and the instances that the Commission found of the pilots' interests conflicting with the public interest.

(j) *Paquet Case*

As recommended by the Robb Commission, the Attorney General for the Dominion of Canada intervened as a co-appellant in the Paquet case and on July 22, 1920, the Privy Council (1920 A.C. p. 1029) reversed the decision of the Appeal Court and confirmed Paquet's stand that the Pilots' Corporation had no right to his dues, despite the fact that he had remained a member of the Corporation. It was held that the right to collect the dues earned by a pilot which the Pilots' Corporation had pursuant to the 1860 Act had been transferred by the 1914 Act to the Minister and that, therefore, the Corporation had no right of action against pilot Paquet for the dues he had himself collected. (Part I, pp. 66 and 187.)

(k) *Pilots' Association*

Despite sec. 37 of the 1915 By-law as amended May 8, 1915 (P.C. 1048), which specified that the dues were to be paid to the pilot who had earned them "in person", it is apparent that the Pilots' Corporation continued to make collections and that the earnings were still pooled. Following the Privy Council judgment the Minister took a further step to ensure that payment was actually made to each pilot by amending sec. 37 of the 1915 By-law so that the Pilotage Authority was made responsible for collecting the dues (P.C. 737 dated March 12, 1921, Ex. 1456(n)).

The extent of the Privy Council judgment was that the Pilots' Corporation could not force the pilots to pool their earnings. The pilots reacted immediately and unanimously (dissent pilot Paquet had died before the final judgment was rendered) and bound themselves by a deed of partnership for the express purpose of maintaining the pooling system (Ex. 592(a)).

The name of the Association was "L'Union des Pilotes licenciés pour le Havre de Québec et au-dessous" (Part I, p. 84).

The deed was for a period of 25 years. In addition to the clauses dealing with pooling, other clauses covered such subjects as the payment of indemnity to suspended pilots and sickness benefits. No active pilot could withdraw from the partnership without unanimous consent unless he ceased to be a pilot, in which case the withdrawal was automatic, the partnership continued to exist for the remaining partners and any pilot who left the Union in this manner could claim only his share of the monies earned up to the date of his departure. All the pilots bound themselves to remit to the Association all their pilotage earnings with the proviso that the engagement would become void if the pilots became government employees at a fixed salary. The deed could not be modified or annulled except with the consent of 90% of the members. A Board of Directors was provided to administer association business.

At the same time, another deed was signed entitled "Acte du Mille Piastres", the purpose of which appears to have been the liquidation of the assets of the Pilots' Corporation: it had been considered that a pilot's share in the Corporation assets was worth \$1,000.

On May 21, 1924, a new partnership deed was signed under the name of "L'Association des Pilotes licenciés pour le Havre de Québec et en aval". It superseded the previous partnership Act and was later extended to May 21, 1980. From time to time some of its clauses were amended, *inter alia*, the majority needed for the amendment or revocation of the deed was lowered to two-thirds of the members, as was the majority needed to authorize the Board of Directors to make an expenditure or act in a law suit. Certain other expenditures were authorized, e.g., offerings in the case of a death, the cost of entertainment when a pilot retired, the payment of Guild dues and the travelling expenses of delegates.

It was difficult for the pilots to lay down rules for pooling their earnings since pooling and despatching normally are handled by the same authority in order to ensure that both assignments and remuneration are distributed equitably. Assignments vary according to type of ship, weather conditions, amount of pilotage dues, etc., so that at times the longest and most strenuous trips are the least remunerative. Under these circumstances, a common fund is the most effective counterbalance. However, when despatching was taken away from the pilots in the Quebec District they could neither control the allotment of pilotage work nor operate a truly equitable pooling system.

Hence, in the hope that the Pilotage Authority would despatch according to roster, the pilots decided to establish a system of distributing earnings on the basis of work performed by each pilot, disregarding the actual dues paid for each assignment, and created an equivalent work unit, called a *turn*. In the rules adopted by the Association the *turn* was of the same value for all

pilots and formed the basis for calculating each pilot's remuneration so that all pilots with the same number of *turns* received the same amount of money. The *turn* system is still in use in the Quebec District and the Pilotage Authority has retained responsibility for despatching.

The Pilotage Authority recognized the system and has always remitted to the Association, rather than to the individual pilots, all pilotage monies that remained after deducting the compulsory contributions to the Pilot Fund. A compelling reason for this practice is that, without exception, all the pilots who were licensed since 1924 have joined the Association.

In the end, the shipping interests gained nothing. Their request for a return to the open profession of pilotage and the free enterprise system was denied but they retained essentially the same rights as before: regular lines were allowed to choose their "special service pilots" and in other cases the Master's right of selection was reduced to the first three names on the list.

The pilots did not find this method of pooling as complete and effective as before, but they were relieved of a substantial part of the cost of administering the District. In fact, their situation had changed little and had actually improved slightly. On the legal side, however, there had been a serious set-back because their Association did not enjoy the status of a closed professional corporation and they had no legal means to force any pilot to join their partnership.

As for the Pilotage Authority, nothing had changed. The Minister *per se*, however, had assumed onerous duties and responsibilities related to the management of the service which were to prove extremely troublesome.

(1) 1927 C.S.A.

When the C.S.A. was consolidated in 1927 (1927 RSC c. 186), nothing affecting the Pilotage District of Quebec was added to the 1906 version as amended.

The consolidation of the Act created a confused legal situation because of the way the 1914 Act was incorporated. The distinction between the two functions of the Minister was retained, i.e., as Pilotage Authority he still had the same powers the Quebec Harbour Commissioners had enjoyed (sec. 395), but as administrator he had all the powers of the Pilots' Corporation and even more. For instance, as Pilotage Authority, his By-laws had to be approved by the Governor in Council but he could administer the service as he saw fit. However, no penalties were provided to enable him to enforce his decisions.

The combined (and certainly unwanted) effect of the abrogation of secs. 1 and 2 of the 1914 Act and of the adoption of secs. 491 and 492,

1927 C.S.A., was the re-establishment of the rights of the Pilots' Corporation over the earnings of the pilots. Otherwise, these sections as amended in 1927 would have been meaningless. They read as follows:

"491. The Minister shall have power, from time to time, to select any of the pilots, members of the Quebec Pilots Corporation, to be masters of any schooners under his control, and to remove them.

492. The Minister may pay out of the funds of the Quebec Pilots Corporation to each of its directors, and shall pay to each of the masters of the schooners of the said corporation a remuneration not exceeding in any one year one hundred dollars over and above such director's or masters's share in the net income of the said corporation."

Sec. 493 re-established the functions of the Superintendent of Pilots, although he was not called by that name. He was the appointee and representative of the Minister (but not of the Pilotage Authority) and his function was to manage the service at the local level in lieu of the Corporation Directors of the former organization.

(m) 1928 By-law

On May 10, 1928, the Minister as Pilotage Authority made a new By-law (Order in Council 800, May 10, 1928) that was to remain in force until replaced on February 7, 1957 (P.C. 1957-191, Ex. 429) by the one in force at the present time. The 1928 By-law was amended 27 times (Ex. 1448) before being abrogated.

This By-law was primarily a consolidation of the 1915 By-law as amended. It retained the previous system of organization and added five new features:

- (i) For the first time it contained definitions, of which two are worth noting:

"'Superintendent' means the officer of the Department of Marine and Fisheries appointed as Superintendent of Pilots or Assistant Superintendent or any other officer of the said Department duly authorized by the Pilotage Authority;

'Vessel' includes every sort of ship in tow or otherwise except a scow;"

- (ii) The payment of dues was said to be compulsory. Such a regulation did not come within the competence of the Pilotage Authority, but at the time it was merely repeating the provisions of sec. 455, 1927 C.S.A.
- (iii) The criterion for establishing the number of pilots within the 125 maximum fixed by the Act (sec. 423 C.S.A.) was modified to read "on the basis of fifty pilots for each 3,500 trips per annum".
- (iv) While the "special service pilots" were retained, the remaining limited right of the Master to choose his pilot was cancelled and he had to accept the first pilot on the list.
- (v) The Superintendent was given disciplinary powers of his own.

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Up to 1934, this By-law had been amended three times: in 1928 (P.C. 2269 dated January 12, 1928), to give a special meaning to the term "sea going" when used in connection with apprenticeship requirements; in 1932 and 1934, two in a series of annual amendments to the tariff rendered necessary by the economic depression. These were made at the request of the Shipping Federation and took the form of an overall reduction of 5% for one year (P.C. 821 dated April 15, 1932) and the next year for 7% (P.C. 913 dated May 8, 1934).

(n) *1933 Amendment to C.S.A.*

In 1933, an amendment to sec. 414 C.S.A. (23-24 Geo. V c. 52) introduced the office of Superintendent of Pilots as the local representative of the Minister as Pilotage Authority. To him and to other persons the Minister as Pilotage Authority could delegate any of his functions, provided the delegation was effected in by-laws duly approved by the Governor in Council. This is the origin of the present sec. 327 C.S.A.

(o) *Gibb Report and National Harbours Board*

In 1931, Sir Alexander Gibb, an outstanding English port engineer, was requested by the Canadian Government to carry out a survey of the national ports of Canada. *The National Ports Survey, 1931-32* (Ex. 1465) led to the creation of the National Harbours Board in 1936 (1 Ed. VIII c. 42). The National Harbours Board at the outset assumed responsibility for administration for the harbours of Montreal, Trois-Rivières, Quebec, Chicoutimi, Saint John, N.B., and Halifax. Federally appointed local Commissions for these harbours and Vancouver were abolished and replaced by the N.H.B. and all Acts pertaining to them were repealed. The harbour of Churchill was transferred from departmental administration to the N.H.B. in 1937, and the harbours of St. John's, Nfld., and Belledune, N.B., recently.

The present responsibilities of the National Harbours Board for navigation within harbour limits correspond to those previously held by Trinity House and by the Quebec Harbour Commissioners, but these do not include pilotage.

(7) THE MINISTER AS PILOTAGE AUTHORITY  
PURSUANT TO C.S.A.—1934 TO DATE

(a) *1934 C.S.A.*

Following the Statute of Westminster in 1931, a new C.S.A. was passed in 1934 (24-25 Geo. V c. 44), revoking, *inter alia*, the previous statutory legislation dealing with pilotage.

In this field, the main feature of the new Act was that it did away almost completely with what still remained of the special systems that obtained in some Districts. Halifax and Saint John, N.B., were fully integrat-

ed and all references to their special status were deleted from the Act but the process was not that thorough in the Districts of Montreal and Quebec.

Perusal of the Act suggests that when it was first drafted the intention was that these two Districts should also be made to conform to the common system but that, both while the Act was being prepared and during its adoption by Parliament, modifications were made with the intent of retaining some of the features (often termed acquired rights) contained in previous statutes. The result was that these were incorporated somewhat hastily without ascertaining whether there was general agreement with the remainder of the Act as redrafted. A confused legal situation was created with respect to the equivocal status of the Pilotage Authority, the contentious power of the Governor in Council to modify the limits of these districts and the legality of the compulsory payment system. This unsatisfactory state of affairs has not been corrected and still persists (vide pp. 7-10).

All that remained of the special organization which the Quebec Pilotage District inherited from the Trinity House Act and the Pilots Corporation Act was abolished (except the Decayed Pilot Fund) and with a few exceptions the legal structure of the Quebec District was made to conform to the structure of the other Districts. Parliament retained control over the existence of the District and who should constitute its Pilotage Authority, the imposition of the compulsory payment of dues and the prohibition of the use of pilotage monies to meet District expenses.

The Minister, as such, no longer had anything to do with the administration and provision of pilotage services in the Quebec District. All references to the functions he had inherited from the Quebec Harbour Commissioners as Pilotage Authority and from the Pilots' Corporation through the 1914 Act were abrogated and he was left with the limited licensing and related powers enjoyed by a regular Pilotage Authority.

The Quebec Pilots' Corporation retained only the administration of the Pension Fund (Decayed Pilot Fund). All other references to this Corporation were deleted, including its definition in the interpretation section and the special chapter dealing with its powers and responsibilities.

The statutory right of appeal to the Quebec Superior Court, which the Quebec pilots had enjoyed (secs. 538 and 539, 1927 C.S.A.), was withdrawn.

The only amendments to the By-laws between 1934 and 1938 inclusive related to the reduction of the annual tariff to 4 per cent as had been done in 1932 at the request of the Shipping Federation (P.C. 913, 1934; P.C. 1047, 1935; P.C. 901, 1936; P.C. 639, 1937) and in 1938 (P.C. 2845, Ex. 1448-4) to make regulation offences the former statutory offences that had been deleted from the Act in 1936 and made subject-matters of the Pilotage Authority's regulation-making power (1 Ed. VIII c. 23 s. 361).

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Because maritime trade was reduced considerably during the war years, a surcharge of 15 per cent, later increased to 25 and 30 per cent, was imposed to provide sufficient revenue to maintain an adequate pilotage service.

(b) *Cannon Report—1942 (Ex. 1456)(p)*

On July 26, 1940 (P.C. 214-3404) the Honourable Lucien Cannon, District Judge in Admiralty, was appointed sole member of a Commission of Inquiry convened to inquire into the problems created by the navigation of small vessels on the St. Lawrence River, and also into the pilotage situation in the St. Lawrence-Kingston-Ottawa Pilotage District. On August 15, 1941, new instructions were issued to the effect that the inquiry was to be conducted on a departmental basis and that it should be restricted to the navigation of small vessels on the St. Lawrence, from Montreal to the sea. The reasons for the inquiry are quoted in the report as follows:

"Since 1920, numerous complaints were heard against the navigation of small vessels, following accidents, wrecks, mishaps, dangerous and hazardous methods of seamanship.

The maritime enquiries, held during that period, revealed unsatisfactory condition.

The loss of human life was rather heavy, the material damage considerable, the danger to navigation disquieting.

The St. Lawrence, being one of the most important shipping lanes in the world, is used by thousands of vessels from many different countries; its navigation is subject to international convention and treaties, which are binding on Canada; so that our government must secure its safety through a strict observance, by all of the law, rules and regulations relating thereto."

He found that small vessels conducted a considerable trade which was most useful and that their disappearance would be disastrous because the large shipping companies would be unable to fill the gap; a great number of these vessels were owned by farmers who were not real seamen and the schooners were operated by them on a family basis; many Masters did not hold any certificate, either of service or of competency; some small craft ventured into narrow waters without charts or essential navigational instruments; many operators had little or no knowledge of the rule of the road; signals were often either unheeded or misunderstood; pilots and Masters of the large ships had acquired the bad habit of not giving the prescribed signals when they met or overtook small ships; too often when the Masters of the "lakers" had cleared the canals they continued to follow their own rules; and the rules and regulations were often infringed but the penalties provided for such cases were never imposed.

He recommended that navigation on the St. Lawrence River be adequately regulated; a maritime patrol be provided to supervise traffic movements as was done on the St. Clair River; effective penalties be provided through a simple, summary procedure administered by competent and experienced officials whose decisions were to be subject to appeal to the

Minister; small vessels be adequately classified; educational facilities be provided for the operators of these small craft; and official publications relating to navigation on the St. Lawrence be more widely distributed.

The Department of Transport reports that these recommendations have been implemented in part, and that the conditions complained about have greatly improved since the inquiry. However, the Department notes that Canada has never yet risen to the expense of a patrol vessel on any of its waters except the very thinly spread out facilities of the R.C.M.P. and that the Department of Justice has never extended any sympathetic help to the Department of Transport in any efforts to impose summary sanctions on offenders against any regulations. Nevertheless, when pilots have complained the Department of Transport has always said that, if they could identify the offenders and were willing to give evidence in court, the Department would be prepared to take appropriate action. River boats are now classed as steamships and are subject to steamships inspection and to the requirements of certificated Masters and engineers when over ten tons gross tonnage. Educational facilities have been provided and everything possible has been done to assist Masters of river boats to obtain the knowledge they require to receive certificates. Educational facilities are now in the hands of the Provincial Government (Ex. 1456 (p)) (vide pp. 235 and ff.).

(c) *St. Lawrence River Ship Channel Committee 1946*

On February 27, 1946, the Deputy Minister of Transport assembled a committee, under the name of "The St. Lawrence River Ship Channel Committee 1946" to determine possible improvements to the St. Lawrence Channel. It was then a three-man committee composed of representatives of the National Harbours Board, Department of Public Works and Department of Transport, St. Lawrence Ship Channel Division. Its terms of reference were, *inter alia*:

"to consider the whole Ship Channel situation, from the head of navigation (including Montreal Harbour) to the Gulf of St. Lawrence and, in the light of present trends in shipping, both to the port of Quebec and the port of Montreal (including oceangoing and small river crafts) and to make recommendations as to the width and depth of the channel which can usefully and economically be justified;"

On December 1, 1946, the Committee forwarded its Report. After studying the channel, the traffic and the types of merchant ships that were anticipated, it recommended "the works that should be performed to achieve" the necessary improvements in the channel. It noted that since the 35-foot North Channel was opened in 1937 the old South Channel had been little used and then by a few of the older pilots only. As a result of siltation its depth was only 22 feet at low water and the Committee found no justification for any expenditure to improve it (Ex. 1456 (q)).



This is not a standing committee. When similar committees are required they are convened by the Deputy Minister of the Department of Transport.<sup>5</sup>

(d) *Survey by Captain F. S. Slocombe*

On March 4, 1947, Captain F. S. Slocombe of the Department of Transport reported on his survey of seven Pilotage Districts including the Quebec District (Ex. 1452, pp. 66-82). His Report contained the following points of particular importance to this Commission:

- (i) "*Special Features.* Pilotage between Father Point and Quebec includes both Gulf and River pilotage. That is, for over half of the distance compass courses may be laid. The Gulf is twenty miles wide at Father Point, gradually narrowing to dredged and buoyed channels. The Saguenay River is a narrow steep-sided gorge with deep water, similar to some of the channels on the British Columbia coast.

... Previous to 1906 the pilot station was at Rimouski, and when the pilots consented to extend the District to Father Point it was agreed that facilities for boarding should be provided by the Government. The C. G. S. "CITADELLE"... the "ABRAHAM MARTIN"... These vessels are operated as Government vessels at no cost to the pilots. The "CITADELLE" has accommodation for Quarantine and Customs officials, in addition to sleeping accommodation for eight pilots.

At Quebec also, there is no expense to the pilots involved in boarding or disembarking pilots. The Department maintains a float at the Pilotage Office, and private motorboat companies contract to carry pilots to and from ships. The cost of this service is met by the Shipping Federation of Canada, Inc., on behalf of the shipowners or agents concerned.

Activity in the District is seasonal, there being no pilotage between the end of December and the end of March. During some seasons fog is frequent, and weather conditions are often severe in the Spring and Fall. Buoys must be taken in while ice conditions permit in the Fall, and pilotage must often be performed without these aids to navigation."

- (ii) "*Entry into the Service.* No person can become a pilot in the Quebec District without first serving an apprenticeship. Apprentices are licensed by the Minister as the service requires...

Officially an apprentice pilot receives no remuneration, but some shipowners provide a small gratuity for services performed. Nevertheless, the By-laws require that during the whole season of navigation an apprentice must hold himself ready for assignment by the Superintendent to any vessel being piloted...

There will be 21 apprentice pilots for the 1947 season."

- (iii) "*Conditions of Service.* When a pilot is licensed there is no probationary period, he must take his regular turn with the other licensed pilots.

There are at present fifty-four pilots on the roll. Of these, twenty-four are special pilots for certain companies... A pilot assigned to such special service must, in addition, perform tour-de-rôle work if the exigencies of the service

<sup>5</sup> A similar committee called the "St. Lawrence Ship Channel Committee 1965" was established January 20, 1965, by order of the Deputy Minister under the chairmanship of Mr. H. L. Land, Chief, St. Lawrence Ship Channel Division, D. O. T., with representatives from the St. Lawrence Seaway Authority, the National Harbours Board and the Hydraulic Studies Division, D. O. T. *Inter alia*, it was required to study the existing and prospective uses of the St. Lawrence River for marine transportation purposes, to recommend the engineering projects needed to achieve the optimum use of the St. Lawrence River Ship Channel and to submit a work programme of study and investigation over a five-year period ( Ex. 1456 (r) ).

require it. It is the practice to require the special pilots to make up the same number of trips during the season as are performed by a tour-de-rôle pilot.

It is the duty of the Assistant Superintendent at Quebec and the Pilotage Officer at Father Point to so arrange that enough pilots are on station at either place to handle the traffic. There is a dormitory provided by the Department in the Pilotage Building at Quebec. At Father Point eight pilots may sleep on the C. G. S. "CITADELLE", but some of the pilots prefer to live at the hotel nearby at their own expense while the vessel is at the wharf. Food is provided on the "CITADELLE" at no cost to the pilots, but if they take their meals at the hotel the Department allows them twenty-five cents per meal. This item costs the Department about \$2,000. per year, and was part of an agreement made with the pilots in 1906.

Pilots live at home until required to report, and all travelling expenses must be paid for by the individual pilot concerned. Pilots perform pilotage either inwards or outwards as directed."

- (iv) "*Revenues and Charges* According to the By-laws all pilotage dues are collected by the Pilotage Authority, who deducts therefrom the amount required for the Pilot's Pension Fund, and pays to each pilot the balance of the dues earned by him. In practice each pilot has given power of attorney to "l'Association de Pilotes Licenciés pour le Havre de Québec et en Aval" to handle his remuneration. The Department therefore deducts from each pilot's earnings 7% for the Pension Fund and remits to the Quebec Pilots' Corporation the total amount of pension deductions. . . The remaining total, with a paylist showing each pilot's net earnings, is remitted to the Association, and the Department has nothing further to do with it."
- (v) "*Pilots' Remuneration* It is understood that after the Association expenses have been paid the net revenue is divided equally among the pilots, but as far as the Department is concerned a pilot's actual earnings are his own. . . It will be seen that during the war years, in spite of surcharges of 10% and later 25% on the main rates, the remuneration of the pilots fell considerably, being only \$2,146 in 1942. In 1945 it had risen to \$4,987, but dropped once more to \$ (sic) in 1946.

When considering remuneration of the pilots it may be mentioned that Special Pilots are provided, by the shipowners or agents concerned, with a gratuity of \$12. per trip, which is intended to cover expenses. The Royal Commission Report of 1918 condemned this practice as being a direct contravention of the Canada Shipping Act. . ."

- (vi) "*Pilotage Dues.* The pilotage rates at present in force for the District of Quebec have remained the same since 1915. They are based on draught only, but change according to season. . . ."
- (vii) "*Representations of Pilots'* In résumé, they are as follows:-
  - (A) The rates then in force were inadequate because they dated back about 100 years to sailing ships.
  - (B) The apprenticeship requirements were extremely arduous.
  - (C) "It was felt that pilotage in this District could not be compared with that in any other District in Canada given to the length of the River, involving sometimes 24 hours on the bridge. (It was stated that the upbound trip from Father Point to Quebec sometimes takes as long as 22 hours on a slow ship, while from Father Point to Chicoutimi may take from 15 to 24 hours).

The often adverse weather conditions were referred to, especially with the snow in the Fall, when perhaps the buoys would be taken up. Then at the end of a long pilotage, if the tide serves at Quebec the pilots must dock the ship. . . ."

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- (D) The pilots charged that the Department had repudiated the 1906 agreement to provide meals and board at Father Point and Chicoutimi: the Chicoutimi allowance had been discontinued and the allowance at Father Point was only one-third of the actual cost of the meals.
- (E) The *Citadelle* was used for many other purposes.

P.C. 1345 dated April 11, 1947 (Ex. 1448-13) approved a new tariff involving an overall increase of about 30 per cent.

It is worth noting that the other amendments to the By-laws included P.C. 3448, dated August 3, 1948 (Ex. 1448-15) which, *inter alia*, gave the pilots a new right and officially recognized the pilots' organization by stipulating that three of the five members of the Board of Examiners had to be members of the Board of "l'Association des Pilotes Licenciés de Québec" selected by that Board.

(e) *Audette Report—1949*

Order in Council P.C. 3978, dated August 10, 1949, convened a five-member committee under the chairmanship of Mr. L.C. Audette, a Commissioner of the Canadian Maritime Commission, to consider and report upon pilotage and related matters in the Pilotage Districts where the Minister of Transport was the Pilotage Authority.

Four general findings are worth noting:

- (i) In a majority decision they recommended against the proposal made by various Pilots' Committees that the Government guarantee minimum earnings, and suggested that the *status quo* be retained, with cases of hardship being studied on their merits, if and when they occurred. They felt that the proposal was "socially, politically and economically unsound".
- (ii) They found that the various pension funds were in a precarious state and recommended that the Government make good the deficit of approximately \$1,500,000, partly as compensation for its share of responsibility in the disaster which had befallen the pilots' pension funds and partly as an *ex gratia* gesture. In addition, they recommended amalgamation of all pension funds in order to provide more stability (vide Part I, C.10).
- (iii) In a majority decision (the pilot members dissenting) they concurred in the Shipping Federation's proposal that the shipping interests be represented on the Board of Examiners of pilots.
- (iv) They also made a recommendation "to consider the establishment of a uniform system to form the basis of tariffs in all Districts... we have attempted to evolve various formulae upon which we could reach firm agreement. In this we have been unsuccessful for a variety of reasons" (Part I, C.6).

The Report is almost silent about the situation in the Quebec District. The two recommendations emanating from the Quebec Pilots' Committee did not receive favourable consideration, i.e., abolition of the veteran's preference policy (sec 11A of the By-law) and the need to regulate ferry traffic. The Report noted the existence of a gentlemen's agreement with the ferries which was working satisfactorily and added "however, if subsequent developments should reveal any abuses on the part of ferries, we do suggest that this matter be reconsidered".

In a separate minority report the Chairman dealt with the official recognition of private pilot organizations and the special pilot system.

Referring to the pilots' associations as they existed in Quebec and Montreal for the purpose of pooling the pilots' earnings, the Chairman viewed "this practice with disfavour and apprehension as it may lead to unfortunate results" such as providing a suspended pilot with remuneration out of District earnings during the period of his suspension and thereby negating the effect of the disciplinary measure. He also noted the constant possibility of inequitable distribution "as a result of the enforcement of majority will agreements contrary to the spirit of the C.S.A. or the By-laws of the districts". The two pilot representatives took exception to the Chairman's views.

Although both the pilots and the shipping interests had urged that the special pilot system be continued, the Chairman advocated its abolition. He referred to the illegal bonus paid over and above the dues, he pointed out that the practice was to the detriment of the tour de rôle and that the appointment of some special pilots "from the ranks of relative fledgelings" had decreased the value of the argument that the system constituted the only way recognition could be given to a pilot to enhance his prestige and acknowledge his superior experience and ability. Instead he recommended something along the lines of the "grade system" that was later adopted in 1960. The pilots' representatives again took exception to the Chairman's views.

In general, the Audette Report is not sufficiently informative. Important recommendations were made but in the abstract without explanation of the extent and nature of the problems to be solved and whether, in fact, they existed. The Report does not indicate where the basic organization failed, whether this was brought about by new developments and, if so, which ones, or in other words why the system that was working well before was now deficient.

(f) *Amendments to C.S.A. (1948-1950)*

The C.S.A. was amended in 1948 to make the corrections necessitated by the creation in 1936 of the Department of Transport out of the amalgamation of the Department of Marine and the Department of Railways and Canals (1 Ed. VIII c. 34).

### *Study of Quebec Pilotage District*

Immediately following the Audette Report measures were taken to make the Quebec Pilotage Authority responsible for the Pension Fund, as was the case in the other Districts. The 1950 amendment to the C.S.A. (14 Geo. VI c. 26), *inter alia*, abrogated the last remaining power of the Pilots' Corporation, the administration of the Pension Fund, by deleting from the Act the particular provisions concerning that Fund. However, this part of the amendment was not to come into force until it had been specifically proclaimed. The 1950 amendment together with this reservation was incorporated in the 1952 revised version of the Act but to date it has not come into effect because it has not been proclaimed.

In 1956, P.C. 1956-1264 revoked the 1933 Order in Council appointing "The Honourable Alfred Duranleau, Minister of Marine" the Pilotage Authority, *inter alia*, for the Quebec Pilotage District, and in his stead appointed "The Minister of Transport as Pilotage Authority" (Ex. 1143).

#### *(g) Further Amendments to 1928 By-law*

The 1928 By-law was amended eight times (Exs. 1448-17 to 24 incl.) between 1950 and 1956 when it was replaced by the existing By-law. Exemptions were the subject of five consecutive amendments and the dues were revised twice. The section dealing with eyesight and hearing tests was modified. The sections dealing with apprenticeship were first amended and later completely rewritten in 1956. In 1955, the Superintendent was required to remove from the assignment list any pilot who was, or seemed to be, impaired by alcohol or drugs, and it was further provided that he would not be responsible for any loss of earnings by the pilot if he acted in good faith (Ex. 1448-23). When the statutes came up for periodic revision in 1952 the C.S.A. was consolidated (1952 R.S.C. c. 29) but there was no change in the pilotage section.

#### *(h) 1957 General By-law and Amendments*

In 1957, P.C. 1957-191 (Ex. 429) repealed the 1928 By-law as amended and replaced it with a new By-law. The main changes were:

- (i) The two offices of Assistant Superintendent were cancelled and a revised definition of "Superintendent" no longer made him an officer of the Department, his appointment now having to emanate from the Pilotage Authority.
- (ii) The principle of equalization of trips was made one of the despatching criteria.
- (iii) Pilots were again forbidden to engage in other employment.
- (iv) The inquiry procedure contained in the former sec. 49 regarding complaints about a pilot's physical or mental capacity was omitted.

Between 1957 and 1967 inclusive, the General By-law was amended eight times (Ex. 429), the most important changes being:

- (i) On June 2, 1960, P.C. 1960-756 introduced the system of Grade Pilots in lieu of the special pilot system which was *ipso facto* abolished.
- (ii) On November 25, 1960, P.C. 1960-1601 regulated winter pilotage by prescribing the joint despatching of two pilots on winter assignments (other than movages), and providing for a special tariff, i.e., the lesser of double dues or the regular dues with a \$100 surcharge.
- (iii) On March 23, 1961, P.C. 1961-425 extensively amended the sections of the By-law regarding eyesight and hearing examinations and pilot grades, but mainly regarding entry into the service, apprentices and licensing of pilots. A mandatory period at a Marine School was introduced as a new feature and the minimum length of apprenticeship was lowered to three years.

(i) *Pilots' Organizations*

In 1959, after their participation in the debates on Bill S-3 concerning intended amendments to the C.S.A., the Quebec Pilots' Association, as well as the other pilots' organizations in the St. Lawrence River Districts, felt the need for concerted group action and formed the Federation of St. Lawrence River Pilots, the letters patent of which were issued on November 5, 1959, under Part II of the Canada Companies Act (Part I, p. 94).

On May 9, 1960, a large group of the Quebec District pilots incorporated themselves under the name "The Corporation of the Lower St. Lawrence Pilots" although the Quebec Pilots' Association continued to exist (Part I, pp. 84 and ff.).

(j) *Pilots' Strike—1962*

The relations between the pilots, the shipping interests and the Department of Transport deteriorated and between April 5 and April 14, 1962, all the pilots of the Federation, including the Quebec District Pilots, went on strike in support of their demands. The appointment of the present Royal Commission was one of the conditions of its settlement; however, the scope of the Commission's inquiry was extended to cover pilotage in all its phases throughout Canada.

(k) *Quebec District Tariff Evolution*

Between 1788 and 1956, the following basic changes in the tariff structure are noted:

- (i) In 1799, a difference in tariff for upbound and downbound trips was introduced, the upbound trips being more costly. This feature remained up to 1952 inclusive.

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- (ii) In 1812, the year was divided into four periods for tariff purposes: spring navigation, i.e., March and April; the normal navigation season from May 1 to November 10; the pre-winter navigation period from November 11 to November 19; and winter navigation from November 20 to March 1. The lowest rates were for the normal navigation period and the highest for the winter period. This feature was abolished in 1952 when uniform tariff was applicable throughout the year. In 1960, however, a surcharge of 100 per cent, with a maximum of \$100, was introduced for winter navigation, i.e., from December 1 to April 8, because a second pilot was employed.
- (iii) From 1788 to 1952 inclusive, the tariff was based on foot draught only. This was changed in 1952 to a combination of foot draught and NRT, with an NRT minimum of 2,000 tons and a maximum of 7,500. In 1960, the maximum was raised to 15,000 tons.
- (iv) During the depression from 1932 to 1937 inclusive, a yearly decrease varying between 3 and 7 per cent was imposed. Conversely, in the war years, between 1941 and 1944 inclusive when traffic decreased, an annual surcharge of 10 and 25 per cent was imposed to provide sufficient revenue to maintain the pilotage service.
- (v) The tariff structure was not modified either time the seaward pilot station was moved from Bic to Father Point in 1905 or to Les Escoumins in the spring of 1960.
- (vi) The basic rate for the trip from Quebec downriver rose gradually from \$2.20 per foot draught in 1788 to \$3.15 in the summer season in 1812, to \$3.40 in 1888, to \$5.05 in 1947 and to \$5.20 in 1952. Since 1952 it has remained at \$5.20 per foot draught plus  $\frac{1}{2}$  cent NRT which was raised to  $\frac{3}{4}$  cent in 1957.
- (vii) In 1965 a surcharge of 50% on movages and 8% on other pilotage charges was made to provide for an increase in the pilots' remuneration. The latter surcharge was successively increased to 13%, 17% and 22.85% in 1966, 1967 and 1969.

## Chapter B

# BRIEFS

Thirteen Briefs were submitted in connection with pilotage generally and on the St. Lawrence River in particular. Four<sup>1</sup> of these Briefs deal exclusively with pilotage in the District of Quebec and lower St. Lawrence; the remaining nine accord equal importance to all Pilotage Districts on the River. For this reason they are reported here together with the Briefs dealing solely with the Quebec District.

Beyond *specific recommendations* concerning pilotage in the District of Quebec, some of these Briefs contain *general recommendations* for basic reforms in the organization of pilotage. References are made throughout the summary of these recommendations to indicate where the subject matter of a particular recommendation is dealt with in the Report.

The Briefs, which are grouped hereunder according to their respective classifications, are as follows:

### *Pilots*

- (1) The Federation of the St. Lawrence River Pilots (B.28, Ex. 671);
- (2) The Canadian Merchant Service Guild (B.53, Ex. 1382);
- (3) Capt. Maurice Koenig, Quebec Pilot (B.30, Ex. 571; B.48, Ex. 1352);
- (4) Capt. Lucien Bédard, Quebec Pilot (B.47, Ex. 1323);
- (5) Petition by 21 pilots of the District of Quebec (B.46, Ex. 1322);

### *Shipping Interests*

- (6) The Shipping Federation of Canada (B.27, Ex. 726);
- (7) The Dominion Marine Association (B.39, Ex. 1134);
- (8) Canadian Shipowners Association (B.55, Ex. 1436);
- (9) Imperial Oil Ltd. (B.23, Ex. 1132);
- (10) Clarke Steamship Co. Ltd. (B.31, Ex. 1345);

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<sup>1</sup> Briefs No. 30, 47, 46 and 33.



*Others*

- (11) Institut de Marine de la Province de Québec (B.32, Ex. 749);
- (12) The Lower St. Lawrence and Gulf Development Ass. (B.33, Ex. 923);
- (13) Computing Devices of Canada Ltd. (B.42, Ex. 1339).

(1) THE FEDERATION OF THE ST. LAWRENCE RIVER

PILOTS' BRIEF

The Federation of the St. Lawrence River Pilots submitted its Brief in the name of its five member-groups which, in 1966, represented close to 310 pilots operating on the St. Lawrence River between the upper and lower reaches of the River (Kingston-Les Escoumins) (pp. 296 & ff.; Part I, pp. 94-95). These member-groups are:

- Association des Pilotes licenciés pour le Havre de Québec et en aval (Les Escoumins—Quebec) (vide p. 266)
- Corporation of the Mid-St. Lawrence Pilots (Quebec—Montreal)
- Corporation of the Montreal Harbour Pilots (Montreal Harbour)
- Corporation of the St. Lawrence River and Seaway Pilots (Montreal—Cornwall)
- Corporation of the Upper St. Lawrence Pilots (Cornwall—Kingston)<sup>2</sup>

The Federation of Pilots, as well as the various corporations mentioned above, are non-profit organizations created under Part II of the then Federal Companies Act (now Canada Corporations Act). One of the objects of the Federation is to represent its member-groups before public bodies and it was in this capacity that the Federation acted throughout the Commission's inquiry<sup>3</sup>.

The Brief is voluminous: it contains some 245 pages. There are 39 general recommendations and several specific recommendations concerning the various Pilotage Districts on the St. Lawrence, of which six pertain to the District of Quebec.

*General Recommendations*

- (a) *The Governor in Council.* The Governor General in Council retains his power to approve orders in council concerning pilotage tariff on the advice of the Minister of Transport who, in turn, acts upon the recommendation of the Pilotage Commissioner (Part I, Gen. Recs. 16 and 17.

<sup>2</sup> The Kingston Pilotage District (Cornwall-Kingston) is in the international section of the River. It is also one of the three Pilotage Districts on the Great Lakes where pilotage is provided under joint arrangements between Canada and the United States.

<sup>3</sup> The objects and powers of the Federation of the St. Lawrence River Pilots are developed further pp. 297 and ff.; vide also Part I, p. 94.

- (b) *The Minister of Transport.* The Minister of Transport remains the political authority responsible for pilotage. He is the link between the Commissioner of Pilotage and the Governor General in Council; he is the authority who issues and revokes licences, on the recommendation of the Commissioner of Pilotage or the body charged with inquiring into maritime accidents. He can revise the decisions of the Commissioner in matters of pilotage tariff, exemptions from compulsory pilotage, changes in the limits of a District, or the establishment of a District (Part I, Gen. Rec. 18).
- (c) *The Pilotage Commissioner* (Part I, Gen. Recs. 16, 17 and 18).
- (i) A new position is created: Commissioner of Pilotage, which replaces all other positions and functions relating to pilotage in the Department of Transport. It carries the rank and salary of a Deputy Minister. The Commissioner is appointed by the Governor General in Council and retains office at the pleasure of His Excellency. He must be a Canadian citizen who is fluent in both English and French.
  - (ii) The general powers of the Commissioner consist of supervising the efficiency and safety of the pilotage service. The Corporations (or Associations) of pilots submit to him detailed annual financial statements concerning the administration of pilotage itself. If a District does not clearly meet the appropriate standards of efficiency and security, the Commissioner possesses the necessary powers to remedy the situation.
  - (iii) The basic by-laws of the Corporations concerning the operation of pilotage are also subject to the approval of the Commissioner and, in addition, the Corporations must submit their annual budgets for approval outlining the general expenses of administration relating to pilotage itself. Expenses and by-laws of a purely internal nature do not fall under the jurisdiction of the Commissioner (Part I, Gen. Recs. 19, 20 and 21).
  - (iv) The Commissioner adjudicates appeals against the decisions of the local committees on discipline, and he has the power to impose a suspension for a maximum period of two years, and/or a maximum fine of \$2,000. He can also recommend to the Minister that the licence of a pilot be revoked. Further, the Commissioner can appoint assessors in disciplinary matters. The fines thus collected are placed in the pension fund of the Corporation of which the pilot is a member, if such a fund exists or, if not, in the Consolidated Revenue Fund of Canada (Part I, C. 9; Gen. Recs. 26—38).

- (v) The Commissioner convenes public hearings concerning all requests for a revision of the tariff, changing the limits of a District, the creation of new Districts and exemptions from compulsory pilotage. In all cases, he renders a written, reasoned decision and copies are despatched to the parties concerned. A copy is also sent to the Minister of Transport, to whom interested parties can appeal against the decision of the Commissioner. In the case of a revision of the tariff, if the Minister approves the decision of the Commissioner, he transmits it to the Governor in Council for approval by order in Council. In cases involving exemptions, changing the limits of Districts, or the creation of new Districts, if the Minister approves the decision of the Commissioner, he brings it to the attention of the Cabinet with a view to Parliament approving the necessary amendments to the Act (Part I, Gen. Recs. 17, 18 and 19).
  - (vi) In matters other than those mentioned in the preceding paragraph, the Commissioner is not bound to hold public hearings. Except in cases of changing the tariff, exemptions from compulsory pilotage, changing the limits of a District, the establishment of new Districts and the annulment of a licence, the decision of the Commissioner is not subject to review by the Minister (Part I, Gen. Recs. 16—37).
  - (vii) The office of the Commissioner must not be considered an administrative organism, but rather supervisory. The Commissioner would not need more than two assistants (Part I, Gen. Recs. 16 and 17).
- (d) *Consultative Committee* (Part I, p. 506)
- (i) The Commissioner is assisted in the exercise of his duties by a consultative committee of four members, of whom two are appointed by the pilots of Canada, and two others by the shipowners. If the shipowners or the pilots find it impossible to choose their representatives, the Commissioner can organize a vote among the pilots or shipowners to select these members.
  - (ii) The members of this committee are elected for three years, and their mandate is renewable. To ensure continuity, two members shall first be elected for two years, and the others for three years. Elections will be held following the expiration of the mandate of each of these two groups.
  - (iii) The Commissioner must convene this committee at least once a year. The powers of the committee are, however, strictly consultative, and the advice it renders to the Commissioner is not made public.

- (iv) The members of the committee are remunerated by the Government, and receive an indemnity equivalent to that paid to part-time members of various Federal commissions.
- (e) *Administration by the Corporations.* The entire local administration of pilotage is conducted by the Corporations (or Associations) of pilots. This includes the administration of pilotage stations, pilot boats, telecommunications services for pilotage purposes, the allocation of pilots to ships, and the collection of pilotage dues.

The Corporations administer all movable or immovable property relating to pilotage and can be the owners or lessees of such property (Part I, Gen. Recs. 14 and 25).

- (f) *Financial Autonomy.* Each District is financially independent of the others. The funds of a District, or of a section of a District for which there exists a special group of pilots, can not be transferred to another District, or to a section of such District (Part I, Gen. Recs. 8, 15, 20 and 21).
- (g) *The Chief Pilot.* The Corporations are governed by a Board of Directors composed of pilots. The president is elected for three years and carries the title of Chief Pilot. In Districts where shipping traffic is heavy and there are a large number of pilots, the office of Chief Pilot will be a full-time position. However, he is permitted to exercise his profession within the District if he considers this necessary.

The Chief Pilot fulfills the rôle of president of the Corporation, and assumes the duties now undertaken by the local Superintendent.

The Chief Pilot is not a mere chairman, but is vested with real powers which appertain to him personally, as well as those powers held by the Board of Directors.

The Chief Pilot receives the highest remuneration of any pilot in his District during the year, increased by 20% (Part I, Gen. Rec. 25).

- (h) *Disciplinary Powers.* The Corporation is vested with disciplinary powers in relation to licensed pilots as well as apprentice pilots. These powers are exercised by a disciplinary committee composed of three to five persons, the members of which can be chosen from fields outside pilotage. In the case of smaller Districts, this committee can be composed of a single person. Its powers extend from the light sanction of reprimand to the imposition of a fine of \$500 and suspension for a maximum period of six months. The committee

can also recommend to the Commissioner the imposition of even more severe penalties. The decisions of the committee are in all cases appealable to the Commissioner. The fines collected are placed in the pension fund, if one exists, or if not, they are turned over to charitable projects (Part I, p. 552).

- (i) *Apprenticeship.* Apprenticeship schemes are the responsibility of each Corporation and are subject to the approval of the Commissioner.

Apprentices must receive a reasonable remuneration which is to be paid by the Corporation; these costs are to be considered costs of administration.

Examinations are held before a Board composed of an Examiner for Masters and Mates, the Chief Pilot, and three pilots of the District appointed by the Corporation.

The names of the candidates passed by the Examining Board are transmitted to the Commissioner who requests the Minister of Transport to issue the appropriate pilotage licences (Part I, Gen. Recs. 25-37).

- (j) *Pension Funds.* Retirement plans are left to the discretion of each Corporation, but are subject to the general laws applicable to pension funds. The present provisions of the Canada Shipping Act in this regard must be repealed (Part I, Gen. Rec. 39).
- (k) *Retirement Age.* Each Corporation can provide for optional retirement at the age of sixty years. Commencing at age sixty-five each pilot must submit to a medical examination twice yearly, and his licence is only temporary. Retirement is compulsory at the age of seventy (Part I, Gen. Rec. 32).
- (l) *Number of Pilots.* The number of pilots in each District is determined by the Corporations concerned (Part I, p.255; Gen. Recs. 8, 14 and 25).
- (m) *Agreements between Corporations.* The Corporations are permitted to conclude all kinds of agreements with a view to reducing operational costs, or increasing the efficiency of the pilotage service (Part I, Gen. Rec. 25).
- (n) *Pilotage Legislation.* Special legislation on pilotage, independent of the Canada Shipping Act, should be adopted, except that this legislation might on occasion refer to certain sections of the Canada Shipping Act (Part I, Gen. Recs. 1 and 2).

- (o) *Compulsory Pilotage.* The legislation in matters of pilotage should be changed from compulsory payment of pilotage dues to compulsory pilotage, pure and simple (Part I, Gen. Recs. 22 and 23).
- (p) *Status of the Pilot.* The status of a civil servant, where it exists, should totally disappear from pilotage in Canada (Part I, Gen. Rec. 24; Part III, pp. 210 and ff.).
- (q) *Addition to Legislation.* The limits of the Districts and the exemptions from compulsory pilotage must be defined in the law, and not merely by enacting by-laws (Part I, Gen. Recs. 3 and 17).
- (r) *Responsibility of the Pilot.* The status of the pilot must continue to be that of an adviser to the Master, in reality a "living map". His civil responsibility for damages is limited to the amount specified in sec. 362 C.S.A. (Part I, pp. 22 and ff.; Gen. Recs. 11 and 12).
- (s) *Establishment of Districts.* All areas where pilotage exists must be transformed into Pilotage Districts under the authority of the Commissioner of Pilotage and of the Minister of Transport. The pilots must be duly licensed (Part I, Gen. Recs. 6, 8, 10 and 12).
- (t) *Basis of Pilotage Tariff.* The tariff in all Districts is based on the net or gross tonnage and the draught of the vessel. It must specify the maximum net or gross tonnage as it appears in the certificate of registration of the vessel, in order to cover vessels with "shelter-decks" and "side-tanks".

In the case of movages, the tariff base can be a determinate sum which varies according to the scale of tonnage.

All discrimination in the tariff in favour of coastal or inland water vessels must be removed (Part I, C. 6; Gen. Rec. 21).
- (u) *Tariff: Costs of Pilotage and Expenses of Administration.* The pilotage tariff includes both the costs of remunerating the pilots and the costs of administration. The tariff is, however, divided into two distinct parts, one concerning remuneration of pilots, and the other denoting the cost of administering pilotage (Part I, C. 6; Gen. Recs. 20 and 21).
- (v) *Criteria re Tariff.* For administrative purposes the rates must be established at a level which permits the payment of all the costs of administration. Any surplus would be applied to a reduction in the tariff. The rates for pilotage would be governed by the public interest, the value of the services rendered, the cost to the ship-owners, and the necessity of attracting to the pilotage profession the finest candidates the maritime world can offer (Part I, Gen. Recs. 20 and 21).

- (w) *Cancellation of Departure and Detention.* The amounts paid due to the cancellation of a departure and for detention are inadequate and must be made uniform (Part I, pp. 149 and ff.).
- (x) *Prior Payment of Dues.* The Corporations must be able to request the prior payment of pilotage dues or the deposit of a guarantee if there is doubt about the solvency of a ship or her agent (Part I, p. 200, and Gen. Rec. 11).
- (y) *Indemnity outside the District.* Pilots required to leave their own District or to meet a vessel outside it have a right to an indemnity of fifty dollars per day for each day of absence from their District besides payment of their first class transportation as well as their food and lodging (Part I, Gen. Rec. 11).
- (z) *Detention because of Stress of Weather and Ice.* The "exemption" from detention fees because of stress of weather or ice must be removed for the period between December 1 and April 8. The pilots must also receive, during this period, detention dues for any delay of more than six hours in the scheduled departure of a vessel (Part II, p. 157 and ff.; and Part IV, p. 474).
- (aa) *Two pilots on Board.* Between December 1 and April 8 there must be two pilots aboard each vessel and a double tariff must be charged (Part I, p. 135; Part II, pp. 113 and ff.; Part IV, p. 439).
- (bb) *Pilotage Licences.* The pilots duly licensed by the Pilotage Authority are the only ones authorized to fulfill the duties of a pilot. No certificate of pilot-captain shall be issued authorizing pilotage by the holders of same in the Pilotage Districts (Part I, Gen. Rec. 23).
- (cc) *Penalties.* Penalties imposed upon a Master who does not take a pilot although obliged to do so, as well as sanctions placed on any non-licensed person piloting a vessel, must be increased (Part I, Gen. Recs. 11 and 22).
- (dd) *Procedure in Cases of Violation of the By-laws by the Pilots, and Maritime Accidents.* A specific procedure of inquiry should be established to investigate violations of the By-laws by the pilots. As for inquiries following shipping accidents, the present By-laws must be substantially amended to assure protection of the rights of the interested parties in conformity with the contemporary concepts of justice (Part I, C.9; Gen. Recs. 26-37).
- (ee) *Vessels Lightly Loaded.* Vessels with small cargoes should be required to carry sufficient ballast to guarantee their safe handling on the St. Lawrence River (p. 319).

- (ff) *Radiotelephone*. All ships should have in the wheel-house radio-telephone equipment capable of operating on the appropriate local frequencies (pp. 180 and ff.).
- (gg) *Luminous Signals*. An automatic luminous signal should be attached to ships' whistles or sirens (p. 176).
- (hh) *Wheel-house Instruments*. The rudder angle indicator and the propeller speed indicator (R.P.M.) must be clearly placed and well in view, so that no person can shield them from the pilot or helmsman (pp. 176-177).
- (ii) *Derricks Forward*. Appropriate measures must be taken to have all derricks so placed that they do not obstruct the view of the pilot (p. 914).
- (jj) *Accommodation Ladder*. Ships must always place an accommodation ladder at the disposal of the pilots, except in the locks. This should be so situated as not to endanger the lives of the pilots (p. 320).
- (kk) *Pilot's Cabin*. A cabin must always be placed at the disposal of the pilot in case of delays, anchoring, etc.  
All ships in default thereof must pay a compensatory indemnity to the pilot (p. 320).
- (ll) *Maritime Police*. An adequate system of Maritime Police should be established to supervise the application of the various by-laws affecting shipping (p. 125 and p. 642).
- (mm) *Joint Committee*. A joint Committee composed of representatives of the pilots and shipowners should be established to assist the Government in its implementation of the recommendation of the Royal Commission on Pilotage.<sup>4</sup>

*Specific Recommendations—Pilotage District of Quebec*

- (a) *Limits of the District*. That the limits of the District be changed in such a manner as to correspond to the new situation resulting from the change of the pilotage station from Father Point to Les Escoumins; these new limits should be designated by an imaginary line drawn from the quay at Les Escoumins to the eastern extremity of Anse aux Basques (Rec. No. 2).
- (b) *Restricted Navigation Zone*. That a restricted navigation zone of embarkation and debarkation be established to encompass a radius of two (2) miles from Anse aux Basques (p. 410).

<sup>4</sup>This recommendation is beyond the mandate of this Commission.



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- (c) *Exemptions.* That no other exemption from compulsory payment of pilotage dues be granted. (Part I, Gen. Recs. 22 and 23; Part IV, Rec. No. 4).
- (d) *Berthing at Quebec.* That all vessels ascending the St. Lawrence and having to berth in the harbour of Quebec should change pilots for berthing, and the appropriate pilotage dues be charged in this regard (pp. 340 and ff.; Rec. No. 6).
- (e) *Number of Pilots.* That the number of pilots in the District of Quebec be increased by at least four (pp. 230-231).
- (f) *Limits of Tariff.* That the present limit of 15,000 net tons for computing pilotage dues be removed (p. 467 and ff.).

(2) THE CANADIAN MERCHANT SERVICE GUILD'S BRIEF

The Canadian Merchant Service Guild was constituted as a body corporate by an Act of Parliament, assented to on June 6, 1919 (9-10 Geo. V c. 99). The main object of the new corporation was to organize all Canadian mariners into a fraternal group.

The Guild represents Masters, mates and pilots. Its total membership has remained stable for some time at approximately 2,400, equally divided between the east and west coast.

In 1958, an eastern branch was formed under the provisions of sec. 6 of the Guild's constitution. The eastern branch covers the territory from the Head of the Great Lakes to Newfoundland.

The Guild had its main office in Vancouver up until 1966 when it was transferred to Ottawa. The Guild is affiliated with the Canadian Labour Congress. Its affairs are managed by a National Executive Board made up of ten members chosen in a manner determined by by-laws.

The Guild represents the following groups of licensed pilots:

- British Columbia Coast,
- New Westminster (Fraser River),
- St. John's, Nfld.,
- Sydney,
- Halifax,
- Saint John, N.B.,
- St. Lawrence River Pilots—All Districts,  
(Quebec, Montreal, Cornwall and Kingston).

In 1947, a National Pilots' Committee was formed to promote the best interests of the Canadian licensed pilots. The Committee, now known as the Committee of the National Association of Canadian Marine Pilots following the formation of that Association in 1966, is composed of two authorized

representatives from each Pilotage District and one non-voting recording Secretary designated by the National Executive Board of the Guild. Meetings are held annually. A Committee chairman and two vice-chairmen are elected at each annual meeting, representing the East Coast, the West Coast and the St. Lawrence-Great Lakes area. Although the Committee has its own rules and regulations, it operates according to the constitution and by-laws of the Guild.

The Canadian Merchant Service Guild submitted a 48-page Brief which stresses the need for basic reforms in the organization of pilotage in Canada and makes a number of recommendations.

The Canadian Labour Congress, in a letter dated October 23, 1964, to the Royal Commission on Pilotage, supported the Guild's representations to the Commission and stated that it was in full accord with the recommendations contained in the Guild's Brief. In this letter, the Congress drew particular attention to the sections of the Brief dealing with shipping casualty investigations (paras. 80-92) and strongly urged that serious consideration be given to making recommendations providing for well-defined, orderly and just procedures to protect the pilots against arbitrary discipline.

The recommendations contained in the Brief of the Canadian Merchant Service Guild are as follows:

(a) *Pilotage Act*

"It has become imperative to have a separate Pilotage Act containing the general principles regulating pilotage in all districts and defining the constitution and jurisdiction of the pilotage authority or authorities, the status, the rights, the immunities and the obligations of pilots. The Pilotage Act should limit the power of the pilotage authority or authorities to make by-laws applying the general principles therein contained to local conditions only. Such by-laws should be drafted in consultation with an advisory committee comprising representatives of the shipping industry and pilots and enacted under the authority of the Governor-General-in-Council." (Part I, Gen. Recs. 1, 2, 3, 17, 18 and 19).

"The Pilotage Act should also contain provisions guaranteeing to pilots an appeal against any action of the pilotage authority or authorities with respect to pilot's licences, the suspension or revocation of same and/or against any disciplinary action by the pilotage authority or authorities." (Part I, C.9; Gen. Recs. 30, 35 and 36).

"Lastly the proposed Pilotage Act should contain provisions clearly setting out a definite procedure for inquiries into the conduct and behaviour of pilots having due regard to our well-esta-

blished principles of justice, the law of evidence and the provisions of the Canadian Bill of Rights.” (Part I, C.9; Gen. Recs. 28, 34 and 36).

(b) *Compulsory Pilotage*

“Canada should follow the example of the major trading nations of the world in adopting the rule of Compulsory Pilotage in all pilotage districts, as it did in 1960 for the Great Lakes Basin.” (Part I, Gen. Recs. 22 and 23).

“However, in establishing Compulsory Pilotage care must be taken to remove the exemption from liability for shipowners using the services of compulsory pilots.....”

“Also, the provisions of Sub-Section (2) of Section 362 of the Canada Shipping Act limiting the liability of pilots in pecuniary damages to \$300 for any damage or loss occasioned by their negligence or want of skill should be retained.” (Part I, Gen. Rec. 11).

“Finally, the present statutory exemptions from the payment of pilotage dues should be made applicable to compulsory pilotage, unless otherwise recommended in submissions made by individual pilotage districts and corporations.” (Part I, Gen. Recs. 22 and 23).

“The National Pilots’ Committee joins with the pilots of the pilotage districts of Quebec-Les Escoumins, St. John, New Brunswick, Halifax, Sydney and St. John’s, Newfoundland, in opposing the recommendations” (made by Imperial Oil Ltd. (Brief 23)) for the establishment and uniform application of rules governing exemption from the compulsory payment of pilotage dues by Canadian ships engaged in coastwise trading either on the East or West Coast of Canada.” (Part I, Gen. Recs. 22 and 23; Part IV, Rec. No. 4).

(c) *Pilotage Dues*

“... that an effort be made to find a formula by which pilotage dues would be charged on units based on the physical dimensions of the vessel, such as overall length, breadth, depth and possibly draught, together with mileage in larger districts where the distance run is an important but variable factor. It is felt that the use of these easily ascertainable physical dimensions could be of considerable assistance in computing pilotage charges payable by any vessel, whilst taking into consideration the importance of the vessel and the degree of responsibility assumed by the pilot.” (Part I, C.6).

(d) *Pilotage by Ships' Officers* (Part I, Gen. Rec. 23)

"The Masters and Mates, members of the Eastern Branch of the Canadian Merchant Service Guild, have repeatedly in the past voiced their opposition to their being forced to pilot their vessels in addition to their normal duties as ship officers. This opposition has made the subject of many resolutions regularly adopted at meetings of The Guild by the pilots and officers concerned as well."

"The Canadian Merchant Service Guild gives its strongest support to these views of the Masters and Mates engaged in the inland and coastal trades on the Great Lakes, the St. Lawrence Seaway, St. Lawrence River and on the East Coast of Canada."

(e) *Pilot Boats*

"The National Pilots' Committee supports the recommendations of the various pilotage districts that these be supplied with suitable pilot boats. It is submitted that pilot boats cannot be standardized owing to varied conditions obtaining in each individual district."

"Any new construction should first be discussed with the pilots of the districts concerned, in order to obtain their views as to the type and size of boats required."

(f) *Detention, Cancellation and Morage Charges* (Part I, C.7; Part II, pp. 157 and ff.).

"The payment of detention, cancellation and morage charges should be standardized throughout Canada, in all fairness to pilots and users of their services as well."

"A cursory review of detention, cancellation and morage charges, applicable to all pilotage districts in Canada, is sufficient to show that these charges are quite inadequate and should be revised upwards."

"The National Pilots' Committee supports, in particular, recommendation twenty-six (26) contained in the Brief submitted by the Federation of the St. Lawrence River Pilots dealing with the removal of the exemption from detention charges because of stress of water<sup>5</sup> or ice conditions for the period between December 1st and April 8th, for the reasons outlined in the said Brief."

(g) *Pension Funds*

"The National Pilots' Committee supports the recommendations made by the various pilotage districts and corporations in

<sup>5</sup> It is clear from the French language version of the Brief that *weather* is intended.

regard to pension funds and does not wish to elaborate further on the recommendations already made in this respect." (Part I, C. 10; Gen. Rec. 39.)

(h) *Aids to Navigation*

".....It is recommended to have the various district marine agent offices at least partially manned or staffed during weekends and on legal holidays."

"A greater co-operation and frequent consultations between those charged with the operation and maintenance of aids to navigation and pilots are highly recommended."

"It is submitted that all modifications to present systems of aids to navigation in any pilotage district should first be discussed with the pilots of the district concerned.".....

(i) *Telecommunications* (pp. 180 and ff.).

"The National Pilots' Committee supports the views expressed in the evidence adduced by the pilots of practically all pilotage districts across Canada in regard to improving the present telecommunication system and the operation of the Signal Service."

"The National Pilots' Committee also strongly recommends that all ships plying the pilotage waters of Canada should be equipped with adequate M.F. and V.H.F. radiotelephone sets."

"Finally, the National Pilots' Committee recommends that pilots be supplied with light-weight portable two-way radio sets for speedy and dependable communications between pilots rendering pilotage services on separate vessels, or between two pilots on board the same vessel when two pilots are required for difficult manoeuvres in particularly restricted waters with certain type of vessels, or between a pilot and the Master of any tug assisting in the movement of his vessel and/or between the pilots in charge of a tug and her tow."

(j) *Under Keel Clearance* (Part IV. pp. 643-45).

"The National Pilots' Committee recommends that the Pilotage Authority or Authorities, in consultation with Harbour, Seaway and Ship Channel authorities, should determine and promulgate from time to time minimum under keel clearances applicable to particularly narrow channels and restricted pilotage waters."

"These minimum under keel or bottom clearances should take into consideration the following phenomena experienced by large vessels in restricted channels:—

- (a) increased draught and decreased manoeuvrability due to wave and swell action at harbour and channel entrances;

- (b) decreased bottom clearance due to "squat" in restricted channels;
- (c) the various factors affecting a vessel's manoeuvrability in channels of restricted width and depth due to decreased rudder effect, bank suction and other factors;
- (d) wave and swell action affecting loaded vessels entering port coupled with increased draught resulting from rolling action of beamy vessels."

"It is of the utmost importance that any regulations relating to minimum under keel clearances be widely promulgated so that masters, owners and agents of vessels entering waters where such minimum under keel clearances are applicable be well informed of their existence and may be made aware of the risk to the safety of vessels not complying with same."

- (k) *Disciplinary Measures and Shipping Casualties* (Part I, C.9; Gen. Recs. 26-37)

"This arbitrary and illegal manner of conducting inquiries and investigations" (into the conduct, behaviour and administration of pilots and into accidents or casualties involving them) "has led to severe criticism of the system and to complete disrespect for those charged with the application of the provisions of the Act dealing with pilotage matters and of the By-laws made thereunder."

"It seems obvious that drastic changes are required in the handling of discipline cases and accidents or casualties involving pilots. First of all, all such cases should be investigated by specially trained Investigating Officers not connected with the operation of pilotage. Their investigations should be carried out under well-defined regulations confirmed by the Governor-in-Council. These regulations should provide for a complete procedure of investigation jealously safeguarding the rights of the individual involved. The conduct of such investigation should be governed by our well-established principles of justice, the law on evidence and the provisions of the Canadian Bill of Rights. In no circumstances should any individual be forced to incriminate himself."

"On receipt of the report of such investigation the Minister should have the alternative of ordering either the case dropped or a Formal Investigation held under provisions comparable to those presently contained in Sections 558 to 578 of the Canada Shipping Act inclusive and the rules of procedure made pursuant thereto. In no circumstances should the conduct of such Formal Investigation be entrusted to Commissioners with no legal background. It is of paramount importance that provisions similar to those presently

contained in Section 576 dealing with re-hearing of investigation and the appeal to the Admiralty Court be preserved together with those of Section 142, whilst the provisions of Section 579 should cease to apply to pilots' licences. However, in minor cases involving the imposition of fines only, the Minister of Transport could impose a penalty without ordering a Formal Investigation."

### (3) CAPTAIN MAURICE KOENIG'S BRIEF

Captain Maurice Koenig, a licensed pilot in the Quebec District since 1951 and a member of both the "Association des Pilotes licenciés pour le Havre de Québec et en aval", of which he was a director in 1955, and the Corporation of the Lower St. Lawrence Pilots, submitted a private brief (Ex. 571) in which he voiced his disapproval of the present administration of the Quebec pilots' affairs by the said Corporation. He testified in support of his brief when the Commission held its public hearings in Quebec City and subsequently filed written pleadings (Ex. 1352) when the Commission held its final hearings in Ottawa.

In his brief, which relates solely to the Quebec Pilotage District, Captain Koenig made the following recommendations:

- (a) The Department of Transport should continue to be recognized as the pilotage authority (Part I, Gen. Recs. 15, 16 and 18).
- (b) The relocation at Les Escoumins of the pilotage station which used to be at Father Point should be reconsidered (pp. 403 and ff.).
- (c) The existing rules concerning the election of the Board of Directors of the Corporation should be revised to ensure that at least half the Board is always composed of older and more experienced pilots (Part I, Gen. Rec. 25; Part IV, pp. 277-278).
- (d) Either the individual contributions to the pilots' Pension Fund should be reduced or the pilots' pension benefits should be increased (Part I, C. 10; Gen. Rec. 39).

### (4) CAPTAIN LUCIEN BÉDARD'S BRIEF

Captain Lucien Bédard has been a licensed pilot in the District since 1938. He is a member of the "Association des Pilotes licenciés pour le Havre de Québec et en aval", but, among others, refused to join the Corporation of the Lower St. Lawrence Pilots. He filed a private brief (Ex. 1323), but did not bring any evidence to support his representations.

In his brief, which also relates solely to the Quebec District, Captain Bédard made the following recommendations:

- (a) In the interest of pilotage in general and of the pilots in particular, the Department of Transport should remain the controlling agent of the administration of pilotage on the St. Lawrence (Part I, Gen. Recs. 15, 16 and 18).
- (b) The said Department should continue to collect from each pilot a ten per cent (10%) contribution for Pension Fund purposes (Part I, C.10; Gen. Rec. 39).
- (c) The pilots should be required to continue their support of the "Association des Pilotes licenciés pour le Havre de Québec et en aval" and pay to it whatever contribution may be determined from time to time at general meetings (Part I, Gen. Rec. 25).
- (d) The present system of pooling of earnings should be abandoned, each pilot receiving directly from his employer the remuneration to which he is entitled by law and regulations (Part I, pp. 77 and ff. and 192 and ff.; Gen. Rec. 24).

#### (5) BRIEF BY TWENTY-ONE PILOTS OF THE QUEBEC DISTRICT

Twenty-one pilots of the Quebec District, including Captain Maurice Koenig and Captain Lucien Bédard, submitted to the Commission, in the form of a petition, a brief (Ex. 1322) which every one of the twenty-one pilots signed.<sup>6</sup>

After indicating their objection to the present "pooling" system, these pilots recommended that:

- (a) The system under which pilots are required to pool their earnings should be abolished, each pilot receiving directly the dues to which he is entitled by law (Part I, pp. 77 and ff. and 192 and ff.; Gen. Rec. 24).
- (b) The "Association des Pilotes licenciés pour le Havre de Québec et en aval" should be maintained and the newly formed Corporation of the Lower St. Lawrence Pilots be prevented from usurping the rights of the Association (Part I, Gen. Rec. 25).
- (c) The administrative expenses of the Association should be met through a fixed, reasonable, individual contribution (Part I, Gen. Rec. 25).
- (d) The pilots should be entitled to provide financial assistance in bona fide cases of illness and suspension (Part I, Gen. Rec. 39).
- (e) The pilots' Pension Fund should be properly supervised by the Pilotage Authority (Part I, Gen. Rec. 39).

<sup>6</sup> Subsequently, five pilots withdrew their signatures on the ground that they had misunderstood what they had been called upon to sign.



- (f) The administration of pilotage in the Quebec District should be entrusted to a local authority or commission composed of three persons including a Judge of the Superior Court of Quebec (Part I, Gen. Rec. 18).

(6) SHIPPING FEDERATION OF CANADA'S BRIEF

The Shipping Federation of Canada Inc. was incorporated in 1903 by an Act of the Federal Parliament (3 Edward VII c.190 (Ex. 903)) as an association of persons having a common interest in the shipping trade of Canada. Its head office is in Montreal.

The main objects of the Federation, as set out in its documents of incorporation, are, in part:

- (a) to amalgamate and federate, as members thereof, shipowners and shipping agents and such other persons, firms and corporations, as are from time to time interested in the shipping trade of Canada.
- (b) to consider all questions affecting the interests of the shipping trade of Canada or other trades connected therewith and the interests of the members of the Federation, and to take such action as the Federation deems advisable to develop and protect the said trades and interests."

In addition to the operators of certain Canadian coasting services, the Federation represents at present nearly all the owners and operators of ocean-going vessels trading from overseas to eastern Canadian ports, St. Lawrence River ports and Canadian and United States ports on the Great Lakes which carry most of Canada's foreign trade that moves by sea. The membership of the Federation does not vary greatly from year to year. In 1962, there were forty-nine members representing one hundred and eighteen shipping companies operating liner services; in 1963 and 1964, there were forty-seven members representing one hundred and twenty-two such companies.

The members of the Federation, although representing mainly foreign flag ships owned either by foreign nationals or Canadian interests operating their vessels under the British flag, are essentially Canadian companies managed by individual Canadians who either operate the ships themselves under contracts of affreightment, or act as agents for the foreign carriers. It is the concern of these Canadian operators or agents, members of the Shipping Federation of Canada, to establish operating conditions within Canada for all shipping, not for the benefit of "foreign" interests *versus* "Canadian" interests, but for the benefit of Canada's foreign trade by means of efficient and competitive ocean shipping services. Ocean shipping is, by its very nature,

international in scope, composition and practice and Canada's export and import trade moving overseas could not hope to live without the services of these "foreign" ships.

The Shipping Federation is affiliated with the International Chamber of Shipping, London, and works closely with the Chamber of Shipping of the United Kingdom, the Baltic and International Maritime Conference of Copenhagen, the Liverpool Steamship Owners Association and the Norwegian Shipowners Association. These associations, including the Shipping Federation, pursue similar objectives, i.e., to formulate and present the views of the shipping industry as a whole on all questions of major policy. They have nothing to do with the fixing of freight rates and none belongs to any rate-fixing Conference.

An annual meeting of the members of the Shipping Federation of Canada takes place in March of every year at which time an Executive Council consisting of eleven representatives is elected by the members of the Federation. The business of the Federation is managed by this Executive Council with the assistance of various committees, particularly the Pilotage Committee, the Labour Relations Committee, the Pilferage Committee and local Steamship Committees at Toronto, Quebec, Halifax and Saint John, which deal with shipping problems at these ports.

The main functions of the Shipping Federation are in connection with pilotage, aids to navigation, improvement of harbours, port use, towage tariffs, deepening of channels, agreements with labour organizations, and negotiations with all branches of government on any matters affecting the interests of shipowners in connection with charges and facilities in Canadian harbours.

In connection with pilotage, the members of the Shipping Federation are the main users of the services of pilots and are thus interested in ensuring that competent, reliable pilots are always available at reasonable cost for the safe and efficient movement of traffic. Their interest in pilotage matters has been looked after since 1955 by a Pilotage Committee composed of nine members which meets several times a year to discuss various aspects of pilotage administration and operations such as pilotage dues, income levels of pilots, workload and general working conditions of pilots. On these and other related subjects, the Committee makes its recommendations to the Executive Council or to an annual general meeting.

In June 1963, the Shipping Federation submitted to the Royal Commission a Brief in two volumes on the problems of pilotage on the St. Lawrence River between Les Escoumins and Kingston, leaving aside the stretch of the River between Cornwall and Kingston from the time that it became part of the Great Lakes pilotage system, as District No. 1, at the beginning of the

1961 navigation season.<sup>7</sup> In it the Shipping Federation makes several recommendations of which all except one<sup>8</sup> are of a general nature and deal with the organizational structure of pilotage, the extent and nature of pilotage requirements, and the duties, responsibilities and status of pilots. These recommendations are as follows:

- (a) The creation of a permanent Board of Pilotage Commissioners as a non-political agency having, under its enabling Act, jurisdiction over the administration of pilotage in the whole of Canada. This Board should be established either as an Agency Corporation (like the National Harbours Board) or as a Proprietary Corporation (like the Canadian Broadcasting Corporation) accountable through the Minister of Transport to Parliament for the conduct of its affairs. The Board should consist of a chairman with shipping and business experience and two other members, one of whom should be a lawyer and the other a chartered accountant. It should have the assistance of an Advisory Committee made up of representatives from each of the following Government authorities: Department of Trade and Commerce, St. Lawrence Seaway Authority, National Harbours Board, Department of Transport and Treasury Board (Part I, Gen. Rec. 16). With regard to the powers of the Board, the following were suggested (Part I, Gen. Recs. 17, 19, 20, 21, 22 and 23):
  - (i) establishing new Pilotage Districts or abolishing existing ones;
  - (ii) making such rearrangements of Pilotage Districts as the Board may think necessary or expedient, including<sup>9</sup> payment of compensation to any pilot for loss or damage incurred by him in consequence of any order abolishing or rearranging Pilotage Districts, or assigning surplus pilots from one District to another which may be short of pilots;
  - (iii) defining the limits of each Pilotage District and appointing the local Pilotage Committee to administer such District;
  - (iv) determining whether the payment of pilotage dues shall be compulsory in any District or in any part thereof and for what class of ships;
  - (v) granting pilotage exemptions in any District and determining the conditions of such exemptions;
  - (vi) authorizing the Pilotage Committee in each District to make by-laws and approving such by-laws;

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<sup>7</sup> The Shipping Federation subsequently filed a supplementary Brief on the problems affecting pilotage in the Great Lakes, which forms the subject of Part V of this Report.

<sup>8</sup> This recommendation pertains to the establishment of a separate Pilotage District for the harbour of Montreal; see Montreal Pilotage District.

<sup>9</sup> Added subsequently-*vide* Transcript Vol. 158, p. 21057.

- (vii) determining the minimum and maximum yearly earnings of pilots in each District in relation to their workload and determining the accounting procedure to be followed to take care of deficiencies or surplus in the pilotage revenues of the District;
  - (viii) determining what part of the cost of the services in each District shall be borne by the users of the service and what part shall be paid by the Government as a public service to shipping;
  - (ix) settling disputes on the interpretation of by-laws between a local Pilotage Committee and the pilots of the District or the users of their services;
  - (x) prescribing what type of control, if any, should be exercised over pilotage in any of the smaller ports where pilots offer their services on a purely private basis, and conducting investigations into the competency of such pilots and the nature of the services rendered;
  - (xi) convening and holding public hearings on all matters of interest to the shipping industry and the pilots in relation to pilotage problems in general or pilotage problems arising in a given District;
  - (xii) approving and supervising the operation of the pooling agreements of the pilots in each Pilotage District;
  - (xiii) causing an annual audit to be made of the books of the Pilots' Corporations in each District, examining their constitution as well as their proceedings, protecting the interests of individual members of such Corporations and hearing their complaints against the Corporations, ordering the cessation of discriminatory practices against minority members, and generally ensuring that in all actions taken by the Corporations against their members the fundamental requirements of due process of law are complied with;
  - (xiv) controlling or supervising the administration of the pension funds in each District; and
  - (xv) ordering and supervising the preparation of statistical returns covering all phases of the pilotage system operating in each of the Pilotage Districts or harbours coming under the jurisdiction of the Board.
- (b) The creation of a local Pilotage Committee in each Pilotage District established by the National Pilotage Board, having the autonomous administration of the pilotage services in the District and charged with the full and complete enforcement of the local by-laws.

*Study of Quebec Pilotage District*

Specifically, each Committee should consist of three persons: the local Superintendent of Pilots as chairman, assisted by two advisory members, one of whom might be a representative of the local harbour authority and the other the District Marine Agent or a representative of the Department of Transport (Part I, Gen. Rec. 18).

In regard to the powers of the local Pilotage Committees, it is envisaged that they should be primarily administrative in nature, particularly as regards the enforcement of the by-laws governing their respective Districts. The primary responsibility for the preparation of these by-laws should rest with each Committee, but the by-laws would need to be approved by the Board of Pilotage Commissioners to become effective. Amongst the subject matters to be covered by such by-laws, the following are suggested:

- (i) the qualifications of pilots;
- (ii) the terms and conditions of pilots' licences;
- (iii) the selection of apprentice pilots and the formulation of programmes of apprenticeship;
- (iv) the government of pilots;
- (v) the disciplinary measures to be taken against pilots for any breach of the regulations governing their conduct;
- (vi) the pilotage rates and tariffs necessary to provide the required revenues to meet the costs of the pilotage service to the extent that they have to be met by the users, including the remuneration of pilots computed on the basis of the minimum and maximum yearly earnings set by the Board of Pilotage Commissioners;
- (vii) the rules governing the retirement of pilots;
- (viii) the adjustment of disputes between pilots and users of their services; and
- (ix) the establishment of pension funds for pilots and the administration thereof.

It is further intended that each local Committee should be empowered to appoint such staff as it may deem necessary to discharge its managerial functions effectively.

- (c) The development of a formula designed to provide a pre-set annual remuneration for pilots with, perhaps, certain limits and geared to a fair workload (Part I, C.6; Gen. Recs. 21 and 24).
- (d) The adoption of a system under which pilotage rates or tariffs shall be negotiated between the shipping industry and the local Pilotage Committee in each District with a view to providing sufficient

- revenues to meet the payment of a pre-set remuneration of the pilots, subject to confirmation by the Board of Pilotage Commissioners as expressed in the enactment of the by-laws of each District (Part I, C.7; Gen. Recs. 19, 20 and 21).
- (e) Recognition of the right of the shipping industry to participate in the selection of applicants for pilotage apprenticeship or of probationary pilots, and the formulation of the conditions of apprenticeship (Part I, p. 515; Part IV, p. 234).
  - (f) The convening of periodical or special meetings at the level of the local Pilotage Committee between representatives of the pilots and the shipping industry for the purpose of submitting joint recommendations to the Authority for warranted changes or improvements in aids to navigation in each Pilotage District (Part I, Gen. Recs. 18 and 19).
  - (g) The outlawing of individual or collective strike action by the pilots in any or all Districts and the setting of penalties by law against striking pilots (Part I, Gen. Rec. 38).
  - (h) The acceptance of the principle of collective responsibility on the part of pilots for collective action taken by them or through their Corporations, and the Corporations to be made liable for such collective action (Part I, p. 430 and ff.; Gen. Rec. 38).
  - (i) The enactment of disciplinary rules making it unlawful for pilots individually or collectively through their corporate organizations to threaten, entice or otherwise influence a pilot in any District in order to have him refuse work and, conversely, to threaten, or otherwise influence or entice the Master of any ship to have him refrain from proceeding through a Pilotage District without a pilot on board.
  - (j) The enactment of rules permitting the Pilotage Authority to take steps to ensure that in all actions taken by the Corporations affecting their members the fundamental requirements of due process of law are complied with, the interests of minority members are fully protected and pilots in any District remain free to join or not join the Corporation in their District (Part I, Gen. Recs. 18 and 25).
  - (k) The enactment of rules whereby a pilot involved in a serious casualty or suspected of serious negligence or dereliction will automatically be suspended pending an immediate, full investigation into the circumstances of the case, at which the operators of the ship will be permitted to attend, and which will include a full medical and/or psychiatric examination if the state of health, physical or mental, of the pilot appears to have been a factor, or drinking or drug addiction is suspected (Part I, Gen. Rec. 29).

In regard to investigation of marine casualties, it is envisaged that the exercise of the judicial or quasi-judicial powers in connection with the investigation of those casualties in which pilots are involved should be completely divorced from the functions of either the local Committees or the Board of Pilotage Commissioners for Canada, and that such judicial functions should be vested in a Court constituted under the same principles as those under which the former Wreck Commissioner's Court used to operate, the reports of the Court always being made available to the Board. This would not mean that the local Committees or the Board itself would not have the power to take disciplinary measures against pilots found guilty of infractions against the rules of discipline as set out in the By-law of their District whenever such infractions did not result in a shipping casualty (Part I, Gen. Recs. 28, 30, 35 and 36).

- (1) A computation of the accident record of each pilot with a yearly review submitted to the representatives of the shipping industry with a view to having steps taken to investigate the physical fitness, character and background of accident-prone pilots.

#### (7) DOMINION MARINE ASSOCIATION'S BRIEF

The Dominion Marine Association was originally established in 1904 as a voluntary association of Canadian lake carriers. It was re-organized a number of times and operated under various names until 1961 when it was incorporated under Part II of the Canadian Companies Act as a non-profit organization to represent Canadian companies owning and operating ships on the Great Lakes and the St. Lawrence River and in the Gulf of St. Lawrence.

The objects of the Association, as stated in its documents of incorporation, are:

- (a) to promote in Canada the operation of ships built and registered in Canada;
- (b) to do and perform all things or acts to protect and advance the common interests of Canadian shipowners.

The membership of the Association consists of 21 companies which, during 1964, operated on the Great Lakes and the St. Lawrence some 155 ships with a total gross tonnage of 911,544 tons, representing over 80 per cent of the Canadian Great Lakes fleet.<sup>10</sup>

<sup>10</sup> Among notable exceptions are Papachristidis Co. Ltd., Imperial Oil Limited and Branch Lines Ltd. In 1964, these three companies operated some 20 ships with a total gross tonnage of 120,772 tons. However, they filed letters with the Commission indicating their support for the Association's Brief—Exs. 1137 and 1283.

For many years the Dominion Marine Association has played an important rôle in the development of shipping on the Great Lakes and St. Lawrence River. Among other things, the Association encouraged the use of radiotelephony on the Great Lakes, a system which now forms the basis of an agreement between Canada and the United States wherein all vessels must have radiotelephone equipment while on the Lakes. It advocated and secured the establishment of separate lanes for upbound and downbound vessels. The Association has also been active in securing improvements to the channels and aids to navigation on the St. Lawrence. In these endeavours, the Association acts in close concert with a similar association of owners in the United States: the American Lake Carriers Association. Each Association maintains a standing Navigation Committee to review safety standards and assist governmental agencies and others to bring about the necessary improvements.

While the work of the American Committee is limited to the Great Lakes, the work of the Canadian Committee ranges all the way from the Lakehead to the Maritimes. Each winter, the Navigation Committee of the Dominion Marine Association holds meetings to draw upon the experience of the past navigation season and makes to the Canadian Government such recommendations as may be deemed necessary or desirable. These annual meetings are attended by representatives of all the departments and agencies concerned and liaison is maintained with the corresponding Committee of the American Lake Carriers Association.

The Dominion Marine Association has also been interested in matters of pilotage for a good many years, but more particularly since the opening of the St. Lawrence Seaway. Until 1959, the small canal-sized ships, which had a maximum net tonnage of between 1,500 and 2,000 tons, were used primarily on the St. Lawrence River below Montreal and in the Gulf of St. Lawrence with only occasional voyages to the Upper Lakes. Since the officers of these vessels were familiar with pilotage in these areas, their vessels were specifically exempt by local pilotage by-laws from the compulsory payment of pilotage dues when navigating through the Pilotage Districts of Montreal and Quebec. With the opening of the Seaway in 1959, the large lakers which had hitherto been confined to the Upper Lakes were able to extend their voyages as far east as Seven Islands. This, concurrently with the gradual replacement of the smaller canal-size ships, brought about a complete change in the pattern of trade and in the pattern of operations of the Canadian lake shipping companies. In due course, the Dominion Marine Association requested the Federal Government to exempt these large lake vessels from the compulsory payment of pilotage dues in the Districts of Montreal and Quebec on the ground that the Masters of these vessels did not really require pilots.



Since no action was taken on its request, the Association brought the matter up before this Commission and submitted a 30-page Brief in which it made the following *general recommendations*:

- (a) exemption from pilotage and compulsory payment of pilotage dues to domestic ships engaged in trade of a local nature on the St. Lawrence River without regard to tonnage restriction (Part I, Gen. Recs. 22 and 23);
- (b) a universal system of measurement as a basis for calculation of pilotage tariff (Part I, C. 6);
- (c) administration of the pilotage service by a national board or commission (Part I, Gen. Recs. 15-19).

#### (8) CANADIAN SHIPOWNERS ASSOCIATION'S BRIEF

The Canadian Shipowners Association, incorporated in 1953 under Part II of the Federal Companies Act, is a national association of ocean shipping operators.

One of the main objectives of this Association has been to promote Canadian deep-sea shipowning, but the gradual decline experienced since 1946 in the ownership and operation of Canadian registered ocean-going ships continued despite the efforts of the Association and reached such a point that by 1965 Canadian ocean shipping companies had to rely almost exclusively (and still do) on chartering foreign vessels to carry their goods.

This transition from owners to charterers brought about the formation in December 1967 of a more widely based national organization to represent Canadian shipping interests, namely the Canadian Chamber of Shipping. Among the constituent members of this new organization are: Canadian Shipowners Association, Shipping Federation of Canada, Chamber of Shipping of British Columbia, British Columbia Towboat Owners Association, and British Columbia Maritime Employers Association.

The Canadian Chamber of Shipping has now taken over most of the services and functions of the Canadian Shipowners Association, including the liaison activities with the several departments and agencies of the Federal Government concerned with waterborne transport.

In 1964, the Canadian Shipowners Association submitted to the Royal Commission a Brief in which it expressed the view that the administration of pilotage should be removed from the present method of political control and reorganized under a separate, independent and, for the most part, autonomous authority. Specifically, the Association recommended:

- (a) The repeal of Part VI and other pertinent sections of the Canada Shipping Act and their replacement by statutory powers directing the Governor in Council to establish a National Pilotage Commis-

- sion vested with authority to control and administer all pilotage in Canada directly or by delegation as may be desirable in order to provide economically and efficiently, and regulate, the pilotage services required as an aid to navigation in the territorial or domestic waters of Canada (Part I, Gen. Recs. 1 and 14-19).
- (b) That the proposed National Pilotage Commission be given responsibility for all aspects of the provision of pilotage services, including, but not restricted to, on the one hand:
- (i) employment of pilots under terms and conditions negotiated from time to time with the Pilots' Associations (Part I, Gen. Recs. 24 and 25);
  - (ii) establishment and enforcement of standards of competency and discipline, and regulation of the issuance of licences to qualified personnel (Part I, Gen. Recs. 13, 18 and 19);
  - (iii) organization and operation of efficient training and apprenticeship procedures (Part I, Gen. Recs. 13 and 31);
  - (iv) determination and establishment of appropriate Districts and pilotage offices and provision for the operation of suitable pilot vessels (Part I, Gen. Rec. 17);
  - (v) organization of suitable pension schemes designed to meet the particular needs of the service (Part I, Gen. Rec. 39); and on the other hand, in consultation with the users (the ship-operating interests):
  - (vi) determination of the most efficient type and kind of pilotage services required (Part I, Gen. Recs. 17, 18 and 19);
  - (vii) negotiation of a realistic method for assessing and paying fees, with due regard for the value of the services rendered, the need or otherwise for compulsory pilotage or compulsory payment of pilotage dues, and the impact of such costs on the Canadian economy (Part I, C.6).
- (c) That, as in the past, the monetary contribution by the Federal Government towards the administration and operation of pilotage be continued by annual appropriations to the Commission. It is in the national interest to maintain services of the highest order, a portion of the cost of which may be quite appropriately shared by the public treasury, as is done for other aids to navigation, which pilotage essentially is (Part I, Gen. Rec. 21).
- (d) That the Commission be composed of three persons. One should reside on the Pacific Coast, with responsibility for pilotage services in British Columbia coastal waters. Another should be a professional sailor with the highest available qualifications. The third

member, the chairman and chief executive officer, should be a person with demonstrated administrative ability and legal knowledge and with a comprehensive understanding of the mechanics and the importance to Canada of its external and domestic waterborne trade (Part I, Gen. Rec. 16).

- (e) That the authority of the Commission be complete and final without an appeal to the political authorities on its day-to-day administrative judgments and decisions (Part I, Gen. Rec. 19).
- (f) That the Commission be a Schedule D (Proprietary) Corporation, as defined in Part VIII of the Financial Administration Act, responsible to the appropriate Minister of the Crown, reporting annually to Parliament, its accounts reviewed by the Auditor General. The proportion of its annual budget which the Commission considers should be borne from public funds should be voted annually by Parliament in the same manner as that of other Schedule D public service bodies (Part I, Gen. Recs. 16 and 20).
- (g) That the Commission be completely autonomous, subject only to an annual review by Parliament at which time objections to its methods or policies could be registered by either the users of the services (the ship operating interests) or the providers (the pilots) (Part I, Gen. Recs. 16 and 20).

In connection with the employment of pilots and the local administration of pilotage, the Canadian Shipowners Association made the following observations:

- (a) The essentiality of pilotage services or the professional status of the pilots themselves is not in question. In the national interest, the Government employs, whether directly in the civil service or by its various commissions, almost every type of professional person (e.g.; lawyers, doctors, engineers, dentists). There seems no valid reason why pilots should not also be able to find satisfactory employment conditions in the service of a commission organized along the lines indicated, in which incentives for professional responsibilities and workload are given proper recognition. Employment under a Schedule D commission can be of a specialized nature and, in common with other similar organizations, need not be subject to the rigid regulations covering normal civil service employment. Having regard to the rapid developments in the field of electronic navigation and automated methods of controlling the movement of ships, it is felt that the pilots themselves would find more realistic and acceptable employment conditions in this form of organization than as private professional entrepreneurs (Part I, Gen. Rec. 24; Part III, p. 210).

- (b) By following the method envisaged in this recommendation, the commission, if it saw fit, could set up local committees to advise the commission or its Regional Superintendents. Pilots' Associations or ship management organizations would both have access to the commission proper and to its Regional Superintendents. The latter might well be given a good deal of authority to deal with local administrative matters, including payment of salaries and expenses, operation of tour de rôle schedules, billing and collection of fees (Part I, p. 506; Gen. Rec. 18).

Finally, the Canadian Shipowners Association made certain recommendations with respect to pilotage on the Great Lakes, which will be reported upon in Part V of the Commission's Report.

#### (9) IMPERIAL OIL LTD. BRIEF

Imperial Oil Ltd. is a large company with head office in Toronto, dealing in petroleum products. It has a marine division which operates a fleet of tankers (Canadian Registry) on the Great Lakes and St. Lawrence River, as well as in the East and West Coast trade.

The company submitted a Brief in connection with the existing rules governing the compulsory payment of pilotage dues, particularly as these rules are applied in the Pilotage District of Quebec and in the Pilotage Districts on the East Coast; the Brief concludes by recommending the establishment and uniform application of the following rules, more specifically:

- (a) Canadian registered ships engaged in coastwise trade and manned by Masters and officers whose service has provided them with the necessary local knowledge be licensed or authorized to pilot their own ships in and out of the ports for which they have been licensed or authorized without payment of pilotage dues (Part I, Gen. Recs. 22 and 23).
- (b) All foreign-going shipping, regardless of flag, be required to take pilots and pay pilotage dues for such service (Part I, Gen. Rec. 21).
- (c) Canadian ships engaged in coastwise trading, if exempt from pilotage, be required to establish radio contact with the pilotage signal service when entering and leaving port so that parties may have knowledge of the movement of ship traffic (pp. 238 and ff.).

#### (10) CLARKE STEAMSHIP COMPANY LIMITED BRIEF

Clarke Steamship Company Limited is a shipowner operating a certain number of passenger-dry cargo vessels (Canadian Registry) on the St. Lawrence and East Coast of Canada.

*Study of Quebec Pilotage District*

The company submitted a Brief with recommendations concerning the compulsory payment of pilotage dues in those areas served by it, but did not bring any evidence in support of its representations. These recommendations are as follows:

(a) *Pilotage District of Quebec*

- (i) The existing 2,000-NRT limitation set by the local pilotage By-law on Canadian and other British coasting vessels for exemption from compulsory payment of pilotage dues should be increased to 4,000 net tons (Part IV, p. 211).
- (ii) If a separate system of port pilotage is established for the harbour of Quebec, Canadian registered ships should be exempt from any compulsory harbour pilotage or any compulsory payment of pilotage dues in the harbour that may be provided under such arrangements (Part I, p. 227; Gen. Recs. 22 and 23).

(b) *Pilotage Districts in the Maritime Provinces*

- (i) Canadian registered ships should be exempt from compulsory payment of pilotage dues when not employing pilots in any of the Pilotage Districts of the Maritime Provinces where payment of pilotage dues is made compulsory (Part I, Gen. Recs. 22 and 23; Part III, specific recommendations re the classification of each District).

(11) INSTITUT DE MARINE DE LA PROVINCE DE QUÉBEC BRIEF

Founded in 1944 through the co-operation of the Provincial Government and the Federal Government, the Province of Quebec Marine Institute began its operations as a département of the Rimouski Technical School. It gradually expanded with the years to become a unit in the specialized schools system of the Department of Education of the Province of Quebec.

The purpose of the Marine Institute is to give young men who wish to take up a sea-going career the means to achieve their ambition by improving their standing in science and general knowledge before they sign up as apprentices with the shipping companies. Courses are given in navigation, marine engineering and radio-telecommunications. The Institute also provides refresher courses for seamen who, after completing their time at sea, wish to pass the examinations necessary to obtain their certificates (pp. 235 and ff.).

While the Marine Institute is not a school for pilots, its training course of academic and specialized studies has assisted the Pilotage Districts of Quebec and Montreal by providing a number of mariners with a better technical knowledge of their profession. In the light of this experience, the

Marine Institute submitted a Brief dealing with apprenticeship in which it made the following *general recommendations* (Part I, Gen. Recs. 13 and 31):

- (a) All Pilotage Districts on the St. Lawrence River should adopt an apprenticeship system which would enable them to take advantage of the facilities offered by the Marine Institute of the Province of Quebec.
- (b) In selecting pilots from the lists of persons eligible for admission to the pilotage service, preference should be given to Masters or mates in accordance with the grade of the Certificate of Competency each one holds.
- (c) Candidates holding a Certificate of Competency First Mate Foreign-going or Master Home-trade should be exempt from those courses which deal with subjects other than local knowledge. Subjects such as navigation, stability of vessels, shipbuilding, etc., are part of the knowledge required of a First Mate Foreign-going and a Master Home-trade. The course dealing with local knowledge might well be given during the summer season.
- (d) The period of training at sea required of an applicant for admission to the pilotage service in order to obtain a Certificate of Competency as Master or mate is far too long. This period should be reduced by half in favour of training courses in well-organized, specialist schools. In addition, the requirement for experience or training at sea that an apprentice pilot must have should be limited to inland or home-trade voyages, it being understood that this would not involve sailing more than 100 miles beyond the limits of the territorial waters of Canada.
- (e) A Canadian deep-sea merchant marine should be established and developed.

#### (12) THE LOWER ST. LAWRENCE AND GULF DEVELOPMENT ASSOCIATION'S BRIEF

The Lower St. Lawrence and Gulf Development Association was founded in 1957 by the principal industries located on the north shore of the St. Lawrence River to advance the economic and industrial development of the area. The Association, which has its head office in Montreal, comprises some 70 to 75 members including industries, associations and individuals interested in promoting the economic, social and cultural welfare of the Lower St. Lawrence and Gulf region.

The Association submitted a brief dealing with the development of traffic and of the navigational conditions at the principal Lower St. Lawrence north shore ports, namely, Baie Comeau, Port Cartier, Sept-Îles and Havre

St-Pierre. A number of industries located at these ports<sup>11</sup> prepared individual submissions to show that the existing conditions in their respective ports do not warrant the establishment of pilotage as a regulated undertaking, claiming that the private pilotage service currently being given by them there is adequate for the safe and efficient movement of vessels.

The Association, after stating its agreement with the views expressed by these member-industries, *recommended* in its brief that:

No Pilotage District or Districts should be established in the Lower St. Lawrence north shore region generally, nor at the ports of Baie Comeau, Port Cartier, Sept-Îles, or Havre St-Pierre in particular (Part I, Gen. Recs. 7, 8 and 10; Part IV, Rec. No. 5).

### (13) COMPUTING DEVICES OF CANADA LTD. BRIEF

Computing Devices of Canada Ltd. was founded in 1948 by a group of scientists interested in the design and development of electronic equipment for the Canadian market. Current marine programmes actively engaged in by the company include anti-submarine warfare, exploration for gas and oil, fisheries research and navigational aids.

Its Brief reported current accomplishments and developments in fields connected with marine pilotage and navigation and showed how electronic technology could be applied to develop and install an integrated marine traffic information system for use in any pilotage waters: long waterway, extensive system of lakes, connecting canals and rivers, port or harbour.

To facilitate the comprehension of its proposal, the company outlined in its Brief how such a system could be developed on the St. Lawrence River between Les Escoumins and Montreal, utilizing current facilities supplemented by new electronic aids including microwave beacons, computers and V.H.F. radiotelephones for three-way communications, i.e., ship-to-ship, ship-to-shore and shore-to-ship. The system proposed would have the following principal features:

- (a) An independent Authority which would coordinate the interests of all Government departments having jurisdiction over ships navigating the River and would operate a Waterway Traffic Information Centre to provide ships with current information pertaining to navigational dangers, weather conditions, traffic on the River and other information of use when manoeuvring or berthing.

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<sup>11</sup> Cargill Grain Company Limited, Canadian British Aluminum Company Limited and Quebec North Shore Paper Company (Baie Comeau); Quebec Cartier Mining Company (Port Cartier); Iron Ore Company of Canada (Sept-Îles); and Quebec Iron and Titanium Corporation (Havre St-Pierre).

- (b) A Waterway Traffic Information Centre equipped with computer, operational plot and modern data recording facilities, and linked to all ships and authorities on the River through an extensive communications system using V.H.F., H.F., RT and landlines.

The Centre would be in constant touch with all ships using the waterway between Montreal and Les Escoumins and with Harbour Masters, pilot stations, Department of Transport and other authorities controlling river and harbour works, the meteorological forecast office, Customs and Immigration. Information on water levels, direction and strength of current, direction and force of winds, temperature, visibility, failures or displacement of navigational aids and other similar data would be reported by ships or local observers via V.H.F./RT to the Centre for dissemination to ships and shipping interests generally as and when required. A specially designed and constructed operational plot would show the position and progress of all ships on the River, such information to be supplemented by the use of a computer to provide time of arrival of vessels, time and position of vessels passing or overtaking as well as the optimum desirable pattern of ship movements anywhere at any time on the waterway in the light of prevailing conditions. Finally, a modern data recording system would be employed to collect and analyse all information pertaining to the ships using the waterway.

- (c) Microwave beacons in particularly confined areas of the River, mounted on range light towers, for use with associated shipborne receivers, to enable ships in conditions of poor visibility to maintain a pre-determined course in exactly the same manner as when using leading lights or range lights.

Computing Devices of Canada, while concluding in its Brief that the suggestions made were valid and thoroughly practical, did not make specific recommendations as to the manner in which these suggestions should be implemented, explaining that before this could be done, a careful study of all relevant factors would need to be carried out at the actual location.

A system along the lines of the proposal has since been established from Sept-Îles to Montreal (pp. 180 and ff.).