

2. HISTORY OF LEGISLATION

The earliest known reference to pilotage in what is now the Pilotage District of Montreal, i.e., above the harbour of Quebec, is in an ordinance dated April 12, 1790 (30 Geo. III c. 1) where for the first time mention is made of the *Port of Montreal* and of *Pilots and the Navigation of the River St. Lawrence below Montreal*. As seen earlier, at that time the term *port* had a different meaning than *harbour*: it referred to what is now called a Pilotage District.

Previous legislation made no mention of pilotage between Quebec and Montreal for the obvious reason that ocean-going vessels still came no further upriver than Quebec. Water transportation between Quebec and Montreal was provided by small schooners of 50 to 100 tons, and the Lachine Rapids were an impossible barrier to the ships of that era. For all practical purposes, Quebec was the head of navigation.

The 1790 ordinance divided the St. Lawrence River into two distinct sectors for pilotage purposes but there was only one Pilotage Authority—the Superintendent of Pilots—who had jurisdiction over both the “Port of Quebec” and the “Port of Montreal” and their pilots.

The second time pilotage above Quebec is mentioned in legislation is in the 1797 Act (37 Geo. III c.4) entitled “An Act for amending the Laws now in force, and making more effectual Provision for the Pilotage on 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”. Additional dues were imposed on vessels plying between, *inter alia*, Quebec and Three Rivers or upward. These levies were collected by “the Naval Officer of the Port of Quebec” (appointed by the Government) and were used to support and improve navigation and pilotage on the River St. Lawrence from Bic Island to Montreal.

Maritime traffic increased considerably as the colony expanded and more ships sailed above Quebec to Montreal. Larger, newer ships required greater skill and knowledge on the part of the pilots and the pilotage service gradually developed into an extensive organization. One result was that the channels between the lower St. Lawrence and Montreal were improved and provided with additional aids to navigation. The task no doubt became too great for one official and in 1805 the responsibilities which, up to that time, had been entrusted to the Superintendent of Pilots were given to a public corporation, *Quebec Trinity House* (pp. 30 and ff.).

The *Trinity House Act* referred for the first time to the “Harbour of Montreal”, but the distinction between the Port of Quebec and the Port of Montreal was not retained. The whole section from the lower St. Lawrence to the harbour of Montreal inclusive was called the Port of Quebec (45 Geo.

III c. 12). The Port of Quebec and the Harbour of Montreal were defined as follows in the Act, sec. VI:

“...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 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.”

Trinity House was composed of nine persons appointed by the Governor: the Master, the Deputy Master and seven Wardens of whom three had to reside in Montreal. Both the Quebec Harbour Master and the Quebec Superintendent of Pilots were Wardens. In addition, a Harbour Master was appointed for the harbour of Montreal but he was not one of the Corporation Wardens as was his counterpart in Quebec.

The basic organization of the pilotage service was not changed, the two separate groups of pilots were retained and remained under a single Pilotage Authority, Trinity House, instead of the Superintendent of Pilots. The Government retained control over the licensing of pilots. The Act provided that the Governor was to “appoint and commission by warrant, or Branch under his hand and seal at Arms...other fit and proper persons to be, Branch Pilots, for and above the said Harbour” (Quebec Harbour) “...provided always, that no person shall be so appointed, until he shall have been examined...” No person was to be so appointed until he had been examined and certificated by Trinity House, the licensed pilots being invited to attend the examination and ask questions.

Above the harbour of Quebec, pilotage was not compulsory in any way: Masters were free to take a pilot or not, but if one was employed he had to be a licensed pilot and the stipulated rates had to be paid.

The pilotage rates were fixed in the Act itself and were for the round trip. The only boarding station was located at Quebec, and the pilots remained with the vessel for the complete duration of the round trip above the harbour of Quebec. The rates were based on the length of the trip and the ship's tonnage. A round trip to Montreal cost twice as much as a trip to Three Rivers: 7 pounds 10 shillings for a vessel under 200 tons, 10 pounds if between 200 and 250 tons, and 12 pounds 10 shillings if larger. If the Master so requested, the pilot was obliged to remain on board 14 days from the date of the arrival of the vessel in the harbour of Montreal. For detention exceeding 14 days, the pilot was entitled to 5 shillings per extra day, plus his bed and board during the full time of the detention.

In 1805, all the navigable waters of the colony did not come under the jurisdiction of Trinity House. The western limit of its authority was “the point of Saint Anne's” on the western tip of Montreal Island, now known as Ste-Anne de Bellevue.

By that time, mariners had learned how to overcome the rapids above Montreal with the aid of rafts, scows and special flat-bottomed boats. By 1805, the waterway above Montreal had become such an important trade route and was developing into such a vital artery for the growing province of Upper Canada that it was felt in the public interest to improve the channel through the rapids and to regulate navigation in that part of the River. The Government voted a sum of 1,000 pounds to improve the waterway above Montreal in order to facilitate water communications between the Province of Quebec and Upper Canada and increase commerce between both Provinces. As was the practice at that time, responsibility for the works was entrusted to a Board of three Commissioners. *Inter alia*, they were to clear the channel in the rapids and make whatever improvements they deemed advisable between Lachine and Montreal (1805, 45 Geo. III c. 6).

At the same time, the Government passed legislation on pilotage in that section, despite the fact that Chateaugay and the Lachine Rapids, being east of Pointe Ste. Anne, were within Trinity House's jurisdiction, although they were inaccessible to ocean-going vessels. Its title (1805, 45 Geo. III c. 9) is as follows: "An Act for the appointment of an Inspector and Measurers of Scows and Rafts, and for regulating the Pilots and Conductors thereof, between Chateaugay and the City of Montreal".

Its preamble is self-explanatory:

"Whereas many accidents and considerable loss of property have arisen in the rapids of the River St. Lawrence, above the City of Montreal, partly by ignorance or negligence of persons undertaking to pilot and conduct scows laden with flour, and other provisions, also, oak timber, staves and other lumber, coming from Upper Canada, and fire wood from different parts of this Province; above the said rapids, and it being necessary that some Regulations be made to guard as much as possible against such accidents and losses, in future . . ."

The Act provided for the appointment by the Governor of one inspector and two measurers. One of their duties was to prevent the rapids being navigated by craft whose dimensions would not ensure safe transit under given conditions. A second duty was to make recommendations for the appointment of pilots. The Act stipulated that licensed pilots were to be employed whenever vessels were not navigated by their owners. These pilots were licensed by the Justice of the Peace for the District of Montreal on the recommendation of the inspector or either of the two measurers. The Act also fixed the pilotage rates. This Act was of a temporary nature and was to lapse in 1808, but that year, by 48 Geo. III c. 13, its provisions were made permanent with some modifications, e.g., the scale of fees was cancelled and the determination of the pilots' remuneration was left to be agreed between the pilot and the owner; but only a licensed pilot could be employed unless the vessel was navigated by its owner.

In 1806 (46 Geo. III c. 3), a further sum of 1,000 pounds was voted towards improving inland navigation between Montreal and Lake St. Fran-

cis; in 1808 (48 Geo. III c. 19), a permanent fund for the improvement of inland navigation above Montreal was created. The preamble of this Act read as follows:

“Whereas the monies that have been granted for the improvement of the Inland Navigation of this Province, between Montreal and Lake Saint Francis, have been productive of such beneficial effects that it is expedient and proper to provide a permanent Fund for the further prosecution of improvements therein . . .”

The fund was to be supported by dues imposed on every vessel that navigated that stretch of water.

The pilotage organization in the Lachine Rapids proved to be short lived because it was soon found that there was a limit to the improvements that could be made to the channel in that area. Hence, a plan was conceived to construct a system of locks and a canal to by-pass the rapids. In 1815, an Act was passed (55 Geo. III c. 20) “. . . to grant an aid to His Majesty, to assist in opening the canal from the neighbourhood of Montreal to Lachine, and further to provide for facilitating the execution of the same.” 25,000 pounds were granted for this purpose and three Commissioners were to be appointed to act as a body corporate to build and maintain the canal. In 1819, it was decided (59 Geo. III c. 6) to turn the enterprise over to private interests who had petitioned to construct the proposed Lachine Canal with a further extension downriver to overcome the St. Mary’s Current. The petitioners were incorporated for this purpose. The sale of shares was open to the public and a Crown contribution was foreseen in that the Military Commander was authorized to buy any number of shares not exceeding 600, and the Governor, on behalf of the Province, 200 shares. The new corporation was authorized to impose tolls on maritime traffic.

It was soon found that this private venture was bound to fail but the project was considered so vital that as early as 1821 the Government passed preventive legislation to authorize the Crown to intervene and take over if the fears entertained at that time became a reality. By 1 Geo. IV c. 6 a further sum of 10,000 pounds was added to the 25,000 pounds voted four years before and the Governor was empowered to appoint Commissioners to be a body corporate for the purpose of completing the construction of the canal.

The preamble of the Act explains the situation:

“Whereas it is expedient to adopt effectual measures for opening a Navigable Canal from the neighbourhood of Montreal to Lachine, in the event that the Company of Proprietors by law thereunto authorized, shall not make and complete the same within the period prescribed by an Act passed by the Legislature . . . or shall have left their right so to do, by not fulfilling the conditions which are imposed on them by the said Act or shall have abandoned their right to make such Canal pursuant to such Act . . .”

The Commissioners were authorized to make plans for continuing the canal farther downstream to overcome the St. Mary’s Current and, finally,

they were empowered to treat with the shareholders respecting the relinquishment of their rights.

In 1823, the canal had not yet been completed and a further sum of 12,000 pounds was voted "... towards continuing completing the Canal ... actually in progress ..." Again the Commissioners were requested to appraise the cost of extending the canal below the St. Mary's Current (3 Geo. IV. c. 23). In 1825, the Lachine Canal Commissioners were authorized to borrow from the public a sum not to exceed 30,000 pounds (the interest to be paid by the Government) to complete the Lachine Canal because the money previously voted by the Legislature for that purpose was insufficient and it was deemed in the public interest to complete the work without delay (5 Geo. IV c. 19).

The Lachine Canal enterprise was only one of many projects undertaken during that period to improve water transportation. Another was the Richelieu Canal. In 1818 (58 Geo. III c. 18), a private corporation was authorized to make and maintain a navigable canal from the town of St. John on the River Sorel or Richelieu to terminate at the "Bason of Chambly". Here again the task proved beyond the means of private enterprise and as had been done the same year for the Lachine Canal, a public corporation was created to take over in the event the private company was unable to complete the project. Priority was to be given to the Lachine Canal.

The Lachine Canal had been completed by 1826 and was operating, as is shown by the Act passed that year (assented to in 1827) to alter and lower certain rates and tolls in the Lachine Canal for a limited time (6 Geo. IV c. 3). Work on the Richelieu Canal was in progress: 6 Geo. IV c. 33 granted a further sum of 2,400 pounds that year to the Richelieu Canal Commissioners.

A similar development was under way in the Province of Upper Canada. The Welland Canal was under construction and the enterprise was considered of such interest to the Province of Quebec that in 1827 (7 Geo. IV c. 13) the Governor was authorized to subscribe for a maximum of 2,000 shares in the stock of the Welland Canal Company and to advance for such purpose the sum of 25,000 pounds currency. The preamble of the Act sets out the reasons for such an extraordinary measure:

"Whereas the completion of the Welland Canal actually in progress in the Province of Upper-Canada is an object of great public utility to the Canadas, inasmuch as the same will admit the free passage of vessels from Lakes Erie, St. Clair, Huron and Michigan to Lake Ontario, and the River St. Lawrence down to Prescott, and is also of importance to your Majesty's Government in the said Provinces ..."

Further steps were also taken to improve navigation on the St. Lawrence River west of the Lachine Canal. In 1830 (10-11 Geo. IV c. 27), a survey was authorized to ascertain whether it was practical to improve the naviga-

tion of that part of the River St. Lawrence between Cascades and Coteau du Lac.

In 1831, after the problem posed by the Lachine Rapids had been solved by the construction of the Lachine Canal, it was decided to abolish the corporation created in 1808 to improve and maintain the channel in the rapids. In its place a new corporation was created to improve Ste. Anne's rapids "... so as to admit of navigation by Steam-Boats at that point" (1 Wm. IV c. 20). The Commissioners' main tasks were to have hydrographic charts of the rapids made and to estimate the cost of necessary improvements. In 1836 (6 Wm. IV c. 20), the 1805 Act providing for pilotage in the Lachine rapids and for measuring rafts and vessels was repealed with the result that government-controlled pilotage in that sector was abolished. Anyone could use the rapids channel but at his own risk, and rafts or cribs which ran aground were to be removed within 36 hours. Up to 1934, i.e., the year the St. Lawrence-Ottawa-Kingston District was created, pilotage was regularly performed in that sector and in the canals but by unlicensed pilots and for whatever price the parties involved agreed to among themselves.

Reverting to pilotage organization between Quebec and Montreal, the Trinity House Act of 1805 introduced a number of innovations including the creation of the first pilot fund entitled "the decayed Pilot Fund". This was a common fund whose purpose was to grant relief to "distressed and decayed Pilots, and the Widows and Children of Pilots" and to which all pilots were obliged to contribute. Both groups were quickly dissatisfied with the administration of the fund. The Lower St. Lawrence pilots made by far the greatest contribution to the fund but it was soon almost exhausted because of the heavy (and, in the opinion of the Quebec pilots, disproportionate) demands by the Montreal group. It was, therefore, felt advisable to create a separate fund for the pilots of Quebec and above. This was done in 1812 by an amendment to the Trinity House Act (52 Geo. III c. 12)—one further step toward the eventual division of the Pilotage District, i.e., the Port of Quebec.

An amendment to the Trinity House Act in 1811 (51 Geo. III c.12) made five years of continuous navigation between Montreal and Quebec a prerequisite to sitting for an examination to obtain a pilot's licence in the Montreal section. The same Act altered the tariff structure by dividing the District, for tariff purposes, into three zones with intermediary points at Portneuf and Three Rivers. The dues were no longer based on the round trip and those for upbound trips were substantially higher, e.g., for a full journey from Quebec to Montreal in a vessel exceeding 250 tons the upbound trip cost 15 pounds but only 10 pounds 15 shillings downbound. The pilot could no longer be required to remain with the ship for more than 48 hours after arriving at the destination.

As for the pilots' working conditions during that period, the only boarding-station was still the harbour of Quebec where the pilots had to remain on

the alert for the arrival of vessels to offer their services. At that time there was no signal station of any sort and the first news of an arrival was when the vessel reached Quebec.

The trip between Quebec and Montreal was made in sailing vessels between 200 and 250 tons and with a maximum draught of 11 or 12 feet. If the wind was adverse, vessels had to tack with the aid of the rising tide. Two tides were generally required to cover the first 36 to 39 miles as far as Pointe Platon or Anse Portneuf, but from there they had to wait for a favourable wind to travel the remaining 124 miles against the current to Montreal. They often took two or three weeks to reach the entrance to the port of Montreal where the worst ordeal was still to be overcome: the St. Mary's Current which ran at seven knots.

If the favourable wind was not strong enough, they were towed upstream against the St. Mary's Current by 10, 12 or even 16 oxen hauling on a long rope.

Above the St. Mary's Current, there was a little natural harbour with accommodation for a few small vessels. There they used to anchor for many weeks, sometimes two or three months.

Pilots generally had only two or three vessels to pilot during any one navigation season.

Despite the shallow draught of vessels at that time, the pilots' task was quite difficult. They had to come out of the harbour of Montreal under sail in confined waters and clear the narrow exit, at the same time anticipating the eddys and cross-currents. This manoeuvre required much skill and attention. The pilots had no buoys or lights to aid them and had to use trees and buildings as marks, many of which are still in use today (*Le pilotage du Saint-Laurent de Québec à Montréal, Ex. 1456(e)*).

The following excerpts from an article entitled "In St. Mary's Current" published in the Montreal Gazette of April 3, 1965 (Ex. 1470(b)) describe the difficulties that had to be overcome:

"The Harbour of Montreal is perhaps as safe a one as could be wished, when a vessel is once in it, but it is rather difficult of access." So wrote Thomas Doige in the year 1819. The difficulty of access to which he referred was that created by the St. Mary's Current, which then, as now, ran above St. Helen's Island, as well as between St. Helen's and the Island of Montreal.

For the sailing ships of his day, this current presented a serious obstacle. Only when backed by a strong wind could they mount the river to the harbor. When such a wind was wanting, they would have to lie at anchor below St. Helen's Island. It was a not uncommon sight at that period to see fleets of sailing ships lying at anchor for days, or even for weeks, waiting for the wind to veer in their favor.

The barges that brought hay and wood up the river to Montreal were equipped with sails of extraordinary size and design, to give them more power from the winds to carry them against the current. As late as 1900 these barges presented a nearly unique sight on the river. Sails of this kind were probably to be seen nowhere else in North America, perhaps nowhere else in the world.

There were a few steam-boats on the river in Doige's day, but their primitive engines lacked power to master the current. They were, in fact, in a worse position than the sailing ships, having to be hauled by long ropes, pulled by oxen along the shore."

"The difficulties of the St. Mary's Current appear in Philippe Aubert de Gaspé's description of his steamboat journey from Quebec to Montreal in 1818."

"But as they approached the foot of St. Helen's Island neither wind nor steam could help them. It was then necessary 'to have recourse to the united strength of forty-two oxen to assist...in ascending the current.'

The problem of St. Mary's Current was pondered with much concern."

"In 1823 a grander scheme was proposed. By an act of Legislature a commission was appointed to investigate the feasibility of constructing a great canal all the way from the head of the Lachine Rapids to the foot of the St. Mary's Current. ... But the whole scheme collapsed when the cost was estimated.

In the following year, however, there was an incident that pointed to a solution of another kind. In 1824 a tow boat named *The Hercules*, with new engines of exceptional power, entered the current with the ship *Margaret* in ballast in tow. It met and surmounted the onrush of the current and came under its own steam into the harbour of Montreal.

This incident of 1824 marked the first victory of steampower over the St. Mary's Current."

In 1822, it was found necessary to provide Trinity House with more Wardens from Montreal. 2 Geo. IV c.7 added two Wardens for Montreal and one for Quebec. Thus the Corporation consisted of a Master, Deputy Master and ten Wardens, including the Quebec Superintendent of Pilots and the Quebec Harbour Master both of whom were Wardens *ex officio*.

By 1830, shipborne traffic between Quebec and Montreal had increased so much that the facilities in Montreal Harbour were found to be no longer adequate. 10-11 Geo. IV c.28 provided for the appointment of three Commissioners charged with improving and enlarging the harbour. Its preamble is self-explanatory:

"Whereas the Harbour of Montreal is at present insufficient for the accommodation of shipping by which it is frequented, it is expedient that it be improved and enlarged..."

This was another partial encroachment on the powers of Trinity House under whose jurisdiction came the harbour of Montreal and which was normally responsible for improvements to the harbour facilities. At that time, the appointment of Commissioners for a special purpose did not mean that certain rights were taken away from Trinity House but merely that the Government undertook to improve the harbour at its own expense, and the practice was to appoint a Board of Commissioners to perform the task and spend the money voted for the purpose. As time passed, these Commissioners became a public corporation which superseded the Montreal Trinity House in 1873 and took over all its responsibilities and functions both over Montreal harbour and Port.

By 1832, shipborne traffic between Quebec and Montreal had become so important that it was felt desirable to give the Port of Montreal its own Authority. The 1832 Act (2 Wm. IV c. 24) was entitled "An Act to repeal in part certain Acts therein mentioned, and to establish and incorporate a Trinity House in the City of Montreal." It terminated the Port of Quebec at Pointe du Lac (St. Maurice County), 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 under the name *Trinity House of Montreal* whose duties included trusteeship and administration of the Montreal Decayed Pilot Fund.

The western limit of the Port was extended from Pointe Ste. Anne, where it previously ended, to the western boundary of the province, thus adding what is now the Cornwall District. The western limit remained unchanged until 1934. However, the pilotage jurisdiction of the new Trinity House extended beyond the eastern limit of the Port. It had licensing and rate-fixing authority and surveillance responsibility over the pilotage service between Quebec and Montreal, i.e., over the service performed by the pilots for and above the harbour of Quebec.

The Montreal Trinity House was composed of seven persons appointed by the Governor: the Master, the Deputy Master and five Wardens, all of whom resided in the City of Montreal. Its jurisdiction was the same as Quebec Trinity House had had, *inter alia*, responsibility for all navigation and all waterways in its territory (especially responsibility for the harbour of Montreal), control over the pilotage service and judiciary powers over pilotage matters. The Harbour Master of Montreal became an officer of the Corporation but not a member.

The Corporation was given power to make regulations in all its various fields of activity, i.e., not only for the direction, conduct and government of the Corporation itself and of its property, real and personal, but also for safer, more convenient and easier navigation on the River St. Lawrence within the limits of the Port of Montreal, including laying down and taking up buoys and anchors; erecting lighthouses, light ships or floating lights, beacons and landmarks; clearing sand, rocks and other objects to improve the various harbours within the limits of the Port. Regulations could also be made for the discipline and control of the Montreal pilots and apprentices, i.e., over their professional conduct, their qualifications, instruction, practical training and examinations.

The Corporation's judicial powers were to be exercised by at least three of its members. Its jurisdiction extended over disputes between pilots and Masters respecting pilotage dues, complaints against pilots for neglect or misbehaviour or breach of by-laws and all other offences committed against the Act. It enjoyed the full powers of a court to summon accused parties and the necessary witnesses, to administer oaths, to pass judgment with such costs

as were considered reasonable, and to issue warrants of seizure or of imprisonment. Judgments exceeding 20 pounds were appealable to the Court of King's Bench in Montreal.

The 1832 Act provided that pilot candidates were to be examined "in the presence of such Branch Pilots as shall see fit to attend the examination, and who may propose questions" but this procedure was modified by the 1839 ordinance which provided instead that the examination was to take place "in the presence of such Branch Pilots as may have been summoned for that purpose" and were to propose questions to the candidates. The duration of apprenticeship continued to be five years' employment on the River between Quebec and Montreal. The ordinance was to remain in force only until November 1, 1842.

The trusteeship of the Montreal Decayed Pilot Fund was transferred to Montreal Trinity House. The statutory requirements for administration and accountability were the same as those applicable to Quebec Trinity House.

The 1832 Act was for a limited period until May 1, 1837, but these were troubled times when the power of the Legislature had been suspended and no legislation was passed in either 1836 or 1837. Therefore, the Montreal Trinity House Act of 1832 automatically lapsed May 1, 1837, from the legal point of view.

It was not until 1839 that the legal situation was rectified by an ordinance enacted by Governor Sir John Colborne, who *ex officio* had legislative powers at that time (Statutes of the United Kingdom, 1-2 Vic. c. 9) (Imperial Act 1838, 1 Vic. c. 9).

There is no doubt that during those two years both Montreal Trinity House and the pilotage service continued to function, but the 1839 ordinance (2 Vic. c. 19) created the Corporation of Trinity House of Montreal as if it had never existed.

As far as pilotage is concerned, the ordinance was almost a verbatim reproduction of the 1832 Act. The most significant change was the enlargement of the Port of Montreal by extending its eastern limit from Pointe-du-Lac to "the basin of Port Neuf exclusively". The harbour of Three Rivers now came under the jurisdiction of Montreal Trinity House. The prerequisite period on the River for an apprentice was reduced from five years to three years.

The Montreal Trinity House Act was continued from time to time for further limited periods (1842, 6 Vic. c. 11; 1846, 9 Vic. c. 39; 1847, 10-11 Vic. c. 8; 1848, 11 Vic. c. 3). The 1839 ordinance was finally repealed in 1849 when the provisions relating to Montreal Trinity House were consolidated and made permanent.

During that time the Government was determined to improve the waterway. In 1836 (6 Wm. IV c. 23), a survey on Lake St. Louis was authorized and it was planned to enlarge the Lachine Canal, "for establishing, within the limits of Lower Canada, a water communication, corresponding if possible, with that which the Legislature of Upper Canada has undertaken to establish on the River Saint Lawrence, near Cornwall, in the said Province of Upper Canada".

In 1838, the Commissioners for the improvement of the harbour of Montreal were authorized to borrow a further sum of money (1 Vic. c. 23), and by a further ordinance (1 Vic. c. 26), 500 pounds were voted for a survey of Lake St. Peter to be made by Commissioners appointed for the purpose.

After the Union of Upper and Lower Canada (1840, 3-4 Vic. c. 35, Imperial) the Government of Canada decided to acquire exclusive control over the Welland Canal, and in 1841 (4-5 Vic. c. 48) the Government was authorized to purchase the shares owned by individuals. By a further Act passed in 1845, the Government was authorized to give a higher price for shares bought in London on account of higher cost to these shareholders due to differences in currency (8 Vic. c. 74).

Also in 1841 (4-5 Vic. c. 59) the Government advanced money for the erection of lighthouses within the limits of the Port on behalf of the Montreal Trinity House to improve the safety of navigation because Trinity House lacked the necessary funds to provide them. The Corporation was authorized to levy light dues to repay the loan. It was further provided that all these assets were to return to Quebec Trinity House, if and when the Montreal Trinity House Act was allowed to lapse.

In 1841 (Royal Assent in 1842), the Montreal Board of Trade was incorporated by 4-5 Vic. c. 90 and the Quebec Board of Trade by a similar Act. Both were made permanent in 1845 (8 Vic. c. 67).

From time to time, further subsidies were voted for various works to improve the waterway and also to enable the Montreal Harbour Commissioners to borrow additional sums of money.

In 1849, the Act governing both Trinity Houses were consolidated. The new Montreal Trinity House Act (12 Vic. c. 117, Ex. 1470(d)) brought no change in the composition of the Corporation nor in its powers, responsibilities and jurisdiction. The Act did not limit the number of pilots and any applicant who had met the statutory prerequisites was entitled to be licensed, i.e., five years of navigation on the River between Quebec and Montreal, including three years in sailing vessels, knowledge of French and English languages, skill in ship handling and local knowledge. A pilot's licence was automatically suspended if he failed to pay any fine imposed within three months after the judgment or within any shorter period, not less than one

month, stated in the judgment. A pilot's licence could be withdrawn if a shipowner complained that a ship was lost or damages were incurred because a pilot was at fault, but the pilot was entitled to receive a new licence provided he was able to pass a new examination establishing that he was qualified in both skill and knowledge. The basis for the computation of the tariff remained the same, i.e., the three zones between Quebec and Montreal, with Portneuf and Three Rivers as the intermediate points, and three classes of tonnage. The difference between upbound and downbound trips was also maintained, i.e., for a trip between Quebec and Montreal a ship of over 250 tons was charged 16 pounds for the trip upriver and 10 pounds 15 shillings downriver. The responsibility for supervising the pilots rested with the "Captain of the Port" who was the Harbour Master as well.

Neither pilotage nor the payment of pilotage dues was compulsory, but between Quebec and Montreal no one could perform pilotage except a pilot licensed for the District. This obligation was limited a year later to non-local traders. By 13-14 Vic. c. 95, river craft, steamers, barges and lighters engaged in navigation between Quebec and Montreal only were exempt from the obligation to employ a licensed pilot if a pilot was engaged. The amendment stated "... that it shall and may be lawful for any person to pilot or to be hired, engaged or employed to pilot any steamer, river craft, barge or lighter on that part of the River St. Lawrence... without any penalty or forfeiture being incurred thereby; ..."

In contrast, c. 96 of the same statute exempted Masters of vessels under 120 tons registered in Lower Canada from compulsory pilotage in the Port of Quebec but made it mandatory that any pilot they did employ had to be a licensed pilot.

The pilots remained self-employed and the dues they earned belonged to them personally, subject to the compulsory contribution to the Decayed Pilot Fund, but no pilot not otherwise employed could refuse (except for valid reasons) to take charge of a vessel when so required by a Master or by a member or an officer of Trinity House (this situation still prevails, vide subsec. 329(f)(v) C.S.A.).

From the legislative point of view, the period from 1850 to Confederation was marked by three main events:

- (a) replacing the Board of Commissioners which was responsible for improvements in the harbour of Montreal by the Corporation of Harbour Commissioners which acquired from Trinity House complete control over the harbour, except the pilotage service;
- (b) the Government taking over through the Commissioner of Public Works responsibility for improving the channel between the harbours of Quebec and Montreal;
- (c) the attempt to incorporate the Montreal pilots into a professional public corporation.

In 1850, the jurisdiction of the Commissioners for improvements in the harbour of Montreal was extended downriver to Lake St. Peter. They superseded the Lake St. Peter Commissioners and were requested to have the ship channel deepened at Isle Platte in order to provide a least depth of 16 feet at all times. The work was to be financed first by a loan and also by the imposition of light dues on all vessels drawing 10 feet of water and over, which passed through Lake St. Peter (13-14 Vic. c. 97). The following year, however, light dues were abolished in order to relieve the trade from the responsibility of maintaining aids to navigation. The cost of their erection and maintenance was to be borne in future by the public out of the Consolidated Revenue Fund (14-15 Vic. c. 52). In 1852, the Board of Commissioners responsible for improvements in the harbour became a new corporation called the "Harbour Commissioners of Montreal". The new corporation retained the rights and responsibilities of the former Commissioners for improving the harbour and the channel in Lake St. Peter but, in addition, was given all the authority that Trinity House of Montreal had hitherto exercised over the harbour of Montreal, except the administration of the pilotage service. Sec. 6 of the Act (16 Vic. c. 24) empowered the new corporation to make by-laws, *inter alia*, for the government, improvement and regulation of the harbour, the anchoring, mooring and securing of all vessels in the harbour, the regulation and control of the use of lights, fires on board vessels when lying at any wharf or other landing place, or in the stream of the said harbour. The task of supervising and managing the harbour was entrusted to a Harbour Master assisted by a Deputy Harbour Master. It was made the responsibility of the corporation "to mark out the Channel of the said River Saint Lawrence from the said Harbour through the deepened Channel of the said Lake Saint Peter down to the mouth of the River Richelieu . . ."

In 1855, it was felt necessary to reorganize the membership of the Harbour Commissioners' Corporation, which up to then had consisted of Government appointees only, to provide local representatives. By 18 Vic. c. 143, the 1852 Act was abrogated and replaced by a new Act to the same effect, except that the Corporation was composed of five members, three of whom were to be appointed by the Governor. The remaining two were the Mayor of the City of Montreal and the President of the Montreal Board of Trade *ex officio*.

These modifications must have been quite satisfactory because six years later, in 1858, the same reform was made at Quebec with the creation of the Quebec Harbour Commissioners' Corporation. Eventually, in Montreal as in Quebec, the Harbour Commissioners' Corporation superseded Trinity House altogether and assumed all its duties and responsibilities.

It must have been realized, however, that the required improvements to the ship channel between Montreal and Quebec were beyond the normal means and capacity of the Montreal Harbour Commissioners, and in 1864

(27-28 Vic. c. 12), the province assumed responsibility for the enterprise "under the control of the Commissioners of Public Works, to be completed and dealt with as public provincial works . . ."; as well as for the indebtedness that the Harbour Commissioners had already incurred for that purpose. In 1865, the Harbour Commissioners were allowed to borrow 25,000 pounds to complete certain works that were in progress (29 Vic. c. 56).

In 1850, the pilots for and above the harbour of Quebec, realizing "the growing importance of their profession, and the necessity which exists that the persons exercising it should be properly qualified, both as regards their moral character and education and their professional ability", petitioned the legislature to be incorporated in a public professional organization as the best way to promote these objects. 13-14 Vic. c. 123 (Ex. 1470(e)) partly granted the pilots' request and a public corporation called "The Corporation of the Pilots for and above the Harbour of Quebec" was created. Its compulsory membership comprised all persons licensed as pilots for the District ("not suspended or deprived of their branches, and contributing to the Montreal Decayed Pilots' Fund"). The Corporation had the power to own real estate and personal property in the amounts fixed in the Act. Its meetings had to be held in Montreal and it was to be administered by a Council of nine members elected annually. The Council was given power to make by-laws covering the management, regulation, appropriation and disposal of its affairs, property and business, the government of its members, the remuneration and functions of the Secretary-Treasurer, the imposition of penalties for breaches of the by-laws, provided that to have force and effect any by-law should not be contrary to the laws of Lower Canada or the by-laws of Trinity House then in force and must have received the approval of Trinity House (which could require the Council to call a general meeting of the members to obtain their opinion on the proposed by-law before confirming or refusing it). In the event of a refusal by Trinity House to confirm a proposed by-law, the grounds for their decision had to be forwarded in writing. An automatic approval followed if Trinity House failed to act within 10 days after receipt of the proposed by-law. All meetings of the Council and their minutes were open to all members of both the Corporation and Trinity House.

This Corporation differed materially from the Corporation which the Quebec pilots were granted ten years later in that it was a strictly professional organization that had nothing to do with the actual management of the pilotage service. The Act did not give the Montreal Pilots' Corporation the right to manage the provision of services or direct the despatching of pilots, and the exercise of their profession continued to be on a competitive basis. The Corporation had no control over pilots' earnings, which did not become the earnings of the Corporation; therefore, it had no right to impose and enforce a pooling system. In addition, the legislature imposed conditions that did

not please the pilots, i.e., all the meetings had to be held in Montreal and Trinity House had the right of veto.

There is no doubt that the powers granted were less than those the pilots had petitioned for and they were so dissatisfied that they refused to hold the first meeting of the Corporation which, according to the Act, had to take place October 1, 1851.

The pilots made a further petition to the legislature to have the Act of incorporation amended. In 1853, 16 Vic. c. 258 amended the Act, but only with regard to penalties and to allow meetings to be held either in Quebec or Montreal (at that time most of the pilots lived in Quebec since it was the boarding station for the Montreal section of the St. Lawrence). However, Trinity House retained its powers of veto. The amendment did not satisfy the pilots who found no personal or professional advantage in a corporation with such limited powers under the guardianship of Trinity House. They again refused to hold the necessary first meeting to elect the Council and the Corporation, therefore, never became active. (Ex. 1456(e)).

No legislation abrogating the 1850 Act has been found. If it was never repealed, as appears to be the case, the Corporation still exists; all the pilots of the Montreal District belong to that Corporation and it would be sufficient to convene a meeting as provided in the Act, attended by at least 9 pilots, and to elect a Council whose decisions (if *intra vires* of the Corporation's powers) would then become binding on all pilots licensed for and above the harbour of Quebec.

Since Trinity House was by law responsible for the safety of navigation in the section of the River under its jurisdiction and was also responsible for the management and efficient operation of the harbour of Montreal and the other harbours in the District, its by-laws were a combination of rule of the road and regulations governing traffic, protection of channels and wharf installations, as well as the organization and provision of pilotage services. The by-laws drawn up by Montreal Trinity House March 20, 1851, and sanctioned and approved by the Governor General in Council April 2, 1851 (Ex. 1470(g)) are an example of this type of legislation. These regulations consist of 95 sections which are in essence a complete merchant marine code for that section of the St. Lawrence River. Apart from pilotage, they deal, *inter alia*, with anchoring and mooring vessels in the harbour or Port of Montreal; various duties of a Master, such as being obliged "to make the necessary signals" when he is "notified by the Pilot on board that another vessel then in sight is approaching any shoal, or any other cause of danger"; the rule of the road, such as that all vessels shall in meeting take the starboard side "provided always, that vessels entering or leaving the Harbour of Sorel, shall take the

larboard² side"; ballast, coals, cinders, rubbish, etc.; the identification of vessels obstructing navigation and interfering with the harbour Master; the lights steam vessels should carry at night whether under way or at anchor; navigation on the Richelieu River and in the harbour of Sorel; the landing of gun powder; land transportation on harbour property. The word "vessel" was defined as comprehending and meaning every description of floating vessel and the term *Harbour Master* meant the Captain of the Port of Montreal.

The "Regulations respecting pilots" are secs. 49 to 67 inclusive. Their main features are:

- (a) Although self-employed, the pilot had no choice whether or not to accept an assignment when required by the Harbour Master or an officer of Trinity House to take charge of any vessel which needed a pilot, unless he was already engaged, or when required by a requisition signed by an officer of Trinity House to "repair on board, and take charge of any vessel of any denomination in Her Majesty's service, or in the Provincial service . . .", or, when he had accepted, to take an assignment.
- (b) The pilot had to report to Trinity House when he arrived in Montreal from an upbound trip and before he left Montreal on a downbound trip. At Quebec, he was obliged to remain with the ship for 48 hours after arrival and at Montreal he had to remain on board 48 hours after the vessel had arrived in the stream opposite the harbour and one hour after the vessel had been secured to or alongside any wharf.
- (c) The non-performance of pilotage during two full consecutive years (except in case of sickness or unavoidable absence or with special permission) rendered the pilot liable to a penalty of ten pounds and a further similar penalty for every additional year in which he did not perform pilotage. The pilot could avoid paying the penalty by resigning.
- (d) The fees for movages within the Montreal harbour limits, including the wharves in the Lachine Canal, were fixed in the by-laws.
- (e) The by-laws also made it an offence for a pilot:
 - (i) to lend or "in any manner to dispossess himself of his Branch";
 - (ii) to take charge of any vessel as a pilot, otherwise than as his Branch empowered him;

² Larboard is the old word for port. Sec. 24 of the by-law reversed for Sorel the rule which obtained in the remainder of the District. This reversal appears to have been for safety reasons to permit vessels to meet local conditions more effectively. At that time, traffic consisted of sailing ships faced with an outflowing river and adverse currents and lacking any power of propulsion other than the wind.

- (iii) to fail to carry with him a copy of the by-laws in English and in French and to exhibit them if required to the Master;
 - (iv) to disobey any summons of the Corporation of Trinity House;
 - (v) to fail to warn another ship of danger and to fail to report alterations in sand banks, channels or buoys;
 - (vi) to demand or receive "any higher or greater sum for the pilotage of a vessel" than was allowed by law.
- (f) Finally there was a general disciplinary clause which read as follows:

"Section 65. That any Pilot who shall behave himself uncivilly, or not be strictly temperate and sober whilst in the exercise of the duties of his office, or who shall not use his utmost care and diligence for the safe conduct of every ship or vessel, (whether in tow of a Steam-vessel or not) while under his charge, or who shall not use his utmost care to prevent her from doing damage to others, shall for each and every such offence incur and pay a penalty not exceeding ten pounds."

In 1857, by 20 Vic. c. 128, Parliament delegated some of its legislative powers over the pilotage service, which it had retained by authorizing Trinity House to fix all pilotage rates by by-law, subject to the approval of the Governor in Council. Up to that time, the rates (except for movages) were fixed in the Act and the Act had to be amended each time the tariff was changed. It was made mandatory for shipowners to pay full pilotage fees in case of cancellation, unless there was a complaint against the pilot. Free detention time was reduced to 24 hours after mooring.

As seen earlier, the pilots practised their profession under the free enterprise system and it was normal for them to compete for clients. The Montreal pilots did not have to provide a pilot boat and, contrary to the procedure in the District of Quebec, a pilot was not entitled to the pilotage of a ship when he was the first to hail her at the boarding station because no compulsory system existed and the Master was at liberty to employ a pilot or not. The Master's obligation was limited to employing a licensed pilot if he engaged one at all. Since pilots were normally engaged ashore, a Master was at liberty to take a pilot of his choice from those not otherwise on duty, and the pilots, although they were self-employed, had to make themselves available when not on duty and had no right to refuse once they were chosen.

Great difficulty was experienced following these rules and in 1864 (27-28 Vic. c.58) a system of control over the availability of pilots was established. All pilots on their arrival in Montreal had to report to the Registrar of Trinity House and to indicate their place of residence; the Registrar was to keep a record in a register of "the names and residence in Montreal of all such Branch Pilots as shall so report themselves, from

amongst whom it shall be competent for all Shipmasters and others requiring Branch Pilots to select such Pilot or Pilots as they may think fit, other than those actually engaged to pilot the Ocean Mail Steamers or any of them, and to indicate to the said Registrar the name or names of such Pilot or Pilots as they may so select." Once the selection was approved by Trinity House the pilot concerned was to be considered to all intents and purposes engaged and it was a statutory offence for him to refuse to pilot a vessel when so engaged, except for reasons of safety of the ship or for other just and sufficient cause. The same Act updated apprenticeship training. Three of the five years' apprenticeship could now be spent on board a steamer (instead of a sailing vessel) engaged in towing sea-going vessels, and at the end of the five years the apprentice was to perform at least six trips in sailing vessels under not fewer than three different branch pilots. In addition, the candidate had to complete at least one voyage before the mast in a sailing vessel to and from Europe.

The 1864 Act established compulsory pilotage in the District of Montreal for vessels over 125 tons from outside the province, the penalty being an amount equal to the pilotage dues which was to be paid into the Decayed Pilot Fund.

At that time, the pilots had no organization or agreement among themselves, with the result that there was keen competition for clients. They tried by every means to be the first to offer their services and, in the process, some of them went downriver from Quebec (even as far as the Gulf) in boats or tugs to meet vessels and steamers. Because of this ruinous competition they decided in 1870 to establish a control over the provision of services and to form an association for that purpose. Their main obstacle was the existence of the special pilot system which made it impossible to operate a true *tour de rôle*, with the consequence that the work could not be equitably shared. Furthermore, the special pilots enjoyed an undue advantage over their colleagues in that the mere fact of having been chosen by regular lines was considered by prospective clients as recognition of their qualifications. Therefore, the special pilots were unwilling to join a roster system unless certain privileges were granted to them. An agreement was reached after three years of discussion. In 1873, the pilots elected a committee of five members to attend to their general interests. An agent, chosen and paid by them, was also instructed to assign pilots at Quebec in accordance with a *tour de rôle* system. The committee was to be elected every year at a general meeting of the pilots (*Le pilotage du Saint-Laurent de Québec à Montréal*, Ex. 1456(e)). This marked the end of the free enterprise system.

The first pilotage legislation passed after Confederation, the Pilotage Act of 1873, 36 Vic. c. 54, did not substantially modify the legal position as far as pilotage in Montreal was concerned. Very little of the previous legislation pertaining to the Montreal District was abrogated and where this happened it

was because the provisions had been embodied in the new Pilotage Act. The Act repealed that part of the Montreal Trinity House Act (12 Vic. c. 117) relating to the exemption granted to vessels trading between Quebec and Montreal only from taking a licensed pilot when the services of a pilot were needed (sec. 21) and the applicable rates (sec. 23). It also repealed the 1850 Act (13-14 Vic. c. 95), which had introduced an exemption in favour of local traders (vide p. 586) as well as the 1864 Act (27-28 Vic. c. 58) dealing with the right of the Master to choose a pilot from those available, the obligation of a pilot not otherwise engaged to accept when chosen, and also with apprenticeship and compulsory pilotage. All these topics were covered in the new Act.

The specific provisions regarding the Montreal Pilotage District are:

- (a) By way of exception, as for the District of Quebec, Parliament retained the power to appoint the Montreal Pilotage Authority. Through sec. 6 of the Pilotage Act, it appointed the Montreal Harbour Commissioners as the Pilotage Authority of the newly formed federal Pilotage District of Montreal in lieu of Montreal Trinity House, and vested in them all the powers that had up to then been enjoyed by Montreal Trinity House. By a concurrent but separate Act (36 Vic. c. 61) Montreal Trinity House was dissolved and its powers over the Port of Montreal were also vested in the Harbour Commissioners who then became Harbour, Port and Pilotage Authority, all at the same time, as Trinity House had originally been. The assets that were not specifically transferred to the Harbour Commissioners were vested in the Crown through the Minister of the newly formed Department of Marine and Fisheries. The constitution of the Harbour Commissioners' Corporation was amended to allow more representation from local interests: it was to be composed of nine members, four of whom were appointed by the Governor and the remaining five elected, two by the Montreal Board of Trade, one by the Montreal Corn Exchange Association, one by the Montreal City Council, and one by the shipping interests. The buoys and beacons within the Port of Montreal were to be placed and maintained by the Corporation at its own expense. By further legislation passed at the same session, the constitution of the Quebec Harbour Commissioners superseded Quebec Trinity House. By another Act passed at the same session (36 Vic. c. 55) the powers that both Trinity Houses had with regard to salvage and wrecks were abrogated and the office of Receiver of Wrecks (Wreck Commissioner) was created. Therefore, this former power of Trinity House did not pass to the Montreal Harbour Commissioners.

- (b) However, in its definition of the District limits the Act failed to distinguish between the territorial jurisdiction of the Harbour Commissioners as Port Authority and as Pilotage Authority. It gave the Pilotage District the same limits as the Port, i.e., from the basin of Portneuf exclusively to the Quebec-Ontario boundary line, but extended their pilotage jurisdiction over the pilots for and above the harbour of Quebec and the services they performed to "that part also of the pilotage District of Quebec comprising the River Saint Lawrence, between Saint Patrick's Hole and the basin of Portneuf" (sec. 6). This remained until it was corrected by sec. 313 of the 1934 C.S.A.
- (c) The Montreal Pilotage Authority (together with those of Halifax, Saint John and Quebec) was deprived of the right to certify Masters and mates to act as pilots (subsec. 18(4) and sec. 65).
- (d) The general provisions concerning the creation by by-law of a Pilot Fund did not apply (subsec 18(12)), since one had already been created by Parliament and was still in operation, i.e., the Decayed Pilot Fund for the Montreal pilots. Its existence was recognized by sec. 80 which made it compulsory for the pilots to continue to contribute. The amount of the contribution was fixed at 5 per cent but the Montreal Harbour Commissioners were authorized to vary the amount of the contribution by by-law within a maximum of 7 per cent of the gross revenue.
- (e) The overlapping jurisdiction in Quebec harbour was limited by sec. 49 which provided that the Montreal pilots could take charge of a vessel in the harbour of Quebec, provided it was bound upstream, but movages had to be performed by a Quebec pilot.
- (f) The Act provided for the compulsory payment of pilotage dues in the District of Montreal. (with the Districts of Quebec, Halifax and Saint John (sec. 57)). The right of exempt vessels to hire non-licenced pilots was abrogated.

In 1879 (42 Vic. c. 25), the Montreal Pilotage Authority was granted the unusual power to issue a second class pilotage licence to such indentured apprentices as might be found competent to perform a limited or subordinate class of pilotage duties. This licence was to remain in force until the holder became fully qualified. A special tariff was to be established for the services of these second class pilots and it was provided that "the employment of a pilot holding a second class licence shall not be compulsory."

The quorum for the Harbour Commissioners when sitting as Pilotage Authority was reduced to three in 1880 (48 Vic. c. 31).

In 1882, an amendment to the Pilotage Act (45 Vic. c. 32) authorized the various Pilotage Authorities to limit the duration of a pilot's licence to

any term not less than two years. The Act specified, however, that this power was not extended to Quebec, Montreal and Saint John, N.B.

As seen earlier, the pilots had formed what they called a "tour de rôle association" which was directed by a five-member committee and they had appointed an agent to despatch the Montreal pilots in the harbour of Quebec. In 1878, the Pilotage Authority assumed the operating costs of the despatching office in Quebec and the pilots' agent became an employee of the Pilotage Authority (Ex. 1456(e)).

At the general meeting of the pilots in 1881 they decided to make a new petition to the Government for the incorporation of their tour de rôle association. The project was strongly opposed both by the Pilotage Authority and the shipowners. The pilots convened at Montreal and after long discussions a compromise was reached. The pilots agreed to abandon their petition on the following conditions:

- (a) The Pilotage Authority would recognize the pilots' tour de rôle committee and would implement the by-laws the committee adopted.
- (b) The apprenticeship system would be modified in accordance with the proposal made by the pilots' committee.
- (c) The number of pilots would be limited to 45 until the pilotage demand increased.

Apparently, the Pilotage Authority had agreed to more than it could do or wished to do; the pilots became dissatisfied and in 1884 renewed their petition for incorporation. It has been said that they had to fight against powerful, tenacious enemies and the Bill was defeated at first reading (Ex. 1456(e)).

In 1885, the Harbour Commissioners refused to continue paying the cost of administering the pilotage service from their own revenues and imposed a 2 per cent levy from the pilotage revenues to finance their pilotage expenses. The pilots contended that through this levy the Harbour Commissioners made a net profit of about \$800 to \$900 a year and argued that, since they were paying the despatcher's salary, he ought to be their employee, as he had been previously. They also insisted on having a representative of their own on the Board of the Harbour Commissioners' Corporation simply to avoid the considerable expense they had to incur every year to safeguard their threatened interests (Ex. 1456(e)):

When the Pilotage Act was consolidated in 1886, no change was made in the special provisions that applied to the Montreal Pilotage District.

In 1894, when the Montreal Harbour Commissioners Act was amended and consolidated, the pilotage organization was not changed. The Corporation membership was raised to 11 Commissioners, six appointed by the

Governor in Council. The Mayor of the City of Montreal was a Commissioner *ex officio*, and four Commissioners were to be elected, one by the Montreal Board of Trade, one by the Montreal Corn Exchange Association, one by *La Chambre de Commerce du District de Montréal*, and one by the shipping interests. When acting as Pilotage Authority, the Commissioners' quorum was six, but its judicial powers could be delegated to any three Commissioners. As for the powers of the Commissioners as Pilotage Authority, the Act merely referred to the Pilotage Act. Their judicial powers over all pilotage matters were reaffirmed as was the Corporation's authority to enact the necessary by-laws to exercise these powers.

The number of regular shipping lines had increased; consequently, the number of special pilots they hired also increased but the number of tour de rôle pilots decreased as did the number of ships not employing special pilots. The income derived from the tour de rôle became much less than that earned by the pilots of the regular lines and the tour de rôle pilots reacted by demanding a more equitable share of pilotage revenues.

In 1896, the pilots again sought incorporation in order to put an end to the resultant disputes. The Bill they presented to Parliament (Bill No. 67, 1897, Ex. 1470(f)) proposed the creation of a corporation which would be authorized to manage and direct its members in the exercise of pilotage as a profession, to treat their earnings as corporation revenues, to control despatching and pooling and to maintain discipline. Membership was not to be compulsory but the Directors were to have powers over the appointment of pilots and apprentices. The loss or suspension of a pilot's licence would result in the automatic loss or suspension of his membership. The corporation President was to become *ex officio* a member of the Montreal Pilotage authority for all matters concerning pilotage. The by-laws of the corporation were to be subject to the approval of the Pilotage Authority which would have power to quash and annul them in whole or in part during a period of one month after their submission for approval. The right of the Master to choose his pilot was to be preserved but the choice would have to be made from lists of all pilots available for duty which were to be kept for this purpose both at Quebec and Montreal.

The proposed corporation was a considerably modified version of the corporation authorized for the Quebec pilots in 1860. It was to replace, with increased powers, the tour de rôle association the Montreal pilots had formed in 1870.

This time, despite strong opposition from the same quarters, the Bill was adopted by the Commons but was defeated in the Senate June 18, 1897, on the advice of the Committee on Railways, Telegraphs and Harbours which recommended no further action on the ground of public interest. The pilots then went on strike.

Pilot Cléophas Auger, the President of the Montreal Pilots' Committee, in an article which he wrote in 1900 (Ex. 1456(e)) in which he relates the events of those days states that the pilots, discouraged by lack of success in their efforts to obtain their incorporation, seeing the situation worse than ever and believing that a change was needed in the interests of the shipping industry as well as their own, went on strike June 18, 1897. The pilots returned to work only when the Minister of Marine and Fisheries set up a Commission of Inquiry to study their grievances.

The circumstances which led to the strike are summed up in the first paragraph of the convening order of the Commission of Inquiry (Order in Council dated Jan. 11, 1898. (Ex.1470(k)):

"On a Report, dated 8th January, 1898, from the Minister of Marine and Fisheries, stating that for some time past the pilots serving in the district of Montreal have been pressing for incorporation and an extension of their privileges as pilots, and, during the late Session of Parliament a Bill was introduced by Mr. Guay, M.P., providing for incorporation and giving the pilots the management of their affairs, the making of by-laws for maintenance of discipline and other provisions. This Bill was strenuously opposed by the shipping interests of Montreal and by the Harbour Commissioners, who are the legally constituted pilotage authority for the district, but the Bill after having been considered in Committee, and amended, passed its Third Reading in the House of Commons, but was rejected by the Senate. As a consequence of this rejection of the Bill, the pilots, on the 18th June, 1897, refused to pilot any vessels, or to exercise their profession, unless incorporated, thereby causing inconvenience and delay to shipping. After remaining on strike for a week or so, the pilots resumed work, on the assurances given by the Minister of Marine and Fisheries, that the Government would make it a duty to investigate their alleged grievances during the recess."

The Board of Inquiry was composed of three members, Mr. Justice J. Lavergne of Ottawa, Major F. Gourdeau, Deputy Minister of Marine and Fisheries and Commander W. Wakeham, M.D., also of Ottawa.

The Commission recommended against the incorporation that would give the pilots the power they sought, partly because of their relatively small number which it was considered should be further reduced but especially because the Commission thought there were other more adequate ways of giving the pilots the voice they wanted in pilotage affairs.

While finding that when the Harbour Commissioners sat as a court they did not take unfair advantage of pilots who appeared before them for trial in that the assistance of counsel was permitted and expert evidence (including the opinions of pilots) was sought; they considered that the method adopted was not the best. They recommended that pilots involved in shipping casualties should appear before a Marine Court composed of three experts—one chosen by the Pilotage Authority, the second by the pilots (though not a pilot in active service in the Montreal District) and the third by the Minister. If a Court of Admiralty were established in Montreal, "these trials should take place before such a judge, assisted by two nautical assessors."

To give the pilots the required representation, the Commission proposed there be one pilot representative on the Board of the Pilotage Authority. They suggested that the pilots select annually among themselves two pilots for that purpose, one to form part of the Board when sitting on matters affecting pilots, the other being a substitute to ensure constant availability of a pilot representative.

The pilots had asked that their number be further limited, while the shipping interests had recommended that anyone be allowed to become a pilot if he could pass the necessary examination, that the pilots be truly free entrepreneurs and that the shipping interests have unhampered freedom of choice. The Commission found that the number of pilots had never proved insufficient and that the contrary was, in fact, the case. It remarked that strikes could take place just as easily with a large number of discontented underpaid pilots and would actually be less likely with a limited number of well-paid men. It further remarked that while the pilots were in the position of employees performing their duties under the Pilotage Authority there would seem to be no reason why their numbers should not be limited. They found that the number of pilots was then at least three times larger than necessary. If they were more numerous and their work more divided, their efficiency would suffer from lack of practice. They recommended that the number of pilots be limited to fifty.

As for apprenticeship, they agreed that the stipulated requirements were no longer suitable to provide adequate training but left it to the Pilotage Authority together with the pilots to devise new rules. With the disappearance of sailing ships, the traffic pattern on the River had gradually changed but the apprenticeship programme which was based on it had not been modified. Formerly, the apprentices learned the River on board tow boats navigating between Montreal and Quebec towing sailing vessels. On board they became acquainted with leading marks, lights and currents, so that when finally taken in charge by a regular pilot during their two final years of apprenticeship they were already quite familiar with the River. The opportunity for employment in tow boats had passed with the disappearance of sailing vessels. For the same reason, they recommended that the requirement that one of the three foreign-going voyages apprentices were required to make during the winter be in sailing ships be deleted but that the three-voyage requirement be retained.

In addition, the Commission made a number of recommendations regarding improvements to the ship channel, such as erecting permanent landmarks, marking the sides of the channel with buoys of different shape and colour, lighting the channel so as to permit night navigation, making regular sweeps of the channel and removing obstructions which endangered navigation, widening the channel from 500 to 600 feet in straight cuts and to not less than 700 feet in the bends, deepening it to 30 feet with an increased

depth of 2 feet in the bends (pointing out that the flat-bottomed ships of the type that had come into use on the St. Lawrence drew considerably more water when rounding a bend than when on an even keel) and straightening the bends to the extent possible so as to allow longer ships to round them easily (62 Vic., Sessional Papers (No. 11) A.1889) (Ex. 1470(k)).

The pilots were satisfied with the way the inquiry was conducted. Pilot Auger wrote that all interested parties were fully represented and took advantage of the opportunity to express their opinions fully and discuss them thoroughly. He added that the pilots were also satisfied with the report of the Commission and with the proposed amendments to the Pilotage Act which was before Parliament for adoption when he wrote his article. The pilots had noted with satisfaction that the inquiry had already borne fruit in that soundings had been taken, the channel had been cleared of obstructions and the buoys checked. He added that the "Pilotage Court" which the Minister of Marine intended to establish at Montreal and the amendments that were to be made in the Harbour Commissioners' By-laws would certainly provide an adequate remedy for all difficulties.

Pilot Auger summed up the situation as follows (translation):

"For several years the pilots were forced to fight to keep their tariff. Constant efforts were made to lower it.

They worked in vain to obtain agreement that one of their number should represent them on the Pilotage Commission as was done elsewhere, even in ports much less important than Montreal.

The pilots also struggled without success to establish that buoys would be laid in accordance with their recommendations and requirements and not on the advice of persons who, although doubtless interested in the subject, contributed more good will than practical knowledge.

All these disagreements between the pilots on one hand and the Harbour Commissioners and the shipping interests on the other can be attributed to several causes, the main ones being:

Up to 1874, the pilots came under Trinity House and, hence, were represented by the Superintendent of Pilots (sic) (actually Captain of the Port) who, at the same time, was inspector of lighthouses and buoys. The buoys were also laid by a pilot. Because each individual was responsible for his own duties, the pilots were punished only for their errors and blunders.

When the Pilotage Authority was entrusted to the Harbour Commissioners, the Superintendent of Pilots was made their paid employee and his work became so unimportant that when he retired it was not considered advisable to replace him. A civil engineer was given the responsibility for laying buoys. Unquestionably he was eminently qualified in his profession but he was not a pilot. Because the number of

buoys increased proportionately as the canal progressed, it developed that this officer found himself unable to position or replace them in good time, although many were indispensable. If an accident occurred, the poor pilot appeared without counsel before the Harbour Commissioners (who were at one and the same time judges and parties to the case because they were themselves responsible for cutting the canal and placing buoys) and invariably was found guilty.

For their part, the pilots increased their number out of all proportion to the work they had to do and were forced into bitter competition. Frequently they had to yield to unreasonable demands by agents for ships or tugs in order to make a living for their families. They lost much of their prestige and the authority which is essential for any person who has command of a vessel.

What was needed to avoid unfortunate consequences for Montreal was a strong, competent administration based on practical knowledge of navigation which, while subjecting the pilots to strict discipline, would have kept their position commensurate with their importance to maritime trade.

But the Pilotage Commission did not see it that way. The Commissioners, all business men whose reputation in the business world was unquestioned but whose experience in navigation and pilotage was almost nil, always denied the pilots the right to have their say in questions that concerned them exclusively . . . ”

In the years which followed, radical changes were made in the administration of pilotage in the Montreal District. The first legislative change was the creation in 1900 of the Montreal Pilots Court (63-64 Vic. c. 36). The Court was presided over by a Commissioner with at least seven years' experience as a lawyer. He was assisted in the performance of his duties by assessors to be appointed annually, some by the pilots and some by the Pilotage Authority. The judicial powers of the Harbour Commissioners were withdrawn and transferred to the Pilots Court which had jurisdiction over all complaints against any pilots for any offence committed against the provisions of the Pilotage Act or any regulations made thereunder, whether or not there had been a shipping casualty. In addition, the Court was given the power that had been enjoyed by the Harbour Commissioners as Pilotage Authority to inquire into the conduct of pilots, whether or not a complaint had been received. No appeal was provided. It was stipulated that, in the event of the appointment of a local Judge in Admiralty of the Exchequer Court at Montreal, the Pilots Court would cease to exist and all its powers and jurisdiction would be transferred to the Exchequer Court of Canada (Admiralty side).

Three years later, in 1903, Parliament, in an unprecedented move, appointed the Minister of Marine and Fisheries as Pilotage Authority for the District of Montreal in lieu of the Montreal Harbour Commissioners with all the powers they had up to then enjoyed as Pilotage Authority (3 Ed. VII c. 48). It is worth noting that no proviso was added with regard to the judiciary function of the Pilotage Authority as was included in a corresponding amendment to the Pilotage Act in 1904 and to the Quebec Harbour Commissioners Act in 1905. This was because the Pilotage Authority in Montreal at that time no longer held any judiciary powers.

On that occasion, the Minister inherited from the Montreal Harbour Commissioners the trusteeship of the Montreal Decayed Pilot Fund because, contrary to what had occurred in Quebec, when Montreal Trinity House was abolished this trusteeship was passed to the Harbour Commissioners along with the other powers, there being no active pilots' corporation.

An amendment to the Montreal Harbour Commissioners Act in 1909 (8-9 Ed. VII c. 24) placed the "Port of Montreal" under the jurisdiction and control of the Minister of Marine and Fisheries. The expression "Port of Montreal" was redefined to exclude the harbour of Montreal.

The 1906 Canada Shipping Act was merely a consolidation as far as the legislation governing the Pilotage District of Montreal was concerned.

On September 29, 1911 (Ex. 1470(i)) a new set of by-laws, was approved. The principal features were:

- (a) The local representatives of the Minister as Pilotage Authority were a Superintendent at Montreal and an Assistant Superintendent at Quebec with a mandate to manage the service and to carry out the Authority's orders.
- (b) A Pilots' Committee became the liaison between the Authority and the individual pilots.
- (c) The number of pilots was left to be determined administratively by the Authority and pilots continued to be recruited through an apprenticeship system. The apprentices, whose number was not to exceed seven, were chosen in order of seniority from a list of applicants and had to serve a five-year apprenticeship. At the end of the five years, the apprentice had to pass an examination before the Board of Examiners and, if found qualified, his name was entered on a list "as qualified to receive his Branch wherever a vacancy occurs . . ."
- (d) Licences were permanent except that they lapsed automatically when the pilots reached sixty-five years of age. Temporary licences were issued thereafter from year to year as long as the pilots remained fit and competent.

- (e) Neither the Pilotage Authority nor the Superintendent was provided with any judiciary power, but the Act contained a code of discipline.
- (f) Provision was made for investigating complaints about the capacity and fitness of pilots and settling disputes between Masters and pilots.
- (g) Except for special pilots, pilots were to be assigned to duty by the Superintendent and the Assistant Superintendent in a rotation system that to a certain extent preserved the right of a Master to choose his pilot. For each assignment, the Master was given the three first names on the list from which he made his choice. The Superintendent or the Assistant Superintendent had to "satisfy himself that the selected pilot has not, directly or indirectly, used any influence to secure himself such pilotage."
- (h) In case of a shipping casualty, a preventive suspension could be imposed following an informal inquiry that found that the pilot was the cause of the accident. The preventive suspension was to last until a formal investigation had been held but was not to exceed three days unless the Minister gave notice that a formal investigation would be held. This was a power belonging to the Pilotage Authority distinct from the similar power that could be exercised by the officer appointed by the Minister, as such, under Part X of the 1906 Act (sec. 777) to perform a preliminary inquiry.

Lindsay Commission, 1913. As seen in the Quebec District, *History of Legislation*, the Lindsay Royal Commission was created mainly to study the serious and unsatisfactory state of affairs in the Quebec Pilotage District. It would appear that if the Montreal Pilotage District was included in the scope of the investigation of this Commission it was merely on account of the interrelation of the two pilotage services, since the Districts were, in fact, two parts of a single operation. The section of the Report dealing with the Montreal District was very brief and indicated that both the administration and the discipline of pilots were satisfactory. The only unfavourable comment concerned the qualifications and competency of the officer-in-charge of the Quebec despatching office (no doubt the Assistant Superintendent). The Commission found him thoroughly incompetent, so much so that they felt it necessary to make an Interim Report on him. They also found that the location of the Quebec pilots' office "above a bar-room, and having a door leading directly into that place" was not desirable and that it should be moved.

They noted that the change in Pilotage Authority from the Montreal Harbour Commissioners to the Minister had been a complete success, which was in sharp contrast to the state of affairs that prevailed in Quebec.

They made reference to the recommendation of the representatives of the lake carriers that apprentices should be issued licences as second class pilots and "attached to their boats as members of the crew when they required them", but noted that all the pilots were not in favour of the suggestion because "they were afraid it would lower the standard of qualifications and experience and be a handicap to the tour de rôle pilots." The Commission did not take a position on the matter.

The Commission tried to improve the apprentices' lot by suggesting various ways of shortening the period of apprenticeship and of giving them an opportunity to earn a living each season, e.g., by obtaining employment on vessels on the River as second pilots or by being employed in Government vessels.

In order to reduce the disparity between special and tour de rôle pilots in workload and earnings, they suggested modifying the special pilot system to make a pilot available to more than one line in order to enable him to make the same number of trips per season as the tour de rôle pilots. On the other hand, they felt that a line with only one vessel a month should not be allowed to engage a special pilot unless he was shared with another line.

The Commission was convinced that some increase in the tariff was necessary. In order to bring in more revenue, they suggested that the increase be borne only by ocean-going vessels and that certain exemptions in the Montreal District should be abolished (Ex. 1325).

On April 29, 1915, a new set of by-laws was approved by the Governor in Council (P.C. 902, Ex. 1470(h)) but it contained no material changes. The by-laws did not deal with the Commission's suggestion regarding the withdrawal of some exemptions, obviously because this would have required an amendment to the Act itself. The main changes were:

- (a) The list of qualified apprentices was abolished. Examinations were held only when a vacancy occurred and a permanent licence was issued to the first apprentice, according to the order of seniority, who passed the examination before the Board of Examiners.
- (b) Retirement at the age of 70 was made compulsory.
- (c) Agents or firms with only one vessel a month were denied the right to have a special pilot but they were allowed to share the services of one with another agent. Failing this, they were obliged to go to the tour de rôle when a pilot's services were required.
- (d) The tariff was not substantially altered but a minimum tariff was fixed at \$20 for a trip; the charge for a moveage was \$5.
- (e) The system of disciplining pilots was not changed. Neither the Minister as Pilotage Authority nor the Superintendent was given any judiciary power. Offences and breaches of the by-laws by pilots had to be tried before a regular court. Upon such conviction,

however, the Pilotage Authority had the power to impose an additional punishment in the form of a suspension or withdrawal of the licence.

In 1916, various amendments of a minor nature were made to the By-laws and, *inter alia*, a new regulation concerning the collection of dues was passed merely to help the pilots. The Superintendent billed the shipping agent but payment was made direct to the pilot, except for the pension deduction which was paid to the Collector of Customs (P.C. 762 dated April 4, 1916, Ex. 1470(h)).

In 1918, the administration of the Montreal District came under the terms of reference of another Royal Commission, *the Robb Commission*. This Royal Commission was not prompted by any particular problem in either the Quebec or Montreal Pilotage Districts but was originally convened to investigate the pilotage situation in Halifax, Saint John and Sydney. Its mandate was eventually enlarged to include Montreal and Quebec and to deal with other matters. (Ex. 1456(t) and pp. 61 and ff.).

The Report is dated September 10, 1918. The part of the Report dealing with Montreal is very brief and again shows a very satisfactory state of affairs. Only two points were dealt with by the Commission: the moveage rates and the pilots' request to pool their earnings. The Commission recommended changes in the moveages tariff but rejected the pooling request.

The pilots' recommendation had resulted from the great discrepancy between the earnings of line pilots and tour de rôle pilots. The Commission attributed it to the special situation resulting from the war and pointed out that "the established lines' representatives are unanimous against any change in the distribution of the earnings, contending that it would interfere with the spirit of enterprise of the pilots in the Montreal District, who look forward to promotion from the 'tour de rôle' to the regular lines."

On December 27, 1918, thirty-three pilots grouped themselves into a professional partnership under the name of the "United Montreal Pilots". The main purposes of the Association were to pool their pilotage revenues and to look after and defend their professional interests. Other pilots could join by signing the partnership deed but no one could withdraw as long as he remained an active pilot, unless he was expelled. The Association was under the control of five Directors elected at the annual general meeting. The deed could be modified only by the written consent of 80% of the members and was not to come into force unless signed by two-thirds of the licensed pilots. Its duration was to be twenty-five years (Ex. 771(a)).

The signatures of over two-thirds of the licensed pilots were obtained and the contract became effective. At its expiration December 27, 1943, it was renewed for a further term of 25 years, but was allowed to expire December 27, 1968 (Ex. 1539(c)). The contract, amended from time to

time, provided for pooling Corporation expenses and for establishing the value of the turn by averaging. Each pilot received the pooled value for each turn he performed. Contrary to the Quebec pilots' system, the moorage dues formed part of the pool but their value was arbitrarily fixed at \$10 for the purpose of sharing. Detention and cancellation did not form part of the pool and were paid in their entirety to the pilots concerned (Ex. 771).

In 1920, no doubt as a result of the strong stand taken by the Robb Commission with regard to the practice of pooling (vide p. 63), the District By-law was amended (P.C. 1444, dated June 29, 1920, Ex. 1470(h)) exactly as was done in Quebec to provide specifically that the Pilotage Authority was to collect all dues and to pay out, less the Pension Fund deduction, directly to each pilot the balance of the dues he had earned.

On September 16, 1927, a new set of by-laws was approved by the Governor in Council repealing all those previously in force. Its main provisions were (Ex. 1539(a)):

- (a) The 1920 amendment was retained. Pooling the pilots' earnings was not recognized by the Authority, the dues were collected by the Pilotage Authority which, after deducting the compulsory pension contribution, remitted to each pilot the balance of the dues he had earned.
- (b) A Pilots' Committee was provided to represent the pilots with the Authority.
- (c) Apprenticeship was retained but modified. The applicants became apprentices on the basis of seniority on a list. Each apprentice was obliged to obtain a Certificate of Competency not lower than that of mate coasting within three years of being licensed as apprentice and during that time he also had to do 30 trips per year on the River. When he obtained his Certificate of Competency he was called a senior apprentice and had to perform 50 trips per year. The minimum duration of apprenticeship was five years.
- (d) Temporary licences could be issued to senior apprentices in case of emergency.
- (e) A criterion was introduced (as in the Quebec District, p. 225) to determine the number of pilots, viz., 50 pilots for each 3,000 trips per annum.
- (f) The special service pilot system was continued. As before, the appointment was valid for one season only and the special pilot was obliged to do turns on the tour de rôle if so required in case of emergency.
- (g) Shipping casualties were to be investigated pursuant to the procedure laid down in Part X of the Act.

- (h) A Court of Inquiry procedure was provided to investigate complaints against pilots.
- (i) The Pilotage Authority assumed judiciary powers. The By-law purported to give the Superintendent the right to impose a fine of not more than \$40 for insubordination, misbehaviour, malingering, neglect of duty or breach of any section of the By-law, provided the pilot had been given the opportunity to be heard personally or in writing. In addition, the Pilotage Authority could "if he deems the evidence sufficient, fine, suspend or dismiss any pilot or apprentice for a continuing breach of these by-laws." Any pilot reported to be under the influence of intoxicating liquor or narcotic drugs when on duty or about to go on duty was to submit to a medical examination forthwith as ordered by the Superintendent and, if the report was confirmed, his licence was immediately suspended by the Superintendent. Upon receipt of the report, the Pilotage Authority could, in addition, impose a fine to a maximum of \$200 or suspend or cancel the licence.

These provisions regarding alleged judiciary powers, conflicted with the special provisions of the 1906 C.S.A. (which remained unchanged in the 1927 C.S.A.) for the District of Montreal which provided that offences and breaches of regulations committed by pilots had to be dealt with by the Montreal Pilots Court. According to the Act, the Minister as Pilotage Authority for the Montreal District had only the powers that were enjoyed by the Montreal Harbour Commissioners as Pilotage Authority as of October 24, 1903 (sec. 397, 1927 C.S.A.; sec. 415, 1906 C.S.A.). At that time, the Montreal Harbour Commissioners had been stripped of all their judicial powers with regard to pilots and pilotage when the Montreal Pilots Court was created in 1900 and, therefore, as far as the Montreal District was concerned the Minister could not exercise any judicial powers nor could he delegate powers that he did not have. This is why a proviso to that effect was not included in the 1903 Act which appointed the Minister as Pilotage Authority for the District of Montreal, as was done in the 1904 amendment to the Pilotage Act affecting the other Districts and the 1905 amendment dealing with the Quebec Harbour Commissioners. This exercise of judiciary powers by the Pilotage Authority and the Superintendent was, therefore, illegal and ultra vires, as was pointed out by the Minister of Transport in 1936 during the debate on the proposed amendment to the 1934 Canada Shipping Act on the subject of legislative provisions for the discipline of pilots (Part I, pp. 373 and ff.).

The situation in the Quebec District was quite different. The institution of the Pilotage Authority as a court of record had disappeared when the Minister became Pilotage Authority, but it was provided in the Act that such

powers were to be exercised by those he would appoint for the purpose (this provision was repealed by the 1934 C.S.A.). Hence, granting powers of punishment to the Superintendent in the Quebec By-law could be construed as such a delegation of power.

When the Montreal pilots were in the joint territory of both Districts, i.e., the harbour of Quebec, they came under the disciplinary authority of the Quebec Superintendent and also had the benefit of the right of appeal against his decision to the Superior Court of Quebec as provided for in the Canada Shipping Act (sec. 538, 1927 C.S.A., and sec. 558, 1906 C.S.A.).

Sec. 538 began with these words "in the Pilotage District of Quebec, any pilot shall have the right to appeal to the Superior Court of the province of Quebec from any judgment rendered against him by any tribunal or officer designated by the Minister under the authority of this Part for the trial of any offence . . ." In the Gariépy case these provisions were interpreted by the Quebec Court of Appeal to apply to the Montreal pilots when they were in the joint territory and when they were tried by the Superintendent for the District of Quebec (vide Court of King's Bench judgment, Hamel and Gariépy, (1937) 62 K.B. 459) (Part I, pp. 240, 323, 399 and Gen. Rec. 9).

The consolidation of the Canada Shipping Act in 1927 made no changes in the Montreal District except that the prohibition in the Quebec, Montreal and Saint John, N.B., Districts against issuing licences for a limited duration was cancelled. This privilege was extended to all Districts (sec. 434). The status of the Montreal Pilots Court was not changed.

In 1930, the Department of Marine and Fisheries was abolished and the Minister of the new Department of Marine superseded the previous Minister, *inter alia*, as Pilotage Authority for the District of Montreal (20-21 Geo. V c. 31).

The new Canada Shipping Act of 1934, however, brought about substantial changes. It abrogated most of the special provisions that concerned the Montreal District and put Montreal on the same footing as the other Districts as far as legislation and the power of its Authority were concerned. This meant that from then on the Minister as Pilotage Authority, had only the powers stipulated in the Canada Shipping Act for that function and not those that the Montreal Trinity House and Montreal Harbour Commissioners had enjoyed. Furthermore, the provisions dealing with the Montreal Pilots Court (and the eventual transfer of jurisdiction to the Exchequer Court, Admiralty side) were not retained in the new Act, thereby abolishing the Pilots Court. In future, the discipline of pilots in the Montreal District was to be dealt with according to the rules laid down in the Canada Shipping Act for all Districts (Part I, pp. 373 and ff.).

The Act retained, however, the statutory provisions regarding the existence of the District, the establishment of its limits and, conversely, the

appropriate restrictions on the powers of the Governor in Council in these matters (secs. 313, 314 and 315), but the provision appointing the Minister as Pilotage Authority was not retained, thus creating the ambiguous situation that prevails today (pp. 11 and 12).

The 1934 Act properly described the limits of the Pilotage District, omitting those that coincided with the limits of the Port of Montreal and which had no relevancy with the pilotage organization. The Pilotage District was defined as extending from the Lachine Canal exclusive and the harbour of Quebec inclusive. This definition has not been modified since, despite the fact that it no longer corresponds to reality at the western end of the District (pp. 627-629).

Apparently, through a lack of coordination in the modification of the previous statutory legislation, the payment of dues was not made compulsory for either the District of Quebec or Montreal (pp. 12-14).

The statutory restriction preventing the Montreal Pilotage Authority from granting a White Flag certificate was deleted; this could be done if provisions were made for it in the By-law, a situation which still prevails (Part I, p. 253). The Montreal Pilotage Authority never availed itself of this power. The special provisions regarding the Montreal Pilot Fund were abrogated and the general provisions on the matter were extended to the Montreal District.

The statutory provisions concerning the issuance of second class pilotage licences were repealed.

In 1936, the Department of Transport was created to replace the Department of Marine and its Minister became the Montreal District Pilotage Authority (I Ed. VIII c. 34).

The same year the National Harbours Board was created (I Ed. VIII c. 42) which took over responsibility for Montreal harbour from the Montreal Harbour Commissioners whose Act of incorporation was repealed.

From 1934 to date, the only amendments to the special statutory provisions for the District of Montreal have been the deletion from sec. 339 (now 347 C.S.A.) of the restriction preventing the Montreal Pilotage Authority from withdrawing relative statutory exemptions, and of subsec. 338(2) which made certain exemptions not applicable to Montreal. This did not change the legal situation since the compulsory payment system did not apply and could not be established in the District of Montreal any more than in the Quebec District. The amendment merely had the effect of deleting inoperative provisions.

Until then, subsec. 2 of sec. 338 of the 1934 Act could have provided a semblance of argument to prove indirectly the legal existence of the compulsory payment system for Montreal, in that this subsection, which modified the statutory exemptions from the payment of dues as far as the Montreal

District was concerned, would have been meaningless, or at least without effect, unless the payment of dues was compulsory for Montreal. This argument, however, has no legal value because the compulsory payment system is an infringement upon the freedom of trade that can not exist except through a specific and unequivocal statutory provision. There was no such provision. However, any possible doubt was dispelled by the 1950 amendment.

Captain Slocombe's Survey (Ex. 1452).

Montreal was one of the Pilotage Districts included in the fact-finding survey made in 1947 by Captain Slocombe of the Department of Transport (pp. 72 and ff.). Excerpts of special interest are:

"Special Features.

Pilotage in this District is all river pilotage, within a dredged channel for 100 miles. There are no stretches of open water where a pilot may rest and leave the navigation to the ship's officers. The greatest difficulty is presented in the late Fall, when ice conditions enforce removal of buoys and when snow and storms are prevalent.

Pilots are embarked and disembarked at Quebec by means of the motorboat provided by the Shipping Federation of Canada, Inc."

"Conditions of Service.

There are at present 73 pilots on the roll, and all work in strict rotation unless appointed as special pilots. Such appointments are for one season only and terminate at the end of each season. A special pilot may also be required to take turn on the tour-de-role, and in practice each special pilot is required to make up the same total number of trips in a season as are performed by a tour-de-role pilot.

In busy times, pilots are called out three or four times a week for trips, in addition to movages...

A steamer of the 10,000 ton "Park" class takes 12 hours from Montreal to Quebec, 15 hours from Quebec to Montreal (if the tide serves). However, lakeboats comprise one third of the work, and they take 15 to 18 hours downbound, 24 hours upbound. Lakeboats do not take pilots below Quebec, therefore it is not always known when they will arrive at Quebec upbound. This means that more pilots must be kept standing by at Quebec.

There is an unwritten agreement with the shipowners that after November 20th two pilots shall be carried and the shipowners shall pay an additional fee of \$25. The payment of this additional fee is voluntary, and the extra fee is not paid into the Pilotage Fund."

"Pilots' Remuneration.

The net average earnings (after deducting 7% for pension fund) of the full-time pilots in the Montreal District were \$4,243 in 1935, \$3,921 in 1946.

As far as the Department is concerned, those amounts represent 93% of the average earnings of a pilot in this District, there being no deductions by the Department other than for the pension fund. However, it may be noted that the tour-de-role pilots must pay all their own travelling expenses out of these amounts. The pilots claim that these expenses amount to about \$1,000 per year. The case of the special pilot is somewhat different in that a gratuity of \$9 per trip is provided by the owners for the special pilots. This practice was condemned by the Royal Commission of 1918 as being a direct contravention of the Canada Shipping Act, but it is still being carried on."

Study of Montreal Pilotage District

"Pilotage dues.

The rates per foot draught are lower for Inland or Coasting vessels (than sea-going steam vessels), although the pilotage of such vessels entails many more hours of work."

"Representations of Pilots.

With reference to the gratuity of \$6 paid by some shipowners to apprentice pilots, the pilots contend that apprentices render an important service to the shipowners and that in fact some owners ask for two apprentices to be appointed to a ship, so that they may do the steering. It is often difficult to have efficient steering by the crew of a ship immediately after leaving port."

The main complaints of the pilots concerned their remuneration which they considered totally inadequate. Captain Slocombe met both pilots and shipowners' representatives separately and summed up in his report the arguments on both sides. The Pilots' Committee told him that it was only with the greatest difficulty that the pilots were persuaded not to go on strike during the 1946 season. "They feel that after remaining on the job at very low remuneration during the war, as they were asked to do to assist the war effort, they are entitled now to some recognition by the provision of a level of remuneration commensurate with their responsibilities and the standard of living which was theirs before the war."

"In the case of a moorage in Montreal Harbour, for which the pilotage fee is \$5, a linesman handling the mooring ropes on the wharf is paid \$7.50."

"The pilots feel that they have a right to expect an annual remuneration of at least \$5,000 after paying expenses and after deduction is made for pension. The pilots are therefore seeking a 50% increase in all their rates over the level set in the By-laws. It is the intention to work out a new system of rates based on both tonnage and draught and when this has been done definite submissions will be made to the Minister."

Reactions of Shipowners.

The shipowners were surprised at the pilots' demands because they had not been consulted and they had not heard any complaints. The shipowners felt that the pilots should have come to them rather than deal directly with the Minister of Transport. Furthermore, they felt that "there had been very little consultation" and that "the Minister had acted most arbitrarily in re-instating the full surcharge of 25% on October 15 (1946)" ... "The members expressed a desire to meet with the pilots for discussion before any definite submissions would be made on increased rates."

Audette Report, 1949.

The Montreal District was one of the Districts covered by this Committee.

Most of the remarks and recommendations in the Audette Report were of a general nature, e.g. guaranteed minimum earnings, the position of the various pension funds, the inclusion of a shipowners' representative on the

Board of Examiners, recognition of the Pilots' Associations, and the special pilot system. (These have already been dealt with, pp. 74 and ff.)

The problems that related specifically to the Montreal District were of lesser importance. The Committee passed on recommendations received for amending the by-laws about apprentices with a view to improving their qualifications and also in order to assure their entry into service at an earlier age so as to ease pressure on the Pension Fund. Special small problems were also discussed, such as whether one or two pilots should be on board a vessel and her tow and when a pilotage assignment is to be considered as having been performed (Ex. 1330).

The 1927 District By-law remained in force until it was repealed and superseded October 17, 1961, by the existing General By-law (P.C. 1961-1475, Ex. 430) after having been amended 37 times.

The first three amendments approved a 12 per cent reduction in rates for the years 1935, 1936 and 1937 which the Shipping Federation requested because of the depression. The converse happened during the war and post-war years when a surcharge varying between 10 and 25 per cent was imposed yearly to provide enough revenue to maintain an adequate pilotage service and provide the pilots with a satisfactory income. According to the preamble of the Orders in Council, all these surcharges, except the last, were made effective after consultation with the shipping interests. An amendment made April 19, 1947, introduced a new tariff based on draught and tonnage and designed to provide the pilots with an increase of 30 per cent over their prewar revenue to compensate for the increased cost of living. On this occasion, the term "tons" was defined as meaning net registered tons.

After the 1936 amendment to the Canada Shipping Act (Part I, p. 16) the discipline section of the By-law was amended to provide for a series of by-law offences in lieu of the former statutory offences which were abrogated. The Pilotage Authority's alleged powers to impose fines up to \$200, to suspend and cancel licences for breaches of by-laws and of the Superintendent's alleged right to impose a fine up to \$40 were reaffirmed by amendment no. 6 which also introduced special provisions dealing with the consumption of intoxicating liquor or the use of drugs while on duty or about to go on duty.

Some tariff items were slightly amended in 1937 and 1939 and the definition of the termination of pilotage duty was changed.

The 17th amendment (1948) assured the pilots a majority representation on the Board of Examiners whose composition had previously been left to the discretion of the Pilotage Authority. This amendment also substantially altered the conditions of employment of the pilots. Up to that time, the shipping companies could choose their special pilots who were then compulsorily appointed by the Pilotage Authority, but the amendment made it a prerequisite that the pilots' consent be obtained as well.

In the following years, the tariff was amended frequently. The pattern was to grant an overall surcharge followed the next year by a new scale, viz. amendments nos. 18 and 19 in 1948 and 1949 and amendments nos. 22 and 23 in 1951 and 1952.

Amendment no. 19 changed the criterion for determining the number of pilots to 50 pilots per 3,500 trips, i.e., 70 trips per pilot instead of the previous 60. This readjustment was no doubt made necessary because of improved channels and aids to navigation as well as faster ships, all factors which resulted in quicker transits.

Following the Canada Shipping Act amendment of 1950 regarding statutory exemptions, the By-law was modified (amendments nos. 20 and 21 of 1950) which purported to modify the relative statutory exemption as if the compulsory payment of dues applied in Montreal.

After the Audette Report, amendment no. 20 introduced substantial changes to the apprenticeship system in the matter of age limit, conditions of training, etc., while still preserving acquired rights.

Although in his report the Chairman, Mr. L. C. Audette, expressed concern about the rôle played by the Pilots' Association, especially pooling the pilots' earnings, a practice that he viewed "with disfavour and apprehension", the pilots' views prevailed and By-law no. 23, passed in 1952, officially recognized the Montreal Pilots' Association, i.e., the United Montreal Pilots, and the pooling of the earnings that it operated. The Association's Board of Directors was recognized as the Pilots' Committee and the pilots' earnings were to be paid to the Association and no longer to the individual pilots. This was in effect recognition in the regulations of a factual situation that had existed since the creation of the Association in 1918. Furthermore, the Pilotage Authority agreed to cooperate with the Association in the equitable distribution of work by including in its By-law the rule of equalization of trips.

Amendment no. 23, 1952, doubtless resulted from a recommendation of the Audette Committee and was designed to improve the disastrous state of the Pension Fund by providing more flexible rules for assessing contributions, thus bringing the Fund nearer to actuarial solvency.

Many other amendments dealt with apprenticeship, safety and discipline and fees. The main changes after 1953 were:

- (a) In 1956, amendment no. 28 altered the apprenticeship system extensively: the list of applicants was retained but the present requirement for technical education in marine matters was introduced by making a three-year course at the Rimouski Marine Institute a prerequisite.
- (b) In 1957, amendment no. 30 made the Montreal harbour pilots a distinct group; amendment no. 32, approved in 1958, granted

them, as a supplement to the dues, reimbursement for their transportation costs going to or returning from a move in the harbour.

- (c) In 1959, amendment no. 33 introduced grades for the Montreal (river) pilots, i.e., Grade C for the three first years of the licence with the pilot being gradually promoted to larger ships from 1,500 tons, 2,500 tons and finally 4,000 tons; Grade B to be granted after a minimum of three years as Grade C and after passing an examination gave the right to pilot all ships except those over 7,000 NRT which were the exclusive competency of the Grade A pilots; Grade A was not permanent and was subject to reclassification to Grade B if at any time the pilot was found no longer suitable.
- (d) In 1959, amendment no. 35 officially recognized for the first time the special difficulties of winter navigation by granting an extra \$3 fee per hour after the first ten hours with a maximum of \$25 a day on trips between December 14 and April 8. This amendment was repealed the following year by amendment no. 36 when the present By-law provision for winter navigation was adopted, i.e., double assignments on winter trips with double fees limited by a maximum of \$100 for the second fee.

On October 17, 1961, the 1927 By-law with its various amendments was repealed and replaced by the General By-law now in force.

In 1958, the Montreal (harbour) pilots grouped themselves in a corporation under the name of "Corporation of Montreal Harbour Pilots" (Part I, p. 88). The following year, the river pilots also obtained an incorporation under the name of the Corporation of Mid-St. Lawrence Pilots, but not all river pilots joined the Corporation although they were all parties to the partnership contract (Part I, p. 88). Both Corporations joined the Federation of the St. Lawrence River Pilots when it was incorporated in 1959 (Ex. 751) (Part I, p. 94). On Dec. 27, 1968, the partnership contract expired and was not renewed. Hence, the Pilots' Association, the United Montreal Pilots, was automatically dissolved. As of June 25, 1969, there were only two river pilots formerly members of the defunct Association who had refused to become members of the Corporation (Ex. 1539(c)).

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Chapter B

BRIEFS

As already noted (pp. 79-80), thirteen briefs dealt with pilotage on the St. Lawrence River generally.

Only four of these briefs, one submitted by the Federation of the St. Lawrence River Pilots on behalf of the Corporation of Mid-St. Lawrence Pilots and the Corporation of the Montreal Harbour Pilots, the others, by the Shipping Federation of Canada, the Canadian Merchant Service Guild and Clarke Steamship Co. Ltd., contained specific recommendations concerning pilotage in the District of Montreal. These recommendations are as follows (the cross references indicate where the subject-matter of each recommendation is dealt with in the Report):

(1) FEDERATION OF ST. LAWRENCE RIVER PILOTS
(B. 28, Ex. 671)

Corporation of Mid-St. Lawrence Pilots

- (a) That the present limits of the District of Montreal remain as they are (Part IV, Recs. 1 and 2).
- (b) That no other exemptions from compulsory payment of pilotage dues be granted (Part IV, Rec. 5; Part I, Gen. Recs. 22 and 23, pp. 532 and 539).
- (c) That the present limits of the tariff on tonnage be removed (Part IV, pp. 780-1).

Corporation of the Montreal Harbour Pilots

- (a) That the present limits of the District of Montreal remain as they are (Part IV, Recs. 1 and 2).
- (b) That the principle of the gradation of movage dues of ships according to tonnage be applied above the present limits of 5,000 tons by the addition of dues for each additional thousand tons (Part IV, pp. 780-1).

Study of Montreal Pilotage District

- (c) That the transportation allowances given to the other pilots in the District be given equally to the pilots of the port of Montreal (Part IV, pp. 785-6).
- (d) That, if the gates of the St. Lambert lock are not open, the pilots of the port of Montreal be permitted to leave their ships as soon as they reach the approach wall (Part IV, pp. 755 and ff.).

(2) SHIPPING FEDERATION OF CANADA
(B. 27, Ex. 726)

That the division of the Montreal Pilotage District at Three Rivers be abolished, the eastern limits of the Montreal Harbour Pilotage District be established at Sorel and Sorel become the pilotage station where the changeover would be made from the harbour pilot to the river pilot and vice versa (Part IV, Rec. 1).

(3) CANADIAN MERCHANT SERVICE GUILD
(B. 53, Ex. 1382)

- (a) "The National Pilots' Committee is strongly opposed to the recommendation made by the Management of the Port of Montreal to the effect that pilotage within the Harbour of Montreal should fall under its jurisdiction and control." (Part IV, Rec. 8).
- (b) "All the improvements which the management of the Port of Montreal foresees as a result of its taking over pilotage within the limits of the port can be more easily obtained through appropriate amendments to the port regulations adopted after consultation with pilots and the present pilotage authority, and by a larger measure of collaboration and more frequent consultations with pilots on all matters having to do with the handling of water traffic and movement of ships within the limits of the port." (Part IV, Rec. 8).

(4) CLARKE STEAMSHIP COMPANY LIMITED
(B. 31, Ex. 1345)

In the harbour of Montreal, compulsory harbour pilotage should not be put into effect. The present arrangement is satisfactory (Part IV, Rec. 4; Part I, Recs. 22 and 23, pp. 532 and 539).

EVIDENCE

PREAMBLE

The same problem of semantics arises in the District of Montreal as in the District of Quebec and mostly for the same reason. Hence, the definitions devised in Section One, pp. 113 and ff., apply to the service organization of the Montreal river pilots and harbour pilots (except for the few small differences indicated later) together with the statistical tables which correspond to those compiled for the District of Quebec containing the basic information which, unless the contrary is indicated, will be used throughout Section Three.

Trips and Turns

The *river pilots* use the terms *trip* and *turn* with the same meaning as the District of Quebec pilots except for the following differences:

- (a) Trip (vessel) means one ship voyage within the District; hence, both a full transit between Quebec and Montreal and a trip from Montreal to Sorel count equally as one trip in the "trip (vessel)" statistics.
- (b) Trip (assignment) means each time a pilot was assigned to a trip, irrespective of its length. Hence, prior to 1950, one trip (vessel) always corresponded to one trip (assignment) for statistical purposes, pilots being assigned for the full transit and the despatching of a second pilot when winter conditions prevailed not being officially recognized. From 1950 to July 1957, a full transit meant one or two trip assignments, with a changeover of pilots at Trois-Rivières in case of a ship doing less than eight knots. For instance, in 1955, in 6114 trips there was no change of pilots, and in 2821 trips there was a change, making a total of 11,756 trips (assignment). Since July 1957, one full transit has counted for two trips (assignment) because there is a changeover of pilots at Trois-Rivières in all cases. Since 1961, when the joint despatching of two pilots in winter was officially recognized, one full winter transit which counts for one trip in "trip (vessel)" statistics has

counted for four trips (assignment). This explains why the aggregate number of trips (assignment) nearly doubles the trip (vessel) figures; it also explains why in the Montreal District the number of trips (assignment) is also almost double the corresponding figures for the Quebec District, although these should normally be approximately the same since most trips are transits through both Districts.

- (c) The Montreal tariff does not employ the term *trip* as a tariff unit, although the District is divided for tariff purposes into four zones at Portneuf, Trois-Rivières and Sorel. Instead of a single rate for a complete transit with the rate for each zone being a quarter of the total, four different rates are set varying according to the number of zones involved.

On account of discrepancies in the statistics contained in various official documents (although they were reputed to convey the same information), the Commission adopted the statistics listed in the following table concerning trips and turns according to their usual connotation.

The trip figures in this table for the years 1961 to 1969 inclusive were obtained from D.O.T. machine data statistics. These, however, are not available for the years prior to 1961 and the trip (assignment) figures quoted

MONTREAL RIVER PILOTS—NUMBER OF TRIPS PERFORMED AND SHARING TURNS

Year	Trips*						Sharing Turns	
	Vessels			Assignments			Admin. Free Turns†	Total‡
	With Pilots	Without a Pilot	Total	2nd Pilot	Change of Pilots at Trois-Rivières	Total		
1955.....				nil	2,821	11,756	nil	11,756
1956.....				nil	n/av.	13,212	nil	13,205
1957.....				nil	5,931	16,548	nil	16,537
1958.....				nil	6,715	16,999	nil	16,950
1959.....				nil	7,383	18,436	nil	18,467
1960.....				nil	7,066	17,527	132	17,714
1961.....	10,532	3	10,535	485	n/av.	18,312	103	18,288
1962.....	n/av.	nil	10,171	—	n/av.	17,862	148	17,749
1963.....	10,068	3	10,071	684	n/av.	17,838	191.5	17,947
1964.....	10,388	5	10,393	696	n/av.	18,678	115	18,740
1965.....	n/av.	n/av.	n/av.	n/av.	n/av.	n/av.	n/av.	19,270
1966.....	11,739	nil	11,739	887	n/av.	20,798	n/av.	20,726
1967.....	10,226	20	10,246	657	n/av.	18,690	n/av.	19,922
1968.....	9,880	nil	9,880	705	n/av.	18,069	317	22,284
1969.....	8,987	61	9,048	1,820	n/av.	17,497	353	16,887

SOURCES: *Exs. 1539(aa) and 534(b); †Ex. 782; ‡Ex. 785.

have been taken from the Pilotage Authority's annual reports. They do not convey the same accuracy but are sufficient to show the trend. As indicated earlier, there was a change of pilots at Trois-Rivières in certain cases from 1950 to 1957 when the change applied to all cases when ships passed Trois-Rivières. No record was kept of the number of times non-exempt ships dispensed with a pilot, since this was a rare occurrence, and for financial purposes, on account of the practice followed, there was no need to segregate such earnings. In Montreal they are paid into the pilots' pool and not into the Pension Fund as in the Quebec District. The sharing turns figures have been taken from the Pilots' Corporation pooling reports. Free turns to Directors began only in 1960; this was a new feature which came after the creation of the Corporation. The free turns figures for the years 1965, 1966 and 1967 could not be obtained from readily available records.

The system adopted by the *harbour pilots* is basically the same but much less involved.

- (a) The term *trip* does not exist; despatching and pooling are based on movages.
- (b) Two pilots are never despatched for a single movage and a movage counts for one assignment irrespective of its length. Hence, a performed movage always counts for one despatching turn.
- (c) Cancellation counts for a despatching turn. Hence, assignment turns comprise movages performed and cancellations.
- (d) Neither *movage* nor *turn* is used as a tariff unit. Movage rates vary according to the size of the ship, except for a movage at St. Lambert lock for which a flat rate is provided.
- (e) The sharing rules of the harbour pilots do not provide for indemnity turns.
- (f) The difference between movages (vessel) and movages (assignment) is that the former include movages effected without a pilot for which the payment of dues is compulsory (referred to in the Harbour Pilots Corporation report as "free moves").

The following table on traffic and workload is the composite result of statistical information contained in the Pilotage Authority's annual reports (Ex. 534(b)) and the Harbour Pilots' Corporation financial reports (Ex. 802). It is considered that, for the purpose of this Report, the information contained is sufficiently informative. From records available, it was not possible to provide more accurate information. The method of reporting both for the Pilotage Authority and the Pilots' Corporation has changed over the years. For instance, in 1961, the only statistical information contained in the Pilotage Authority's annual reports are the number of movages performed and the aggregate revenue yielded from the various rate items. Hence, the number of cancellations has to be estimated. The number of free

moves was mostly taken from the Pilots' Corporation financial reports, as were the free turns and total sharing turns figures. The method of establishing sharing turns has also changed over the years.

Year	DESPATCHING				POOLING		
	Movages (vessel)	Free Turns	Movages (assignment)	Cancel-lations	Des-patching Turns	Free Turns	Total Sharing Turns
1958.....	5,358	86	5,272	83	5,355	nil	5,355
1959.....	7,937	66*	7,871	207	8,078	nil	7,924
1960.....	—	n/av.	6,657	187	6,844	57	6,824
1961.....	6,119	359	5,760	175*	5,935	29	6,335.2
1962.....	5,932	288	5,644	175*	5,819	80	5,844.8
1963.....	6,050	210	5,840	175*	6,015	141	5,844
1964.....	7,392	236	7,156	175*	7,331	104	7,258
1965.....	8,487	165	8,322	175*	8,497	68	7,608
1966.....	8,374	157	8,217	175*	8,392	49	8,110
1967.....	7,212	136	7,076	175*	7,251	47	7,118
1968.....	5,747	90	5,657	160*	5,817	98	6,421

* Approximate figure appraised from aggregate earnings and other information.

Number of Pilots

The various definitions and comments contained on pp. 116 and ff. are also valid for both the river and the harbour pilots.

The following table shows the basic statistical information regarding the number of river pilots.

NUMBER OF MONTREAL RIVER PILOTS

Year	Establishment as of December 31	Total Pilots Holding Licence during Any Part of Year	Year Pilots	D.O.T. Effective Pilots*
1955.....	97	97	95.5	92.8
1956.....	106	109	105.4	—
1957.....	114	114	111.9	111.3
1958.....	114	113	111.8	—
1959.....	118	120	114.5	—
1960.....	121	122	117.9	—
1961.....	121	120	118.5	117.3
1962.....	124	125	123.2	115.24
1963.....	127	130	124.7	117.1
1964.....	127	126	123.3	116.97
1965.....	131	133	129.6	124.5
1966.....	136	136	133.7	126
1967.....	142	142	141.1	132.6
1968.....	144	147	141.8	136.8

* Ex. 534(b) (annual reports).

The following table contains the same information with regard to the Montreal harbour pilots.

NUMBER OF MONTREAL HARBOUR PILOTS

Year	Establishment as of December 31	Total Pilots Holding Licence during Any Part of Year	Year Pilots	D.O.T. Effective Pilots*
1957.....	12	12	3.8	—
1958.....	13	13	12.7	12.6
1959.....	16	16	13.9	13.2
1960.....	16	16	16.0	—
1961.....	16	16	16.0	16
1962.....	16	16	16.0	16
1963.....	16	16	16.0	—
1964.....	16	16	16.0	15.89
1965.....	18	18	16.9	16.71
1966.....	20	20	18.9	18.50
1967.....	20	20	20.0	19.40
1968.....	20	20	20.0	19.80
1969.....	19	19	19.0	

* Ex. 534(b) (annual reports).

1. GENERAL DESCRIPTION

(1) DISTRICT LIMITS

Three questions of fact arise from the District limits as defined in the legislation (pp. 564-567):

- (a) the extent of the jurisdiction of the Montreal Pilotage Authority over the harbour of Quebec, i.e., the joint territory with the District of Quebec situated at the eastern end of the Montreal District;
- (b) the *de facto* and legal limits of the territorial competency of the three groups of pilots operating in the District referred to below as "pilot limits";
- (c) the difficulties arising from the obsolete definition of the western limit.

The first question is covered in the Quebec District (vide pp. 9-10); the other two are dealt with hereunder.

- (a) *Pilot Limits*. The *de facto* and legal territorial competency of the Montreal District pilots, aside from the question of grades, does not coincide with the District

limits, as has been the case up to now in all Pilotage Districts except the merger-type District of Prince Edward Island:

- (i) While the river pilots' licences are not limited as to territorial competency by legislation (except for movages in the harbour of Montreal), a *de facto* limit divides the District into two sectors at Trois-Rivières (referred to in this Report as lower sector and upper sector), each sector of the River being served by a distinct group of river pilots.
- (ii) Limits established by District regulations establish the exclusive territorial competency of the Montreal harbour pilots over movages in the waters of the Montreal harbour so defined.

While the joint competency of the upper river pilots and the harbour pilots (although in a different capacity) in the harbour of Montreal precludes the formation of two Districts, the *de facto* division of the District at Trois-Rivières should have called for the division of the present District and the creation of two new Pilotage Districts, one for each sector. The compromise reached in 1957 was part way between the pilots' demands and the owners' opposition and counter demands influenced by legal difficulties concerning new statutory limits.

These changes were mainly caused by:

- (i) the length of pilotage trips and the difficulties of navigation;
- (ii) the shortage of pilots volunteering for movages in Montreal harbour;
- (iii) the lack of equity of the pooling rules governing the distribution of earnings from movages;
- (iv) the shortage of qualified apprentices to meet immediate and foreseeable requirements for new pilots.

Questions (ii) and (iii) could have been corrected easily by re-organizing the the despatching system and amending the pilots' pooling rules, but questions (i) and (iv) posed basic problems which affected the safety of navigation and the immediate and future efficiency of the service.

An analysis of the pilots' workload made by the Department of Transport showed that in 1948 half the trip assignments were full transits (140 nautical miles) with an average duration of 14 hours 20 minutes but often lasting as long as 20 or 24 hours because of the limited speed of most ships at that time. The same study revealed that the average duration of trip assignments of the pilot who first registered a complaint was 18½ hours. The reason for this discrepancy with the average duration of the trip assignments of all pilots was the inequitable sharing of the workload because of the existence of the special pilot system. In addition to the pecuniary and other advantages the special pilots had over the *tour de rôle* pilots, they had the majority of the shorter trips since the vessels belonging to regular lines were the fastest.

In the report on his survey, Captain F. S. Slocombe stressed how exacting it is to navigate a ship through the confined waters of the Montreal District which contains no stretches of open water where a pilot may rest and leave responsibility to a ship's officer (p. 609), a condition which sets the Montreal District apart from any other Pilotage District, the Quebec District included. The narrowness of its 100 miles of dredged channel, the numerous bends and the ensuing cross-currents present difficulties which are further compounded by the density and variety of the traffic. Hence, the pilots are obliged to take numerous, quick decisions which necessitate constant attention and alertness. In the interest of the safety of navigation such exacting duties require full physical fitness which can not be maintained over a prolonged period. The problem becomes more acute as traffic increases and larger, faster ships appear equipped with radar which enables them to proceed despite poor visibility.

Prior to 1957, the organization for handling movages in Montreal harbour was the same as still prevails in Quebec, i.e., a group of volunteer pilots effected movages in addition to, and in between, their regular trip assignments following a special tour de rôle. This system proved unsatisfactory because too few pilots volunteered for movages. There were a number of reasons, including the limited pay, but the principal one was the fact that, contrary to the situation that prevails in Quebec harbour, a great number of the Montreal pilots do not reside near Montreal harbour. Some have their residence in the suburbs or in the country, and travel back and forth to handle movages is unprofitable and time-consuming. A substantial number of pilots also lived at Trois-Rivières or Quebec and were, therefore, unable to volunteer except when they happened to be in Montreal after completing a trip assignment. Under these circumstances, the voluntary system could not meet the growing demand for movages.

In addition to unattractive movage rates and considerable travelling expenses, the pilots' pooling rules may also have contributed to the lack of financial incentive for the pilots to handle movages. When the pooling agreement was drafted, the rate for a movage was \$5. This was subsequently replaced by a series of flat rates for the various types of movage which, by the 1952 amendment, ranged between \$13 and \$32. According to the pooling rules then in force, earnings from movages formed part of the pool and a flat sum of \$10 per movage was paid to the pilot concerned before the pool money was shared (this rule was changed in 1959 and the movage dues no longer form part of the pool but are paid at the same time as the pool is distributed to the pilots who earned them, less the compulsory Pension Fund contribution). This created an unfair advantage for the pilots who performed no movage assignments in that the aggregate remuneration paid from the pool for movages was less than the total movage earnings credited to the pool.

It would also appear that over the years the individual pilot's workload had been allowed to increase abnormally as a result of failure to appoint additional pilots when the pilotage demand increased. The situation seems to have been such in 1957 that only a large number of new pilots could have solved the problem. Moreover, pilotage assignments both for trips and movages in Montreal harbour were expected to increase substantially following the opening of the Seaway and there were insufficient qualified apprentices to become river pilots. This problem was solved by creating a group of harbour pilots whose sole function was movages within the harbour. Since these limited pilotage duties did not require extensive training, recruiting could be effected directly from experienced, qualified mariners.

The question of the duration of trips was raised by a group of pilots at the annual pilots' meeting in January 1948. The pilot's study committee which was created at that time to consider the matter recommended that transit trips be performed by two pilots, the changeover to take place at Trois-Rivières where a pilot station would be established. In June 1949, representations to that effect were officially made to the Pilotage Authority by the Pilots' Committee. The implementation of the proposal would not affect shipping adversely since only the pilot boat charge would be additional.

The proposal was favourably received by the Pilotage Authority and was immediately implemented for all vessels whose maximum speed did not exceed eight knots. A wharf in the harbour of Trois-Rivières was placed at the disposal of any ships which refused to take advantage of the pilot vessel service to enable them to change pilots.

The new procedure was opposed by the Shipping Federation and the Dominion Marine Association. It was also opposed by the special pilots on account of the financial loss they suffered. The Shipping Federation pressed for rules to determine which vessels would be affected by the new system. The result was a decision that the pilot assigned to an ocean-going vessel should determine whether he wished to be relieved at Trois-Rivières if the transit up to that point had lasted more than seven hours. This ruling proved to be a source of discontent and friction among the pilots. The seven-hour arbitrary rule gave rise to abuses: it was claimed that ships were deliberately delayed and some pilots insisted on being relieved, whether or not that part of the trip had taken seven hours.

The situation was reviewed by the pilots at their annual meeting in January 1957. Following the decisions taken at that meeting, the Pilots' Committee in a brief presented to the Pilotage Authority on March 8, 1957, requested the division of the District into three separate Districts: Quebec to Trois-Rivières, Trois-Rivières to Montréal harbour (Marien Street wharf) and the harbour of Montreal. At the same time, they urged the abolition of the special pilot system and requested an increase in pilotage rates which they felt warranted consideration in view of the proposed division of the District.

The pilots advanced the following arguments in favour of creating a separate District for the harbour of Montreal and, hence, separate groups of pilots to attend to all ship movements (trips and movages) within the harbour:

- (i) The harbour of Montreal was probably the only large harbour in the world where pilotage was not handled by a special group of pilots.
- (ii) The harbour contains a large number of berthing facilities extending over a wide area where shiphandling is specialized and differs from river pilotage.
- (iii) The number of movages alone would be sufficient to justify the creation of a separate group of harbour pilots.
- (iv) The ever increasing density of harbour traffic requires that pilots moving ships in the harbour have greater experience of its conditions and peculiarities, both for the safety of navigation and the efficiency of the service.
- (v) The increase in harbour traffic expected after the opening of the Seaway would necessitate a group of harbour pilots.

The river pilots volunteered to train the persons selected to become harbour pilots and stated that they would continue to provide harbour services until the harbour pilots' training was completed.

The Shipping Federation reacted vigorously to the pilots' recommendation. It opposed the proposed partition of the District noting that the creation of separate Districts for the harbour of Montreal would mean a changeover of pilots every time a ship entered or left, which would inevitably result in an increase in the cost of pilotage. For the same reason, the Shipping Federation insisted that large passenger vessels and large tankers should not be required to change pilots at Trois-Rivières because they considered it unreasonable to oblige these fast vessels to slow down simply to change pilots during a trip of relatively short duration.

With regard to the harbour pilots, the Shipping Federation made a counter-proposal. While arguing that the problem was not pressing, they did not oppose the eventual formation of a group of harbour pilots provided they were recruited from District river pilots and their competency was limited to movages within the harbour; the river pilots would continue to berth and unberth at the completion or beginning of a river trip and the harbour of Montreal would become joint territory for both harbour and river pilots but in a different capacity.

In the course of the following weeks, many meetings were held between the representatives of the pilots, shipping and the Pilotage Authority until agreement was reached on the present organization:

- (i) There would be no formal division of the District. The pilots abandoned that part of their demand because, on one hand, there

was an acceptable alternative and, on the other, the partition of the District would have required an amendment to the Canada Shipping Act.

- (ii) There would be, for despatching purposes, a *de facto* division of the District at Trois-Rivières, the pilotage service in each sector being provided by a separate group of river pilots. The pilots had been adamant on this point and had threatened to strike if it were not granted. Under the circumstances, the Shipping Federation agreed that this part of the proposal should be given effect to on a trial basis. Experience proved conclusive and since then the *de facto* division has become a permanent feature of the organization.
- (iii) A group of harbour pilots whose competency was limited to movages only would be created. A joint committee was to be set up to select candidates and direct their training.

On July 23, 1957 (P.C. 1957-987) the District By-law was amended to allow for the formation of the group of harbour pilots. However, the *de facto* division of the District at Trois-Rivières was not reflected in the legislation but from the point of view of the Authority was dealt with merely as an administrative matter, i.e., as an aspect of despatching.

The 1957 reorganization made two profound changes in the District organization:

- (i) It resulted in the creation of a second group of pilots with their own professional organization and operating under their own rules and regulations. Although both groups (river and harbour) operate in the same District under the same Pilotage Authority, their *expertise* is different and each group has its own function, thus precluding pilots from one group being transferred to the other.
- (ii) Nevertheless, the division of the river pilots into two groups for despatching purposes is reflected only in the despatching rules. Since the apprentices must continue to train for the whole of the District and the river pilots' licences are not limited to one sector, transfers would be theoretically possible. The river pilots of both sectors have continued to form part of the same professional organizations as before and their earnings form part of the same pool; equal opportunities to earn a maximum share are provided by adjusting the strength of each group and by computing the maximum share separately for each sector.

In 1959, through Bill S-3, the Department of Transport tried to solve the problem of changing the District limits of Quebec and Montreal by amending generally the pertinent provisions so that the limits could be altered by regulations emanating from the Governor in Council as is the

case for other Districts. The pilots opposed the change because of the guarantee afforded by statutory limits, i.e., there is no possibility that their District can be abrogated or its limits altered summarily, a stand which they reiterated before this Commission. For the Commission's view on the matter, vide p. 9. Part I, p. 55 also refers.

During this Commission's hearings, the Shipping Federation recommended a reorganization of the pilotage service: the competency of the harbour pilots to be extended to the whole of the harbour of Montreal, i.e., as far as the harbour of Sorel; the changeover point to be moved from Trois-Rivières to Sorel where the river pilot would be relieved by a harbour pilot in all cases; the trip between Quebec and Sorel to be a single assignment. As a result, the river pilots would no longer be divided into two groups. This proposal is studied on pp. 664-667.

(b) *Problems Resulting from the Obsolete Definition of the Western Limit*

The harbour of Montreal could have been made joint territory for both Districts of Montreal and Cornwall, the Cornwall pilots' jurisdiction being limited to terminating or commencing a Seaway trip in the harbour (a situation similar to the one that exists in Quebec).

An alternative solution existed, however, and had to be adopted on account of its advantages, despite the fact that it meant adding a moving charge for vessels whose destination or point of departure is a berth in Montreal harbour. Changing pilots while under way is always risky, especially in a narrow channel with heavy traffic. The ideal is to change when not under way, as is the case for all ships proceeding through the Seaway when they are in St. Lambert lock or secured to an approach wall.

The Pilotage Authority for the District of Montreal has acted as if the western limit of its District was at St. Lambert lock and as if the lock and the eastern approach wall were joint territory with the District of Cornwall for the changeover of pilots. However, because the western limit of the Montreal District on the Seaway has not been defined in the Act or by an order emanating from the Governor in Council, the Pilotage Authority has lacked authority to settle the problems that have arisen, except by compromises. The inadequacy of the By-law definition of the harbour of Montreal for pilotage purposes (subsec. 2(h)) has further complicated the problem.

Two types of problem have arisen:

- (i) the power of the Montreal Pilotage Authority to fix rates for services rendered in the Seaway approach and at St. Lambert lock;
- (ii) the place and procedure for the changeover of pilots in the lock area.

Problem (i). The clearly indicated place to effect the changeover of pilots for ships using the Seaway is at St. Lambert lock, and the Montreal Pilotage Authority used to require its pilots to pilot ships up to that point. It was, however, incapable of enforcing its decision on legal grounds and this led to a series of compromise solutions. In 1959, it was obliged to yield to the river pilots' demand for a \$20 additional charge plus \$3 for land transportation for trips beginning or ending at the lock (Schedule, sec. 3). Before imposing the new charge, the Pilotage Authority had consulted the shipping interests involved. The Dominion Marine Association, which represents inland vessels which are exempted from the compulsory payment of dues in the Cornwall District and, therefore, up to the entrance to the Seaway, contested the power of the Pilotage Authority to fix such a rate. The contention was solved by a compromise at the expense of the compulsory payment system by making the \$20 rate applicable only to vessels actually piloted by a river pilot through that sector of the Seaway, i.e., only in cases where such service was actually rendered by a river pilot. For downbound ships in transit the river pilot boards at St. Lambert lock but does not begin piloting before the ship has passed the entrance to the Seaway, if the Master of the ship so decides. In such a case, the \$20 additional fee is not payable but the \$3 transportation indemnity remains. This restriction was not extended to the harbour pilots since the financial problem did not arise.

This compromise with the compulsory payment system is illegal because there is no provision in the Act enabling even the Governor in Council (Part I, p. 60) to make the compulsory payment system applicable only to part or parts of a District. The Pilotage Authority does not have the power to vary relative statutory exemptions as to territory but solely in respect of the category of ships affected and of the extent of the exemption as to the amount to be paid (Part I, pp. 221 and ff.).

Problem (ii). The absence of provisions in the By-law concerning a joint area for the changeover of pilots and delimiting the procedure for changeovers and the respective competency in that area of the Cornwall and Montreal pilots resulted in a series of conflicts between the pilots of both Districts for which illegal solutions were arrived at through compromise.

The conflict originated when the Montreal Pilotage Authority (who also happened to be the Cornwall Pilotage Authority) yielded to the demand of the Cornwall pilots and decided that a harbour pilot's services would terminate only when the upbound ship had entered the lock. Up to then, i.e., between 1959 and the end of the navigation season of 1961, a logical and realistic procedure had been followed by all pilots: a pilotage assignment of both a Montreal river and harbour pilot terminated when the ship first tied up, i.e., inside the lock if the ship had not had to tie up at the wait wall, or at the tie-up wall if it had not been possible to enter the lock on arrival, and the Cornwall pilot took over wherever the Montreal pilot disembarked.

The decision of the Montreal Pilotage Authority which created two different procedures depending whether the pilot in charge was a river pilot or a harbour pilot was not accepted by the harbour pilots and a conflict lasting two years ensued. The Pilotage Authority was unable to impose its decision because it was not founded on legal grounds, since it could not establish that St. Lambert lock was within its territorial jurisdiction. It was settled in 1964 at the expense of shipping. The harbour pilots finally accepted the Pilotage Authority's decision in return for additional remuneration for the extra service (\$20 for the first hour and \$5 per additional hour) when a harbour pilot at the end of a move had to bring a ship into the lock from a moored position at the wait wall. This solution gave satisfaction to the pilots but, as was to be expected, was not favourably received by the Shipping Federation. However, they did not resort to court action—the only effective remedy left at their disposal. This problem will be studied further pp. 755 and ff.

(2) PHYSICAL FEATURES

The Pilotage District of Montreal comprises that part of the River St. Lawrence from the upstream end of the harbour of Montreal, including the approach to the Seaway as far as St. Lambert lock, and ending with the harbour of Quebec (which also forms part of the District of Quebec). The distance is 140 nautical miles. This stretch of the River, which is shallow throughout most of its length, is negotiated by a tortuous channel, 100 miles of which is dredged, relatively narrow and 35 feet deep at low water. This becomes the maximum depth above Trois-Rivières where there is no tide.

Although according to its statutory description the District comprises the navigable waters of the rivers flowing into that section of the St. Lawrence, no pilotage is performed in any of them except that part of the Richelieu River which forms the harbour of Sorel. These rivers, including the Richelieu Canal, can accommodate only very small vessels which do not employ pilots.

The main navigational hazards are currents and cross-currents, confined waters, the nature of the dredged channel, frequent periods of poor visibility, heavy traffic and severe ice conditions in winter.

For the purpose of this study, the channel may be divided into three parts: the harbour of Montreal proper and the River from Marien Street wharf to Trois-Rivières, which form the upper sector of the District, and the River from Trois-Rivières to Quebec, which forms the lower sector.

(a) *Montreal Harbour Proper*

This section of the channel, 8.6 nautical miles in length, is dredged throughout. It also comprises, in fact if not in law, the approach to the Seaway up to St. Lambert lock (three miles two cables in length), both of which form part of the Cornwall District as well.

This approach offers no particular navigational difficulties beyond those inherent in canals and locks. The approach is a straight, dredged channel where minimum manoeuvrable speed may be maintained because of the absence of current. Except when meeting another vessel in the channel, the only place where special care should be taken is at the entrance to Montreal harbour where a swift downstream current and harbour traffic must be contended with.

This sector of the harbour of Montreal comprises a continuous line of wharves of various types and shapes, all on the city side of the harbour along a rather narrow channel (one cable wide under the Jacques-Cartier Bridge) where, in addition to traffic, navigation is hampered by the swift St. Mary's Current (vide p. 581) and the strong cross-currents it creates.

St. Mary's Current flows into the harbour between the city and Ile Ste-Hélène. The upper part of the harbour is protected by a jetty as far as Victoria Pier. It provides an area 11 cables long where no current is encountered except the eddy off the end of the jetty. The entrance to the former Lachine Canal was in this area. At the top are Bickerdike and Windmill Point Basins and on the city side a number of finger piers, most of which provide a maximum depth of 35 feet alongside. Tugs are used for berthing and unberthing in this restricted area.

The main force of St. Mary's Current is between the Clock Tower on Victoria Pier and a point about three cables downstream from Jacques-Cartier Bridge where the channel widens. Its velocity in this area varies between six and eight knots. It does not follow the channel but creates alternating cross-currents at acute angles accompanied by numerous eddies.

Except for the L-shaped Victoria Pier which forms Market Basin, all other wharves in this area face the stream. Most provide 30 feet of water alongside.

Downbound ships have serious problems navigating in that area. They must reach 10 knots over the ground in order to maintain steerage-way and also have to counteract the cross-currents. Upbound traffic and Seaway cross-traffic past the Jacques-Cartier Bridge are also met. At times, the pilots have to move downstream stern first maintaining steerage-way by stemming the current just below its speed before they can turn where the channel widens just above the Seaway entrance.

Navigation is not difficult for ships proceeding upstream because they are stemming the current. The main problems are cross-currents and downbound vessels which, as indicated above, are less manoeuvrable and which for this reason are to be given precedence (sec. 10, St. Lawrence River Navigation Safety Regulations). Since the current is much stronger on the city side, it had been the custom for slower vessels bound for the upper end

of the harbour to proceed where the current is weakest, i.e., on the port side of the channel, provided the proper signals are exchanged. Failure to anticipate these difficulties and give the proper signals caused the collision between S.S. *Manchester Merchant* and S.S. *Lionel* in Dec. 1963. Following this casualty a directive was issued to the pilots by the Harbour Authority that "No vessel shall pass or meet another vessel in St. Mary's Current, except in an emergency." (Ex. 1539(x) Annex 1).

Past Ile Ronde, about three cables downstream from the Jacques-Cartier Bridge, the River widens and the current slackens gradually to about three knots off the entrance to the Seaway and two knots further downstream.

Navigation in that sector presents few difficulties except for traffic crossing to or from various berths on the city side and the entrance to the Seaway on the other. The danger from cross traffic is lessened by the traffic control exercised by the Port Authority up to April 1968 and by Marine Traffic Control since then, and by the fact that vessels have more manoeuvring space because the channel is much wider there. The wharves in this sector are front wharves except for finger piers facing the entrance to the Seaway. A number of berths provide maximum depth alongside.

Between Longue-Pointe and Marien Street wharf, the channel is wide and offers few navigational difficulties. In the first part of this section, the channel forms a curve off which the anchorage of Longue-Pointe, the regular anchorage area both for the harbour and the Seaway, is situated on the city side. This anchorage is insufficient in peak traffic periods and vessels have to use the second anchorage downstream off Lanoraie.

Further downstream are the wharves belonging to various oil companies, all with maximum depth alongside. In all that sector, the channel has a minimum width of 1,000 feet.

(b) *Marien Street Wharf—Trois-Rivières*

The 60-mile stretch from Marien Street wharf to the harbour of Trois-Rivières consists of a dredged channel except for nine miles between Lanoraie and the downstream limit of the harbour of Sorel, and five miles at Pointe-des-Ormes (Trois-Rivières harbour). There are no particular difficulties except those pertaining to a narrow dredged channel winding through a series of islands and shoals. The whole area is well served by a series of leading lights and other aids to navigation. Although the River is wide enough, the free flow of the downstream current is obstructed by the many islands which cause the current to vary in intensity between $1\frac{1}{2}$ to 3 knots and create numerous cross-currents. In winter, they cause ice jams.

From Lanoraie to the city of Sorel the channel is natural and deep, three cables wide at its narrowest. The area off Lanoraie is used as an alternative anchorage, thus restricting the channel to some extent.

In 1969, an emergency anchorage 4 to 9 cables in length and 2 cables in width with a depth of 35 feet was completed south of the ship channel off the Contrecoeur Iron Ore wharf.

Cross-traffic from various wharves *en route* must be watched, especially when passing in front of Sorel.

As a result of widening the channel from 550 feet to 800 feet, many leading lights no longer indicate the centre of the channel. This should cause no difficulty to anyone familiar with the area and the information is clearly indicated on the charts.

The changeover of pilots is effected at Pointe-des-Ormes in the natural enlargement of the deep water of the St. Lawrence River between Lake St. Peter and Trois-Rivières.

(c) *Trois Rivières—Quebec Sector*

The first difficulties encountered in this 73-mile sector are the cross-traffic in Trois-Rivières harbour and the cross-currents in the lower part of the harbour created by the outflow of the St. Maurice River.

The first 30 miles from Trois-Rivières to Grondines is a continuous, winding, dredged channel; the lower half, except for four comparatively short stretches (the largest being the 4-mile Cap Santé Traverse), is a natural channel wider than the dredged channel. In this area there are a number of suitable anchorages off the main channel.

The tide is felt throughout this sector. Its range is about one foot at Trois-Rivières increasing gradually to an average of 15 feet at Quebec. The 35-foot depth in the dredged sections is, therefore, a guaranteed minimum at low tide. With the conjunction of the tidal current, the current velocity is increased and the spring tide ebb current may reach six knots at Cap-à-la-Roche near the Richelieu Rapids and under the Quebec Bridge. Both flood and ebb tides are accompanied by tidal currents and cross-currents which vary in direction and intensity.

Fog is a serious hazard and is more prevalent in certain areas such as the Champlain Curve.

A special hazard all along the channel between Montreal and Quebec is the presence of numerous dredges, barges and tugs engaged in extensive capital works enlarging and improving the dredged sections of the channel and maintenance dredging to retain the guaranteed minimum of 35 feet. The exact locations of the various dredging operations are brought to the attention of shipping through regular radio broadcasts of Notices to Shipping. In these areas there is a constant traffic of tugs and barges criss-crossing the channel to dispose of the dredged material. In the course of the operations, floating aids to navigation are displaced; when this occurs shipping is supposed to be notified by Notices to Shipping. This is not, however, always done and instances of this nature have often been reported to the authority

responsible for the ship channel. Dredging operations at night also cause confusion because the various lights used hide aids to navigation or may be mistaken for them.

(3) PRINCIPAL HARBOURS

From the pilotage point of view, the principal harbours of the District, all of which are Ports of Entry, are, for the upper sector of the District: Montreal, Sorel and Trois-Rivières; for the lower sector: Trois-Rivières and Quebec. The upper sector, except for the area of Lake St. Peter, comprises the waters of the three harbours. Trois-Rivières is common to both sectors. The harbour of Quebec forms part of the Montreal District only in a limited way, i.e., for the purpose of commencing or terminating trips to or from upriver.

(a) *Montreal Harbour*

The harbour of Montreal is under the jurisdiction of the National Harbours Board and its limits are contained in the National Harbours Board Act as amended by regulations made by the Governor in Council pursuant to subsec. 6(2) of the Act. The statutory definition contained in the Schedule of the Act has been amended only once so far since the Act was passed. In 1960, P.C. 1960-1486 (Ex. 451) extended the harbour 23 nautical miles downstream from the eastern end of the Island of Montreal to the upstream boundary of the harbour of Sorel—a total length of 36 miles. The opening of the Seaway has not been reflected by an amendment to the upstream limit of the harbour, although P.C. 1955-696 dated May 12, 1955; and P.C. 1965-897 dated May 13, 1965, transferred the administration, control and management of the beach, deep water and filled land lot where the approach to the Seaway is situated from the National Harbours Board to the St. Lawrence Seaway Authority. Therefore, whether or not the approach to the Seaway still forms part of the harbour of Montreal, it is not under the direction and control of the Harbour Authority.

The statutory boundary of the harbour of Montreal does not coincide with the pilotage By-law definition of the harbour. Upstream, it extends to a line 3,760 feet upstream from, and parallel to, Victoria Bridge.

The berthing facilities are situated on the city side of the harbour and comprise 90 open berths extending over 12 miles of wharves, most of which are situated upstream from the city of Longue-Pointe. In the new section of the River annexed to the harbour of Montreal in 1960, the only wharves of importance are the Iron Ore wharf at Contrecoeur and the Quebec Hydro wharf at Tracy.

The official depth in the ship channel throughout the harbour is 35 feet at the 1897 datum. This depth varies with the amount of outflow upriver, which, in turn, is influenced by a number of factors, principally freshets.

These variations affect the maximum permissible draught of vessels. The 35-foot depth corresponds to the depth of the dredged portion of the ship channel between Quebec and Montreal. The seaway depth is 27 feet. The depth alongside the various berths varies from 25 to 35 feet.

Maintenance of the ship channel in the harbour is the responsibility of the Department of Transport but dredging alongside the wharves is handled by the National Harbours Board.

There is little silting in the harbour, the principal causes being waste from sewers in Montreal and neighbouring municipalities and dust and waste material from the loading and unloading operations of vessels and boulders displaced by ice during the runoff period.

In the spring, as soon as the harbour is clear of ice, the Department of Transport Ship Channel Authority takes soundings both in the channel and alongside the wharves to ascertain whether the depth has been reduced. The results of these soundings are brought to the attention of the Harbour Master who transmits them upon request to the pilots and agents. Furthermore, if at any time during the year a complaint of insufficient depth is received, the particular area is verified and, whenever the required depth is no longer obtained, maintenance dredging is carried out.

(i) *Harbour traffic control (Ex. 1539 (x))*

The general principle for marine navigation in Canadian waters—including harbours—is that the Master is free to navigate whenever and wherever he wishes, and is expected to comply with the International Rules of the Road, as amended for a given locality by regulations made by the Governor in Council under sec. 645 C.S.A. In fact, the St. Lawrence River Safety Regulations contain a number of modifications concerning navigation within the harbour of Montreal (vide p. 655). There may also be modifications by, or at the instance of, Harbour Authorities, provided their power to do so is clearly established by the governing statute (e.g., the New Westminster Harbour Commissioners Act (3-4 Geo. V c. 158 s. 20) and regulations made thereunder (Ex. 513), vide Part II, pp. 271 and 275-276). Section 646 C.S.A. stipulates that these local regulations are without force or effect if they conflict with the regulations made by the Governor in Council pursuant to sec. 645; otherwise, they are complementary. However, nowhere in the Canada Shipping Act is there any authority for the establishment of the management and direction of maritime traffic.

Subsecs. 13(1)(a) and (b) of the National Harbours Board Act have been interpreted as giving the Governor in Council, at the instance of the National Harbours Board, power to amend by regulation the International Rules of the Road and the Safety Regulations he made pursuant to sec. 645 C.S.A., and to authorize the establishment and operation of a system of control and direction of maritime traffic within the harbour. The two subsections read as follows:

"13. (1) The Governor in Council may make by-laws, . . . for . . . the administration, management and control of the several harbours, . . . under its jurisdiction including

- (a) the regulation and control of each and every matter in connection with vessels and aircraft navigating the harbours and their mooring, berthing, discharging or loading or anything incidental thereto;
- (b) the use of the harbours (and their facilities) by vessels and aircraft and the owners thereof, . . ."

Prior to the opening of the Seaway, the administrative activities of the Montreal Port Authority in this field were limited to the allocation of berths and anchorages. The only action with regard to harbour traffic was through the adoption of special traffic regulations which, in fact, amended the rules of the road and safety of navigation regulations enacted under sec. 645.

The main provisions of the National Harbours Board Operating Regulations (By-law A-1) of 1954 in this field concerning Montreal harbour were: sec. 31 stating that every vessel in the harbour was under the control and subject to the orders of the Board in respect of its movement and location; sec. 35 with regard to maximum speed in the various parts of the harbour; sec. 42 prohibiting the entry of any vessel into the harbour from the Lachine Canal except at the time permitted by the Board; sec. 43, which is still in effect, amending the general collision regulations in providing for special sound signals and rules of the road (downbound vessels leaving the entrance of the Lachine Canal have to give one prolonged blast in order to warn upbound vessels, and have to navigate to the right of the mid-channel before rounding Alexander Pier; vessels downbound from a point above Victoria Pier to a point below Victoria Pier have also to give a prolonged blast when opposite the Marine Tower Jetty in order to warn vessels leaving Market Basin; vessels heading out of Market Basin have to give one prolonged blast before leaving the Basin in order to warn downbound vessels); sec. 89 stipulating that no vessel carrying explosives is to enter, move within, or depart from, the harbour without a prior permit granting permission and upon such conditions as the Board sees fit to impose. A vessel could not proceed to any berth under N.H.B. jurisdiction or to an anchorage without first obtaining the Harbour Master's authorization but, otherwise, ships were free to depart when they wished and to navigate in the harbour at their convenience.

With the opening of the Seaway, greater control of navigation in the harbour became necessary, both on account of the additional hazards created by the fact that the entrance to the Seaway was situated in the middle of the harbour just below St. Mary's Current, and also by the increase in the number and size of ships using Montreal's berthing facilities. The Operating Regulations were amended in 1959: sec. 35 changed the speed limits and speed zones; sec. 42 was modified to require that prior authority must be obtained from the Harbour Master when entering from the Seaway as well as from the Lachine Canal; sec. 42A was added to give right of way to a

downbound vessel over one entering or leaving the Seaway. In addition, close liaison was established with the Seaway administration in order to enable the Port Authority to keep track of vessels proceeding to, or out of, the Seaway.

Steps were then taken to organize and operate some limited control and regulation over ships navigating within the harbour. By then, a great number of ships were equipped with VHF radiotelephone because it was a standard requirement for ships proceeding through the Seaway. The Harbour Authority was authorized to operate a VHF radiotelephone, and limited administrative traffic control was formally established by an amendment to the Operating Regulations in 1961. This was effected by replacing sec. 42 and sec. 42A by the following provision:

"42. (1) This section applies to the harbour of Montreal.

(2) No vessel shall enter the harbour from the Lachine Canal or the St. Lawrence Seaway except at the time permitted by the Board.

(3) Every vessel that is proceeding downstream in the St. Lawrence ship Channel shall have the right of way over any vessel entering or leaving the St. Lawrence Seaway.

(4) No vessel shall move from any berth or anchorage in the harbour at any time without first having obtained permission from the Harbour Master within fifteen minutes of the actual time of moving.

(5) Where any vessel is delayed in moving from a berth or anchorage after permission to move has been obtained, that vessel shall notify the Harbour Master immediately and permission to leave the berth or anchorage must again be obtained when the vessel is ready to proceed.

(6) Every inbound vessel passing the Town of Sorel shall, before crossing the common boundary between the Montreal Harbour and the Sorel Harbour, report to the Montreal Harbour Master by radio telephone.

(7) The master of any vessel that is unable to communicate as set out in subsection (6) shall arrange for the Harbour Master to be notified of the vessel's arrival at the reporting position by the owner.

(8) Every vessel intending to anchor shall first apply to the Harbour Master for assignment to a designated anchorage.

(9) Except in a case of emergency, no vessel shall, at any time, drop anchor in or close to the St. Lawrence Ship Channel."

Following the collision between the *Manchester Merchant* and the *Lionel* in December 1963, the following additional traffic instructions were issued as directives to pilots. These rules were never embodied in the Operating Regulations although this was then the intention (Ex. 1539 (x)):

"(a) All vessels entering the Harbour of Montreal from the St. Lawrence Seaway and bound for the upper harbour, are to proceed downstream and turn north of Elevator 4, in Vickers channels, west of the main ship channel, between the north end of Elevator 4 and the south end of Longue Pointe shoal.

Turning upstream at the Seaway entrance, rounding light buoy 193M, will only be permitted in special cases and/or emergencies, upon permission being granted by the Harbour Master.

(b) Vessels leaving Longue Pointe anchorage downbound, and unable to turn at the anchorage should also use the area mentioned in sub-section (10) (sic),

proceeding upstream through Racine Channel and turn south of Longue Pointe shoal.

- (c) No vessel shall pass or meet another vessel in St. Mary's Current, except in an emergency."

The 1967 modification to sec. 31 of the Operating Regulations specified the scope of the control the Board could exercise over vessels in its harbours:

"31. Every vessel in the harbour shall be subject to the orders of the Board in respect of her draught, location, speed and direction, and in respect of her means and method of movement."

Thus, prior to April 1968, traffic control in Montreal harbour, as exercised by the Harbour Authority, operated as follows:

Ships upbound, whether merely in transit to the Seaway, or destined to a harbour anchorage or berth, were required when passing Sorel to obtain the Harbour Master's instructions by radiotelephone prior to entering the harbour. This was merely a means of gathering information and permission to enter the harbour was automatically granted. The necessary planning for ships proceeding to a berth had already been completed because arrangements had normally been made with the Harbour Master by the ships' agents. The Harbour Master's instructions consisted only of informing a ship which berth was allocated and if it was ready; if not, the ship was ordered to anchor in an allocated position, unless it was expected that the berth would soon be available, in which case the ship was advised to proceed at reduced speed in order to arrive when the berth was free. In the case of a ship proceeding to the Seaway, the Harbour Master ascertained from the Seaway operator whether the ship could proceed into the Seaway or not; if affirmative, the Seaway instructions were relayed to the ship but, if negative for any reason, she was required to proceed to an anchorage, unless clearance was soon to be expected, in which case she was required to slow down. When a vessel had to submit to a Seaway Authority inspection, she was ordered to proceed to the Longue-Pointe anchorage and fresh instructions from the Harbour Master had to be sought before leaving the anchorage for the Seaway.

For ships downbound from the Seaway, clearance from the Harbour Master to enter the harbour was obtained *via* the Seaway Authority which relayed to the Harbour Master information whether ships were merely in transit or requesting a berth in the harbour. Clearance was automatically granted because delay in the Seaway canals and locks would have amounted to halting Seaway operations. In the case of ships in transit, this served only as traffic information for the Harbour Traffic Controllers in planning the few traffic instructions they had to issue regarding other ships' movements in the harbour. Ships bound for a harbour berth followed the same procedure as described earlier for upbound ships.

The only actual traffic direction exercised for safety purposes was issuing a clearance to leave a berth or an anchorage position. A ship was

not allowed to proceed without first obtaining the Harbour Master's permission. A clearance was valid for 15 minutes and, if the ship had not proceeded within that time, a fresh clearance had to be obtained. Before issuing a clearance, the Harbour Traffic Controller had to appraise the traffic situation, both in the harbour and the Seaway, and gave clearance only when he considered it safe for the ship to leave the berth or anchorage. At the same time, information was given about the movements of other ships expected during the time the clearance was valid.

In effecting such traffic control, the Harbour Authority was trying to achieve both safety of navigation and the maximum efficiency of port operations with least inconvenience, delay or cost to shipping. Port traffic control played an important part in planning port operations.

As in Quebec, the procedure and extent of harbour traffic control have been substantially modified by the Department of Transport Marine Traffic Control System on the St. Lawrence River (vide pp. 180 and ff., and p. 656) which requires all ships within the system to keep their VHF radiotelephone set open on the sector listening frequency, thus precluding the Harbour Authority from operating its own radiotelephone system. This resulted in basic changes in the Montreal harbour traffic control operations.

Since April 1968, the DOT Marine Traffic Control System has superseded the Montreal Port Authority in the responsibility it had assumed for the direction of traffic in the harbour, the rôle of the Harbour Master being limited to what it was prior to 1959, i.e., the allocation of berths without, however, any control over anchorages.

At first sight, it is surprising to find that Marine Traffic Control has exceeded its rôle and infringed on what appears to be the responsibility of the Harbour Authority, i.e., giving ships orders rather than mere information. It is obvious that this practical solution was adopted in the interests of shipping to avoid a duplication of safety information. However, the infringement is more apparent than real because the only traffic orders the Harbour Master used to give were departure clearances which constitute, in fact, an information service to Masters and pilots by an authority which is aware of up-to-the-minute traffic conditions throughout the harbour on the basis of a constant survey. Leaving a berth, especially in that part of the harbour situated above the entrance to the Seaway, is fraught with danger because the narrow channel leaves little room for manoeuvre and the range of visibility is limited by curves in the channel hiding from view downbound traffic which lacks manoeuvrability in St. Mary's Current. Before the Marine Traffic Controller gives authorization to leave a berth, he must first appraise the state of the traffic and ascertain at what period the manoeuvre can be safely effected without undue delay. When this is established, a clearance valid for 15 minutes is given, the Master and pilot are

informed about the traffic that will be met during that period and other ships about to navigate in that area are warned. Such a clearance does not give the departing vessel any right of way. It is the responsibility of the Master and the pilot to sound the warning signal prescribed by sec. 43 of the N.H.B. Operating Regulations, to listen for signals that may be given by a downbound vessel and to carry out the manoeuvre safely with due regard for the right of way of other vessels. Therefore, a departure clearance is basically an information service to the departing ship re the safest period to effect the manoeuvre in the circumstances, co-ordinated with the issuance of a safety notification to all ships in transit in the area.

As far as safety of navigation is concerned, it is unimportant whether departure clearances emanate from the Harbour Master or the System authority. It is essential, however, first, that the person issuing the order is fully conversant with the latest traffic situation in the harbour and, second, that he has the necessary *expertise* to judge when a departure can be undertaken safely and without undue delay in the circumstances.

The change in procedure has not affected shipping. The Marine Traffic Control System provides the necessary liaison for ships in transit through the harbour to or from the Seaway. It relays to ships bound to the Seaway the Seaway Authority's instructions about permission to proceed, and furnishes the necessary co-ordination for departure clearances for ships proceeding from a berth or an anchorage position in the harbour. If a Seaway clearance is delayed or a ship has to undergo Seaway inspection, the System Traffic Controller orders the ship to an anchorage position at Longue-Pointe or an alternative anchorage area. Although this transit traffic is of no concern to the Harbour Authority, a conflict of jurisdiction is created when the System Traffic Controller allocates an anchorage position since, according to the National Harbours Board Act, the management of anchorage areas pertains to the Harbour Authority. It should be remembered, however, that in this respect Montreal harbour is a case of exception which is not covered in the present legislation: in addition to its functions as a harbour, it is also the approach to the Seaway and its anchorages serve as Seaway inspection and waiting areas. Therefore, it is considered that this factual situation should be recognized in legislation to resolve the existing conflict of jurisdiction.

The authorities responsible for Marine Traffic Control have reported that, by assuming responsibility for traffic management in Montreal, the safety practices that have been evolved through the years and which have proved efficient were continued. Traffic surveillance is achieved and infractions of the National Harbours Board Operating By-laws are reported to the Harbour Master.

The safety of a vessel is the final responsibility of the Master. A clearance to leave a berth or an anchorage position, or permission to enter

section 6 (which corresponds to the harbour) from either sector 5 or the Seaway, is given by the Marine Traffic Controlled after he has assessed the situation and considers it safe to do so. It is reported that frequently clearance is given or withheld after VHF discussion with the pilot involved direct from the bridge.

Since this harbour traffic control was imposed for reasons of safety, non-compliance with the traffic regulations and with orders received is a serious matter. Pilots and Masters often feel that the traffic restrictions are unwarranted, complain about long delays in obtaining the required clearance and do not always observe the requirements.

In addition to being an offence under secs. 127 and 128 of the National Harbours Board Act, subsec. 12(2) of the Montreal Pilotage District By-law makes it an offence for a pilot not to comply strictly "with all directions given by a Harbour Master relating to the mooring and unmooring or placing or removing of vessels" within the limits of the harbour.

In case of violation by a pilot, it has been the practice of the Harbour Authority to report the matter to the Pilotage Authority for necessary action. At the Commission's hearings, the representative of the Harbour Authority complained about lack of co-operation on the part of the Pilotage Authority in helping them to enforce the necessary traffic control. This prompted their recommendation that the pilots should come under the jurisdiction of the Port Authority.

Failure by the Pilotage Authority to keep the Harbour Authority informed about the outcome of complaints and reluctance to give any information when requested supported the charge of non-co-operation. It is obvious that the cause of this unsatisfactory situation lies in misapprehension as to the power of the Pilotage Authority to act as a tribunal, and provide a complete and fair trial, and the practice followed of disposing of complaints by administrative decision (vide Part I, pp. 373 and ff.). All too often investigation of a complaint has consisted only of seeking the pilot's version without calling the complainant as a witness. If the pilot admitted the violation, a fine or reprimand was imposed but, if he denied it, no further action was taken (Ex. 990).

The Montreal Harbour Master reports that the situation had improved considerably since that time. During the period 1965-April 1968 before responsibility for harbour traffic control was taken over by the St. Lawrence River Marine Traffic Control System, closer cooperation developed between the pilots and the Harbour Master, and there have been no serious violations by the pilots (Ex. 1539(w)).

COMMENTS

It is considered that the purpose of achieving safety of navigation is defeated if it becomes permissible to scatter safety rules in a maze of different regulations. For a given part of a waterway, all the applicable modifications to the International Rules of the Road should be contained in a single, specific, readily available set of regulations. At present, amendments to the rules of the road that apply only to the harbour of Montreal are found in both the St. Lawrence River Safety Regulations and the National Harbours Board Operating Regulations, many times amended, which cover all the harbours under the Board's jurisdiction. As a result, those modifications that apply to the harbour of Montreal are difficult to locate. They should be contained only in the regulations made specifically for that purpose under sec. 645 C.S.A., i.e., the St. Lawrence River Safety Regulations.

The departure clearance requirement is a safety feature that has become essential and must be retained—it should be legally provided for by an appropriate amendment to the Canada Shipping Act.

The Harbour Authority is right in stating that there is no excuse for pilots not complying with traffic instructions, since they are familiar with the traffic conditions and the physical features of the harbour which made the control necessary for the safety of navigation. The collision between S.S. *Manchester Merchant* and S.S. *Lionel* on December 3, 1963 (p. 736) no doubt would not have occurred if the pilot had asked for unberthing instructions as required.

The obvious and only satisfactory solution would be for the Harbour Authority to lay complaints directly before a regular tribunal under secs. 127 and 128 of the National Harbours Board By-law A-1. This is the only course of action in the case of violations committed by a Master; there should be no difference in the procedure because the violation was committed by a pilot. If it is considered that secs. 127 and 128 do not permit the direct prosecution of a pilot, steps should be taken to have this legislation amended to indicate specifically that a pilot in charge of a ship is responsible for complying with the harbour traffic regulations and the harbour traffic instructions, as was done in 1960 by an amendment to the Canada Shipping Act regarding the application of the collision regulations (subsec. 647(1) C.S.A.).

The problem is quiescent for the time being, since the Harbour Authority no longer exercises control over traffic in Montreal harbour. This function has been taken over by the St. Lawrence River Marine Traffic Control System (Exs. 1539(w) and (x)).

(ii) *Speed limit*

Section 35 of N.H.B. By-law A-1, subject to the general rule that speed should not be such as to endanger life and property, establishes the following maximum speed limits for the harbour of Montreal:

- for upbound vessels, 8 knots between Gas Buoy No. 149-M and the Longue-Pointe Signal Station, and 6 knots from that station to the Clock Tower in the upper part of the harbour;
- for downbound vessels, 10 knots between the Clock Tower and Gas Buoy No. 149-M.

It would be desirable to amend this regulation to state that speed is over the ground and not in relation to the stream, since downbound vessels require greater speed over the ground in order to keep steerage-way when proceeding with the St. Mary's Current. The text of the regulation should also be amended to provide present day reference points, since neither Gas Buoy 149-M nor the Longue-Pointe Signal Station now exist.

Although occasional complaints have been made against pilots for excessive speed, these regulations do not appear to be taken very seriously. While there was no patrol by the harbour police especially for the purpose, the average speed of vessels between two check points where their passage is recorded can easily be calculated at all times but this was done only infrequently. Three times in 1962, for instance, it was found that the cruising speed of all passenger vessels was above the prescribed limit. However, despite the fact that such vessels were all being navigated by a pilot, these violations were not reported to the Pilotage Authority, but only to the agents. Although no objections against the speed limit have been registered either by the pilots or the agents, it was intimated that the speed limits prescribed are too low to allow these vessels to keep the necessary steerage-way. The main objection to increasing the speed limit is danger of damage to shore installations caused by wash, since speed is one of the governing factors.

The Montreal harbour police have now (Jan. 1970) been provided with their own patrol boat and will be in a position to exercise effective control over water pollution, speed violations, general traffic and particularly small craft which create a serious safety hazard when they do not abide by the regulations, *inter alia*, remaining out of the regular shipping lanes (pp. 123 and ff. and p. 655).

(iii) *Notices to Shipping*

The Harbour Master is responsible for issuing Notices to Shipping to bring to the attention of vessels moving in the harbour temporary obstacles or circumstances that may affect the safety of navigation. These Notices are now being transmitted through the Information Service and the VHF network of Marine Traffic Control, and also through the coastal stations for ships not equipped with VHF.

These Notices are particularly necessary to warn traffic about obstructions created by dredging operations. They may serve to indicate the location of a wreck, e.g., M.V. *Federal Express*, until it is removed. They also serve as warnings about changes to the advertised depth alongside wharves through silting. The pilots expressed their general satisfaction with this system of information and their only complaint was that they were not consulted before dredging and other operations were undertaken or aids to navigation displaced or modified.

(iv) *Draught control—under keel clearance requirement*

This factor, which in Canada is legislated for only in the harbour of Montreal, concerns pilotage only indirectly but it was the subject of a specific recommendation by the Canadian Merchant Service Guild which wanted to have its application extended. The procedure being followed appears to be without legal foundation and is unwarranted in practice.

A provision of the "Rules and By-laws of the Office of the Port-Warden of the Harbour of Montreal" (Ex. 490) prescribes that:

"The Port Warden shall not issue his certificate or clearance to any vessel which in his judgment is too deeply laden to pass with safety through the ship channel between Montreal and Quebec.

No officer of Customs shall grant a clearance to any vessel for the purpose of enabling her to leave the port of Montreal for any port not within the limits of inland navigation, until the Master of such vessel produce to him a certificate from the Port Warden to the effect that all the requirements of these regulations have been fully complied with, . . ."

On the strength of this provision, the Port Warden has been fixing by unilateral administrative decisions the minimum depth of water that should be left between ships and the channel bottom (under keel clearance). The required depth has varied from time to time; as 1960, it varied between 2½ and 3½ feet depending upon the size of the vessel concerned (Ex. 491).

This control concerns pilotage indirectly in that in cases where it is applicable it relieves the pilots of the obligation to assess whether the ships to which they are assigned are too deeply laden for the channel. In many Districts, pilots have devised rules based on their common experience (vide Part II, p. 281; Part III, p. 91). However, these rules are only general guide lines since, on account of variable factors, each case must be decided on its merits by the pilot concerned. Since the prime responsibility for the safety of a ship rests with the Master, it is to be expected that undue risks will not be taken. Furthermore, a pilot is not obliged to navigate a vessel when it is not safe to do so. The Port Warden's decisions relieve the pilot of this responsibility in the few cases where they apply.

The authority for this power of the Port Warden is purported to be found in the special statute governing the office of Port Warden for the harbour of Montreal which predates Confederation and has not been amended since it was consolidated in 1882 (45 Vic. c. 45) (Ex. 490).

The Montreal Port Warden is appointed by the Governor in Council upon the recommendation of the Montreal Board of Trade which has power of control and supervision.

The only possible provision in the Act which could confer the power to establish an under keel clearance requirement is sec. 16 which makes it the responsibility of the Port Warden to certify, in the case of a "vessel loading at the Port of Montreal for any port not within the limits of inland navigation . . . whether she is in a fit state to proceed to sea or not; . . ."

It is apparent that this provision provides only for an appraisal of the ship's condition as to seaworthiness to engage in an ocean voyage and not in relation to the physical features of the channel either in the harbour of Montreal or on the St. Lawrence River.

This interpretation is substantiated when one considers the cases to which this purported power does not apply. It does not apply to movages; the Port Warden has not the power to prevent an incoming vessel from entering the harbour of Montreal by reason of her seaworthiness or her draught; he can not prevent a vessel from leaving for a sea voyage even on the ground of seaworthiness if the vessel has not loaded in Montreal harbour; he also lacks authority to prevent the departure of a vessel which will eventually go to sea if a clearance is not required because *en route* she calls at another port, such as Sorel, Trois-Rivières or Quebec, the reason being that the required appraisal is of the seaworthiness of the ship *per se* for a sea voyage and this can not be undertaken before loading is completed.

Nor can the Port Warden derive his power from the By-laws referred to earlier which were made by the Board of Trade pursuant to sec. 5 of the Act. The only regulations so authorized are merely matters of internal organization and procedure: "rules and regulations for regulating the office of Port Warden and the performance of his duties", and none exist for the purpose of giving him powers which he does not already possess under the Act. Significantly, such by-laws of internal character do not have to be sanctioned by the Governor in Council in contrast with the regulations established by the Board of Trade fixing the "tariff of fees to be paid to the Port Warden, for services performed by him and his deputies, by the masters or owners of sea-going vessels, and by others. . ." which can not be in force until approved by the Governor in Council.

Prior to August 29, 1934, the required depth under keel was 3½ feet. At the request of the Shipping Federation and after consultation with the pilots, the Board of Trade consented to reduce it to 2½ feet for ships not exceeding 8,500 tons deadweight.

In 1960, when the water level in the harbour fell, the shipping interests made representations to have the required clearance lowered. After study by representatives of the Port Warden's office and the shipping interests,

new rules devised and suggested by the Port Warden were accepted whereby under keel clearance varied, not according to deadweight but according to beam. The under keel clearance requirement varied between 2 feet 6 inches and 3 feet 6 inches. Beam was considered a controlling factor on account of the bends in the channel; a ship heels somewhat when turning and the larger the ship the greater under keel clearance is required to prevent touching.

The maximum permissible draught for a ship to which the requirement is applied varies from day to day according to the depth of water in the harbour. Every morning at 9 o'clock, the depth datum is reported to the Port Warden by the Harbour Master's office.

The Canadian Merchant Service Guild has recommended that the under keel clearance requirement be extended to all pilotage waters in Canada and be made the responsibility of the respective Pilotage Authorities.

This recommendation was a follow-up of a similar recommendation made previously by the Montreal pilots, in which they asked the Department of Transport to extend the under keel clearance requirement to the harbours of Sorel and Trois-Rivières. This recommendation was not acted upon because it was felt that the Canada Shipping Act did not empower the Minister of Transport to make such regulations. Furthermore, no consideration had been given to amend the Act in this regard.

COMMENTS

The practice of fixing under keel clearance is without legal foundation and has simply been allowed to continue unchallenged. It is repugnant that such rulings with far reaching consequences for the public can be made administratively by an absolutely arbitrary authority, particularly when they are not governed by legislative criteria, and when made do not become regulations, need not receive approval by higher authority and are final and without appeal.

Apart from the question of the legality of the practice in the harbour of Montreal, it is considered discriminatory and unwarranted. If it is believed that such control over under keel clearance should be effected in the public interest and for the safety of navigation, it should be extended to all vessels, inbound or outbound, coastal, inland or sea-going, and whether or not calling at another Canadian port before proceeding to sea. However, the fact that a large number of ships have been able to proceed when their draught was considered safe by their Masters and their pilots and the alleged requirement did not apply to them, without adverse effect on the safety of navigation in general, demonstrates that extending the requirement would be an undue imposition.

(b) *Sorel Harbour*

Sorel is a public harbour under the jurisdiction of the Department of Transport. It was proclaimed such by Order in Council dated July 15, 1874 (Ex. 511). It extends from the Montreal harbour downstream limit at the town of Tracy to the upstream end of Lake St. Peter and comprises about 12 nautical miles of the St. Lawrence ship channel. It also includes about four miles of the Richelieu waterway connecting the St. Lawrence River with the Hudson River in the United States, the controlling depth of which is six and a half feet.

All the harbour berthing facilities are situated on the south shore of the St. Lawrence River and are mostly concentrated on both sides of, and from the estuary of, the Richelieu River.

The approach from the ship channel to the main berths is through an area dredged to a depth of 32 feet which remains constant since there is no tide. The principal wharves are situated on the east side of the entrance to the Richelieu River and consist of Dock No. 1 and Dock No. 2 which extend into St. Lawrence River and create Lanctot Basin.

Dock No. 1 (Grand Quai) is owned by North American Elevators Limited which operate a grain elevator on it. The available depth alongside is 29 feet along the outer face, 25 to 26 feet in Lanctot Basin and 30 feet along the outer sides.

The other main wharves belong to Marine Industries Limited, a shipyard company situated on the west side of the Richelieu River, with 20 feet alongside, and the Quebec Iron Titanium Corporation wharf facing the St. Lawrence ship channel about three-quarters of a mile upstream with 30 feet alongside.

Berthing and unberthing are not difficult and vessels manoeuvre without tugs, although such assistance could be obtained from Marine Industries.

The Sorel Harbour Master does not control traffic in the harbour and only occasionally allocates berths since all except two are privately owned or operated.

In the absence of a controlling local authority, Marine Traffic Control can not provide shipping with ship-to-harbour service as in National Harbours Board ports, and ships' requests are simply relayed to the parties concerned. Control liaises with the manager of the privately-owned grain elevator and also with the local agent who handles most vessels. In normal circumstances, these officials issue berthing instructions direct *via* coastal radio stations but, in case of urgency, such as a last minute change of orders, Control will pass the instructions to a ship over its VHF network. In the event of a ship arriving without orders, Control directs her to a convenient anchorage off Sorel (Ex. 1539(e)).

(c) *Trois-Rivières Harbour*

This harbour comes under the jurisdiction of the National Harbours Board. Its limits are defined in the schedule to the National Harbours Board Act: it extends over two miles eight cables of the St. Lawrence ship channel and includes the estuary of the St. Maurice River and all waters up to the tidal high water mark of that river. It is situated $67\frac{1}{2}$ nautical miles west of Quebec and $73\frac{3}{4}$ miles east of Montreal.

The area for the changeover of pilots for ships in transit is in the natural enlargement of the channel in the upper part of the harbour off *Pointe-des-Ormes*.

All the berthing facilities are located on the north shore of the river and, except for *Cap-de-la-Madeleine* pier, west of the St. Maurice River. The wharves extend over 9,188 feet of waterfront and are parallel to the River St. Lawrence ship channel, except for those inside a basin at the west end where the grain elevators are situated. In the basin, the available depth is 35 feet; elsewhere, 30 feet. There is very little tidal influence, the maximum rise and fall being about one foot. Except for the Canadian International Paper Company's wharf, all wharves are owned and operated by the National Harbours Board.

Berthing and unberthing present little difficulty and tugs are not needed.

The Port Manager's responsibility for traffic control in the harbour is limited to allocating berths. He uses the VHF network of the Marine Traffic Control System like the Quebec Harbour Master in his area (p. 184) (Ex. 1539(e)).

(4) MARITIME AND PILOTAGE TRAFFIC

Maritime traffic in the Montreal District is of the same nature as in Quebec (p. 148) except for the limitation caused by the 35-foot controlling depth of the dredged channel above *Trois-Rivières*.

As in the Quebec District, the D.B.S. statistics, which are computed on the basis of arrivals, do not convey a complete picture of the overall traffic since many ships are in transit from or to the St. Lawrence Seaway. However, the pilotage statistics provide a reasonably good picture of the significant traffic (for the extent of exemptions to the compulsory payment of dues, vide p. 569, and for the incidence of non-exempt vessels dispensing with pilots, vide p. 618). The following table contains the statistics available from D.O.T. machine data 1961-1969 (except 1962 and 1965) showing on an annual basis the number of vessels which paid pilotage dues (trips vessel), their aggregate and average NRT and the percent increase or decrease over 1961.

MONTREAL RIVER PILOTS

Year	Aggregate NRT of Vessels Paying Pilotage Dues		Total Trips (vessel) with Pilots		Average NRT of Vessels Paying Pilotage Dues	
	Tonnage	% Increase since 1961	Number	% Increase or Decrease since 1961	Tonnage	% Increase since 1961
1961	38,944,901	0%	10,535	0%	3,696.7	0%
1962	n/av.	—	10,171	-3.5	n/av.	—
1963	41,645,979	6.9	10,071	-4.4	4,135.2	11.9
1964	46,755,933	20.1	10,393	-1.3	4,498.8	21.7
1965	n/av.	—	n/av.	—	n/av.	—
1966	59,756,074	53.4	11,739	11.4	5,090.4	37.7
1967	53,065,118	36.3	10,246	-2.7	5,179.1	40.1
1968	53,196,545	36.6	9,880	-6.2	5,384.3	45.7
1969	48,426,568	24.3	9,049	-14.1	5,351.6	44.8

SOURCE: Ex. 1539(aa).

The following table is compiled from D.B.S. statistics of arrivals at the main ports in the District on a yearly basis for the period 1959-1967 inclusive. The *all vessels* figure refers to all arrivals at the port excluding, however, such small vessels as fishing vessels, tugs and vessels of less than 15 NRT, and naval vessels. This figure is compared with the special statistics prepared by D.B.S. for this Commission referring to arrivals of vessels of 250 NRT and over, i.e., vessels more likely to employ a pilot, in order to show the incidence of small vessels calling at these ports. For the two National Harbours Board ports of Montreal and Trois-Rivières, the N.H.B. statistics of arrivals of commercial vessels have been added. The main difference between the two *all vessels* figures is that the N.H.B. counts all arrivals (except naval vessels) including fishing and small vessels under 15 NRT.

(5) IMPROVEMENTS TO, AND MAINTENANCE OF,
THE SHIP CHANNEL

The first dredging operations were undertaken in 1844 when an attempt was made to dredge a straight channel across Lake St. Peter. This plan was abandoned in 1847 because it proved too extensive and too costly; instead, it was decided merely to deepen the sinuous natural channel. The existing channel follows the same route but has been enlarged and deepened, thus explaining its numerous curves in Lake St. Peter.

Maintaining and improving the ship channel is the responsibility of the Department of Transport (St. Lawrence Ship Channel Division). From time

COMPARATIVE STATISTICS FOR ARRIVALS OF VESSELS IN THE MAIN
MONTREAL DISTRICT PORTS

	1959		1960		1961		1962		1963	
	No.	Average NRT	No.	Average NRT	No.	Average NRT	No.	Average NRT	No.	Average NRT
MONTREAL HARBOUR:										
D.B.S.—Vessels of 250 NRT and over	5,779	2,417.4	5,525	2,614.7	5,362	2,956.5	5,095	3,212.8	4,841	3,390.7
D.B.S.—All vessels	6,779	2,074.7	7,503	1,935.3	6,148	2,624.4	5,579	2,946.5	2,766	5,950.6
N.H.B.—All vessels	6,482	2,403.2	6,211	2,705.2	6,092	3,000.8	5,913	3,136.9	5,656	3,236.3
TROIS-RIVIÈRES:										
D.B.S.—Vessels of 250 NRT and over	1,106	2,914.0	957	3,090.8	1,068	3,349.3	963	3,433.1	971	3,897.7
D.B.S.—All vessels	2,914	1,197.0	2,577	1,229.2	2,902	1,338.1	2,272	1,537.4	2,046	1,933.9
N.H.B.—All vessels	3,150	1,110.6	3,029	1,121.0	3,329	1,169.7	2,967	1,294.9	2,790	1,487.2
SOREL:										
D.B.S.—Vessels of 250 NRT and over	584	2,561.5	446	2,886.3	622	3,354.8	465	3,140.0	413	3,295.0
D.B.S.—All vessels	725	2,071.5	687	1,906.9	804	2,619.9	601	2,456.4	573	2,399.3
CONTRECOEUR:										
D.B.S.—Vessels of 250 NRT and over	297	3,341.2	129	4,203.5	121	5,033.5	97	5,382.5	86	5,558.3
D.B.S.—All vessels	297	3,341.2	129	4,129.6	127	4,796.6	100	5,221.8	86	5,558.3

COMPARATIVE STATISTICS FOR ARRIVALS OF VESSELS IN THE MAIN
MONTREAL DISTRICT PORTS

	1964		1965		1966		1967		% Increase or Decrease 1959-1967	
	No.	Average NRT	No.	Average NRT	No.	Average NRT	No.	Average NRT	No.	Average NRT
MONTREAL HARBOUR:										
D.B.S.—Vessels of 250 NRT and over.....	5,177	3,339.8	5,615	3,593.0	5,593	3,795.1	5,153	3,778.8	—10.8	56.3
D.B.S.—All vessels.....	5,544	3,126.0	6,029	3,355.4	5,956	3,572.9	5,541	3,522.9	—18.3	69.8
N.H.B.—All vessels.....	6,016	3,275.4	6,318	3,426.1	6,216	3,718.2	5,805	3,633.0	—10.4	51.2
TROIS-RIVIÈRES:										
D.B.S.—Vessels of 250 NRT and over.....	978	3,903.8	926	4,184.5	904	3,953.5	826	3,613.8	—25.3	24.0
D.B.S.—All vessels.....	1,627	2,397.2	1,710	2,906.1	1,735	2,120.9	1,678	1,846.3	—42.4	54.2
N.H.B.—All vessels.....	2,325	1,704.9	2,061	1,910.5	1,876	1,981.1	1,850	1,752.3	—41.3	57.8
SOREL:										
D.B.S.—Vessels of 250 NRT and over.....	575	3,818.5	537	4,454.3	559	5,066.5	382	5,644.8	—34.6	120.4
D.B.S.—All vessels.....	803	2,757.7	776	3,111.6	716	3,970.7	603	3,608.8	—16.8	74.2
CONTRECOEUR:										
D.B.S.—Vessels of 250 NRT and over.....	96	4,420.3	111	4,088.6	142	5,332.4	109	5,489.7	—63.3	64.3
D.B.S.—All vessels.....	100	4,244.3	111	4,088.6	143	5,296.4	113	5,296.8	—62.0	58.5

Sources: Exs. 15, 479 and 1483.

to time, it has been the Department's practice to set up advisory committees to assess the situation at a given moment and obtain the suggestions and recommendations of all interested parties (vide pp. 71-72).

Following the recommendations of these committees, the channel was deepened from 30 to 35 feet (completed in 1952), and an extensive improvement program was undertaken to enlarge it from 550 feet to a minimum of 800 feet, to improve the curves and to add further improvements aimed at reducing maintenance.

Extensive studies were made of the currents and the physical features of the river bed before these improvements were commenced, *inter alia*, by testing the effect of the proposed modifications on a large hydraulic scale model of the River.

Since the deepening of the channel was completed in 1952, the remainder of the improvement programme has been in progress, priority being given to certain areas which were more dangerous to navigation, such as the shoals at St-Augustin and Cap-Santé and the Richelieu Rapids.

In that part of the River where the tide is not felt, i.e., above Trois-Rivières, deepening and enlarging the channel have resulted in lowering the level a few inches as far as the harbour of Montreal. This undesirable effect had to be counteracted by construction, e.g., weirs across the River outside the channel, or by dumping dredging *debris* in areas indicated by studies on the hydraulic scale model.

In a letter dated January 12, 1970 (Ex. 1539(u)), the Department of Transport gave the following progress report on the ship channel improvement programme:

"The following capital works were carried out this year in addition to the regular maintenance which insured that the advertised depths in the channels were maintained at; 20' L.N.T. in the Saguenay River, 30' L.N.T. in the North Traverse below Quebec, 35' at chart datum between Quebec and Montreal and 28' 6" at chart datum in the non-canal reaches of the Seaway between Montreal and Lake Ontario.

Contrecoeur

The emergency anchorage at Contrecoeur was completed this year and made available to navigation during the latter part of the summer. The depth of the anchorage is 35' at chart datum.

Lac St. Pierre.

The widening of the channel in Lac St. Pierre progressed exceptionally well during the past year and some 40% of the widening was completed in the second year of the contract. At present, only about 10% is left to complete the entire widening in this reach. A channel of 1,000' in width was provided at the head of Lac St. Pierre in the Ile aux Raisins Course. In addition, a channel of 800' wide was provided between curve No. 1 and Curve No. 2. These curves were widened to 1,200 and 1,100' respectively. This entire complex was made available to navigation in the late fall and is being used during winter navigation this year.

By mid-summer of 1970, the entire channel on Lac St. Pierre will have been widened to 800' which was the last remaining reach in the Ship Channel between Montreal and Quebec that was less than 800'.

Nicolet Curve

The widening at Nicolet Curve on the North side of the channel was undertaken earlier in 1968 and was 85% completed by late fall. With the completion of the widening of Curve No. 3, this entire section will be opened to navigation by the middle of next summer.

Trois-Rivières Shoal

The fourth and final capital works project undertaken by the Department was the removal of the shoal at Trois-Rivières. After three years of dredging operations, this work is practically completed. It is expected that this shoal will be completely removed in the early part of next summer. 25' of water is presently available at chart datum over this shoal.

In a general way, I am pleased to report to you that the improvements in the St. Lawrence Ship Channel which will be completed by the middle of next summer, represent a substantial improvement in the St. Lawrence Waterway. The minimum width of the Ship Channel will then be 800' along its entire length and at least 1,000' and up to 1,600' in the various curves. Cap à la Roche is the only curve whose width is inferior to 1,000'. Model studies are contemplated to increase its present width of 800' to at least 1,000'."

To maintain a channel depth of 35 feet, maintenance dredging has to be carried out periodically to offset the effects of sedimentation and remove obstacles such as boulders that are occasionally carried into the channel by bank ice during the runoff period.

A depth survey is carried out every year immediately after the runoff, and a special survey is made whenever a report is received that the required depth is no longer obtained in an area. These depth limitations are immediately brought to the attention of shipping by Notices to Shipping and dredging is carried out to remedy the situation.

Silting is particularly marked in Lake St. Peter, off Cap à la Roche and toward the Richelieu Rapids; there is also a particular problem between Trois-Rivières and Batiscan where the depth may vary three or four feet, although this may be partly compensated for by the tide.

There is always the possibility of this narrow channel being closed following a shipping casualty—so far, this has occurred on only a few occasions and for a short period. In 1954, traffic was stopped briefly in Montreal when M.V. *North Gaspé* caught fire and exploded at her berth. On April 24, 1957, traffic was stopped for 3 hours to permit rescue operations when the tug *Yvon Dupré* overturned and sank while assisting S.S. *Nyland* at wharf No. 16 in Montreal. On May 5, 1960, traffic in the harbour was interrupted for 13 hours 40 minutes, plus a short period during rescue operations, when M.V. *Federal Express* broke loose from pier No. 28 after being struck by S.S. *Polaris* and drifted down until she sank off Laurier wharf. On August 19, 1960, traffic was temporarily stopped on Lake St. Peter when M.V. *Belle Isle II* went aground and caught fire after a collision with the vessel *Holmside*. On November 16, 1961, traffic was interrupted for 5 hours 45 minutes after M.V. *Glynn* grounded on the north side of the channel in the narrow section of the harbour below Longue-Pointe. On December 8, 1963, traffic was stopped for 5½ hours following

the collision between M.V. *Fort Albany* and M.V. *Procyon*. There was also a short interruption on April 10, 1965, when M.V. *Transatlantic* went aground in Lake St. Peter and caught fire after a collision with M.V. *Hermes*.

(6) AIDS TO NAVIGATION

The responsibility for establishing and maintaining aids to navigation west of Portneuf Basin as far as the Beauharnois Canal in Lake St. Louis lies with the District Marine Agent of the Department of Transport located in Sorel.

The ship channel in the Montreal District, which is narrow, winding and dredged for over 100 miles, is provided with an array of aids to navigation of all types, except light houses and radio beacons which are more appropriate for open water.

All straight courses in the dredged channel and in most other sections have automatic range lights with emergency lights in case of failure. In addition, the channel is lined with floating buoys lit and unlit; the limits on the bends are indicated by floating buoys fitted with radar reflectors and flashing lights.

The range lights remain in operation throughout the year, except those erected in Lake St. Peter which have to be removed because the caissons on which the towers rest lack clearance to afford protection against ice.

All floating aids are removed before ice forms about the end of November or the beginning of December. They are replaced in position as soon as possible after the runoff between April 7 and April 15.

The range lights are normally reliable on account of the emergency light system and also because they are not likely to be displaced since they are erected on land. As soon as an emergency light is observed in operation, repairs are effected so that there is little possibility of a complete breakdown. It was found that range lights erected in Lake St. Peter could be displaced more or less gradually over a long period of years on account of the nature of the bottom. This is claimed to have been the *causa causans* of the collision between S.S. *Transatlantic* and M.V. *Hermes* on April 10, 1965, when, in the absence of floating aids and setting course by range lights no longer in position, S.S. *Transatlantic* came too close to the bank, went out of control, crossed the channel and collided with the *Hermes* (pp. 727-9).

The range lights in a narrow channel normally indicate the centre of the channel but this is no longer the case because most sets have not yet been relocated to coincide with the new centre after the channel was widened. They are still aligned with the channel but generally parallel to the new centre to one side or the other. However, this situation is clearly indicated on the charts.

Floating aids are displaced for a number of reasons. As soon as a case occurs, a Notice to Shipping is disseminated and the buoy is placed back in position, unless the displacement was associated with dredging operations. Negligence by dredge operators to report displaced floating aids immediately has concerned the pilots, but they are on the alert since dredging areas are published regularly in Notices to Shipping.

Unlit buoys placed at strategic points during the winter are not always visible because they are constructed to submerge under the pressure of ice rather than be displaced. Nevertheless, they are often displaced despite this feature and, therefore, should be used with caution.

Improvements are constantly made to the network of aids to navigation and to individual aids, many as a result of the complaints and suggestions of those using the ship channel.

At times, however, improvements create other problems. For instance, when complaints were received regarding the low intensity of some range lights, the District Marine Agent tried to improve them by doubling the intensity with unsatisfactory results. He then adopted a new type of range light whose main feature was a concentration of light through a narrower beam. It proved satisfactory when installed in 1963 on one set of range lights on a trial basis. Both the pilots and the Masters who were consulted expressed their satisfaction. Therefore, it was decided to modify the other range lights accordingly. The narrower beam which is quite satisfactory when the lights are used as leading lights made the lights invisible from other angles, thereby depriving the pilots of the other uses to which they put certain lights as simple beacons, especially during the winter season when floating aids are not available. This failure has since been corrected by the addition of side lights if required.

Since the Commission's public hearings many changes have been effected in aids to navigation. These changes were advertised in Notices to Mariners at the time of their occurrence. The Department of Transport in a report to this Commission dated October 29, 1969 (Ex. 1539(f)) summed up these improvements as follows:

"General upgrading of aids is a continuing process but many changes were also required to conform to channel improvement. The changes include relocating ranges to correspond to the new channel alignment, upgrading the equipment during the change, etc. The corresponding buoy changes were also made.

In Lake St. Peter two new range piers were built to replace old towers in the center of the lake. Other ranges were relocated to mark the widened channel. One pier at the east end of the lake was abandoned and the light relocated on shore. Further downstream at Barre à Boulard the range light was moved from a pier to the shore. In this case, however, a light was maintained on the old pier as a beacon only. The object of moving the ranges ashore was to preclude damage by ice.

Where indicated by pilots that the range light is used also as a beacon, additional lights visible over the required arc are exhibited from the same struc-

ture. Colour of range and other lights have been changed, as necessary, to make them more easily identifiable against their background.

The buoyage system has been revised and improved by the addition of many radar reflectors, distinctive characteristics for buoys marking turns, and by the conversion of the port hand buoy lights from white to green. Specific anchorage areas have been marked with special buoys.

In 1967 a 9-foot channel was marked from near Sorel to Montreal. The purpose of this was to keep small craft clear of the main channel and so avoid embarrassment to large vessels.

Frequent meetings with the Pilots Association help keep us aware of changing requirements."

(7) ST. LAWRENCE RIVER NAVIGATION SAFETY REGULATIONS

For the nature of these regulations (Ex. 1461(j)), vide p. 177.

In addition to secs. 10, 11 and 12 (vide p. 177) which apply to the Montreal District as well, the regulations contain the following provisions that apply specifically to that part of the River St. Lawrence which is within the Pilotage District of Montreal:

- (a) Section 4 prohibits the use by small vessels, i.e., drawing less than 9 feet, and by barges and rafts of the ship channel in Montreal harbour down to Lanoraie, except to cross the deep water channel at the Varennes curve, unless special permission is obtained in advance from the Harbour Master, and in Lake St. Peter between the upper end of Batture St-François and Pointe St-François.
- (b) Where ice conditions prevail, no vessel between the head of Montreal harbour and the western limits of Quebec harbour may proceed at a higher speed than that set for the area by the Chief, St. Lawrence Ship Channel. This provision is obviously designed to prevent bank ice from becoming detached by vessels' wash and blocking the ship channel (sec. 14) (vide p. 657).
- (c) Sec. 15 provides for signals to be given between ships overtaking. Between Victoria Bridge (except in the approach to the Seaway) and the western limit of the harbour of Quebec, the overtaking vessel must give one prolonged blast at a distance of about one-half mile from the other vessel. This signal must be acknowledged with a similar signal by the vessel being overtaken, if the proposed passing is considered safe and practicable, in which case the overtaken vessel must decrease speed and take the port side of the channel. When the overtaking vessel arrives close to the other vessel, it shall reduce speed maintaining only sufficient to enable it to pass to starboard. If the vessel being overtaken considers it unsafe to allow the other vessel to pass to starboard, the acknowledgement signal should be followed after an interval of one minute by a short blast after which the vessel being overtaken takes the starboard side of the channel and the other passes to port.

(8) D.O.T. MARINE INFORMATION AND
TELECOMMUNICATION SERVICES

At the time of the Commission's hearings, many complaints were voiced against the telecommunications network of marine coastal stations in the Montreal District as well as in the Quebec District.

This situation has since been corrected by improvements to the coastal station network (as was done below Quebec to assure full coverage and improve efficiency), and by the creation of the Marine Traffic Control System, which superseded the former Marine Reporting Service (p. 178). With its new VHF network it has provided a reliable means of ship-to-shore communications for transmitting information on safety of navigation and essential messages to facilitate the provision of pilotage services, and limited traffic control within the harbours of Montreal and Trois-Rivières. For full description and details of this service, reference is made to pp. 180 and ff.

For Marine Traffic Control purposes the sections of the ship channel contained in the Pilotage District of Montreal come under the jurisdiction of the two Control Centres. The jurisdiction of the Quebec Control Centre extends upstream to the downstream limit of the harbour of Montreal at Tracy, and the Montreal Control Centre is limited to the harbour of Montreal extending from Tracy to the Seaway. It contains only two sectors, No. 5 which extends from Tracy to Marien Street wharf (Berth 110), and sector No. 6 extending from there to the upper limit of Montreal harbour. There are four reporting points, three situated in sector No. 5 at Tracy, Contrecoeur and Cap St-Michel, and one at the sector change point, Berth 110.

The jurisdiction of the System Control Centre in Montreal coincides with the territory of the harbour of Montreal and the Centre provides the sole means of communication for harbour traffic control purposes, for obtaining clearances and instructions to enter the Seaway and for obtaining berthing instructions from the Harbour Master (Harbour Traffic Control is studied on pp. 634 and ff.). Other correspondence *via* telecommunications between ships and the Montreal harbour authorities is through the marine coastal stations.

The system performs the same function for the allocation of berths at Trois-Rivières. For other ports and landings, e.g., Sorel, the system will convey to officials or other persons concerned a ship's request for berthing instructions, if received on its VHF network. Except in cases of emergency, instructions by the persons concerned are communicated to the ship through coastal radio stations.

Similarly, the system headquarters serves as a liaison between ships and the Pilotage Authority for the transmission of pilotage messages, whether the vessel is proceeding upstream on the St. Lawrence River or downbound in the Seaway. If the vessel is in the Seaway, the messages are routed to the

system headquarters through the Seaway Traffic Control System with which liaison is maintained.

In addition, in the harbour of Montreal, a special channel on the VHF network of the system is provided for direct ship-to-tug communications (p. 746).

For ships that are not equipped with VHF, harbour traffic control correspondence and pilotage messages are also passed through the system headquarters which liaises for this purpose with the marine coastal stations. For pilotage correspondence affecting the Montreal Pilotage District, this should be a rare occurrence since all ships arriving from the Seaway must be equipped with VHF, and for those upbound, if pilots are employed, they bring with them portable VHF sets beginning at Les Escoumins, if ships are not so equipped.

(9) WINTER NAVIGATION

Winter navigation is increasingly difficult above Quebec because of the physical features of the River and the ship channel, and above Trois-Rivières because of the absence of tide. The cluster of islands above Lake St. Peter and the large shallow banks along the dredged channel regularly cause ice jams which must be broken up by icebreakers. The wide banks bordering the comparatively narrow channel cause other difficulties: the ice floes take the direction of the cross-currents and ships are in danger of grounding as they are pushed outside the channel; if the ice is fast to the bank, a ship's speed must be such that the wash does not loosen the ice which may then obstruct the channel. For this reason, sec. 14 of the St. Lawrence River Safety Regulations provides for an administrative control of the maximum permissible speed in the Montreal District during the winter months (p. 655). For general peculiarities of winter navigation, vide pp. 197 and ff.

Because of these physical features, ice conditions during the runoff period (vide p. 198) become an insuperable obstacle and bring navigation to a halt.

Despite these difficulties, except during the runoff period and when ice jams form and must be broken up, vessels strengthened for ice proceed to Montreal in increasing numbers throughout the winter season.

This type of navigation has been rendered less hazardous by the Ice Information Service whose activities were extended in January 1967, to include Montreal. The operations' centre for the St. Lawrence River area is Quebec. For the description of this service, and for other information regarding winter navigation, refer to pp. 200 and ff.

In 1965, in their brief to the Deputy Minister of Transport (vide p. 202) the pilots protested against the inadequate pilot vessel service at Trois-Rivières during the winter (vide p. 744). The Department of Trans-

port then undertook to transfer one of the Les Escoumins pilot vessels to Trois-Rivières for winter service if the local operator was unable to supply a satisfactory vessel. This, however, did not become necessary because a new, larger launch, which was built by the local operator for that purpose, became available for the 1966/67 winter season and proved suitable (Ex. 1539 (g)).

The following table p. 659 shows the total number of trips upbound and downbound divided into full transits and half transits during the winter season as defined in the pilotage regulations, i.e., December 1 to April 8, divided by periods in order to show true winter traffic as opposed to movements of vessels not strengthened for ice at the end of the regular season before severe winter conditions set in, or at the beginning of the regular season immediately after the runoff period. For preparation of this table, complete data were available for the five seasons from 1960/61 to 1964/65, a more complete analysis of which appears as Appendix D. For the four seasons 1965/66 to 1968/69, the only statistics available are those from computer data which give only the total for each period. However, the breakdown of the previous years suffices to provide a sufficiently accurate portrayal of the distribution of these totals for the purpose of this Report.

This table shows that true winter traffic (between January 1 and March 31) is growing steadily but is slight compared to the traffic during the normal navigation season.

The analysis (Appendix D) of the statistics for the five winter seasons 1960/61-1964/65 provides some information about the nature of winter pilotage. For instance, during the 1964/65 season, out of 972 trips, 174 were interrupted because of darkness, 29 for ice and 46 for other reasons; between January 1 and March 15, only 10 vessels not strengthened for ice succeeded in making a partial transit, and none a complete transit.

2. NATURE OF PILOTAGE SERVICE

Pilotage in the District of Montreal is essentially river pilotage—ship handling at the various berths in the harbour of Montreal and other harbours in the District is only part of the river trip and in no harbour, not even Montreal, are berthing and unberthing so difficult as to require a special group of pilots. (The wharves on the east side of Quebec harbour present many more difficulties.) As seen earlier (pp. 573 and ff.), the reasons for the creation of a separate group of harbour pilots were totally different.

As is to be expected, few ships except very small ones and regular traders dispense with pilotage services, even less so than in the Quebec District. Ship-owners do not permit their vessels to ply Montreal District waters unless their navigation is entrusted to a person well acquainted with the ship channel. However, the situation regarding movages is different in Montreal harbour.

MONTREAL RIVER PILOTS—WINTER NAVIGATION

Winter Season	January 1—April 8										Total Trips Jan-uary 1—April 8						
	Grand Total Winter Season December 1—April 8					December 1—31											
	Full* Transit	Half† Transit		Total Trips Winter Season	Full* Transit	Half† Transit		Total Trips	Full* Transit	Half† Transit							
		Lower‡ Sector	Upper§ Sector			Lower‡ Sector	Upper§ Sector			Lower‡ Sector		Upper§ Sector					
1960-1961	340	57	88	485	304	46	78	428	28	2	4	34	8	9	6	23	57
1961-1962	428	65	101	594	342	48	95	485	58	13	3	74	28	4	3	35	109
1962-1963	592	73	64	729	496	51	58	605	86	14	4	104	10	8	2	20	124
1963-1964	898	119	153	1,170	654	78	120	852	130	27	14	171	114	14	19	147	318
1964-1965	838	53	81	972	526	43	59	628	210	10	12	232	102	0	10	112	344
1965-1966	—	—	—	n/av.	—	—	—	n/av.	—	—	—	409	—	—	—	216	625
1966-1967	—	—	—	1,679	—	—	—	1,044	—	—	—	453	—	—	—	182	635
1967-1968	—	—	—	1,741	—	—	—	1,052	—	—	—	547	—	—	—	142	689
1968-1969	—	—	—	1,555	—	—	—	985	—	—	—	417	—	—	—	153	570

*Counted as two trips—Quebec-Montreal (upbound) and Montreal-Quebec (downbound).

†Counted as one trip—upbound and downbound traffic.‡§.

‡Quebec—Trois-Rivières (upbound) and Trois-Rivières—Quebec (downbound).

§Trois-Rivières—Montreal (upbound) and Montreal—Trois-Rivières (downbound).

SOURCE: Ex. 1464(f) (vide also Appendix D).

For statistics on the number of non-exempt ships dispensing with the services of river pilots for trips and of harbour pilots for movages in the harbour of Montreal, reference is made to the tables pp. 618 and 620. But even the incidence of movages is very small compared to the aggregate.

Despite the fact that the Pilotage Authority has reduced statutory relative exemptions considerably by its By-law (p. 569) and has not provided for the exemption of non-Commonwealth small vessels (Part I, p. 227), it does not enforce the ensuing compulsory payment on them, thus indicating that pilotage need not be made compulsory for small vessels, whether or not they are regular traders. It is considered that, until the present Act is superseded by a new pilotage statute, this *de facto* exemption should be covered by regulations made by the Pilotage Authority under subsec. 346(c) C.S.A.

Despite the great difficulties presented by the physical features of the River and the ship channel and those created by the weather, it is possible for a non-regular trader to dispense with a pilot, provided he proceeds slowly and with great caution and stops in adverse conditions. But such manœuvres in the narrow ship channel would be dangerous because vessels proceeding at normal speed would have to overtake slower vessels.

The vessels that dispense with pilots for movages but pay dues are mostly lake vessels whose Masters are accustomed to berthing and unberthing them. Prior to the opening of the St. Lawrence Seaway, it had been the policy of the Pilotage Authority to permit the officers of small lakers entering the harbour of Montreal through the Lachine Canal to berth and unberth their ships, and not to apply compulsory payment to them.

3. ORGANIZATION

The administrative structure of the pilotage service in the District of Montreal is, except for a few details, the same as in the District of Quebec. The Minister of Transport is the Pilotage Authority; the District is administered at the local level by a public servant—a D.O.T. officer, the Supervisor of Pilots, who, however, also performs similar functions for the adjacent District of Cornwall (vide p. 931). For further details as to the powers and responsibilities of the District Supervisor of Pilots, vide pp. 212 and ff. and Part I, pp. 289 and ff.

In 1959, with the aim of ensuring better co-ordination between the various organizations providing pilotage services throughout the St. Lawrence waterway, the office of Regional Superintendent of Pilots was created with surveillance responsibility over the Districts of Quebec, Montreal and Cornwall, and with liaison responsibility between the three Districts and between the Districts and Ottawa headquarters. For further details, vide pp. 221 and ff.

The situation with regard to the Pilots' Committee is the same as in the

Quebec Pilotage District (vide pp. 214 and ff.) except that the By-law provision does not specify the number of elected pilots who form the committees, and the fact that there are two committees in the District to represent the two groups of pilots. As in the Quebec District, no special elections are held to designate the members of the Pilots' Committee, the practice being that this function is automatically exercised by the Board of Directors of the two Pilots' Corporations, despite the fact that in the case of the river pilots their Corporation is not fully representative since a number of pilots have refused to join it. Up to 1968, a semblance of legal representation was maintained by the fact that the Corporation's Board of Directors was also the Board of the Association, a situation which no longer exists since the Association was allowed to lapse when the deed expired in 1968 (vide p. 682).

(1) MONTREAL ADVISORY COMMITTEE

At the end of 1958, the Pilotage Authority set up an Advisory Committee comprising representatives of the major parties interested in pilotage. This committee, like the one in Quebec, was also shortlived. For the background of the Advisory Committees their purpose, powers and responsibilities, reference is made to pp. 217 and ff.

The Montreal Advisory Committee engaged in activities which were unlikely to prove successful:

- (a) It was used as a forum to discuss and agree upon organizational matters concerning which the committee members had conflicting interests. Since the final authority lay outside the committee, when open negotiations within the committee failed, subjects were pursued by direct representation to the Pilotage Authority in Ottawa and decisions were taken and imposed without a meeting of all the parties concerned, although they were members of the committee, to inform them of the representations and give them an opportunity for rebuttal.
- (b) The committee also tried to act as a quasi-court to discipline pilots. Since the committee consisted of the same representation as in Quebec, except for the pilots' representatives, the procedure followed was the same. The committee studied the report of the Preliminary Inquiry, obtained further evidence if necessary and re-examined the pilot concerned who was allowed the assistance of his lawyer. The committee's findings and recommendations were generally unanimous but out of frustration it ceased to function as a quasi-tribunal. The Shipping Federation's representative, the late Captain Matheson, charged that not only were the committee's recommendations not followed by the Pilotage Authority but the com-

mittee was not even informed of the final disposition of a case or the reasons for the Pilotage Authority's contrary decisions.

Since the activities of the Advisory Committee as a quasi-court in the District of Quebec have been reviewed in detail, it is not considered necessary to review also those of the Montreal Advisory Committee in order to demonstrate why it failed. However, a brief review of the committee's activities as a negotiation forum is revealing and shows the need for establishing a procedure for orderly, open presentations by opposing parties (vide the proposal by this Commission in General Recommendation 19, Part I, p. 515).

The first meeting, which took place August 27, 1958, was an organization meeting for the purpose of studying the committee's terms of reference and devising rules of procedure. The three following meetings, held November 7 and 27, 1958, and January 29, 1959, were for the purpose of studying, first, the method of recruiting and training river pilots and, second, the feasibility and advisability of abolishing the special pilot system and replacing it with a grade system.

On the first point, opinions were divided. The shipping interests advocated recruiting pilots from the ranks of qualified, experienced mariners holding a Master's certificate, using advertisements when required. It was suggested that a short apprenticeship of five or seven months would then suffice for such candidates to acquire the necessary local knowledge. These views were opposed by the pilots: they urged that the existing system of recruiting through an extensive apprenticeship be retained with some improvements. The pilots' point of view prevailed but it was not until the 1961 revision of the District By-law that their suggested improvements were implemented (pp. 570 and ff.).

An agreement was promptly reached on the second question. Some difficulties arose over a side issue: the control to be exercised over the distribution of the dues derived from the additional charge to be imposed on Class A ships. The shipping interests did not object to an increase in tariff commensurate with the aggregate loss of unofficial revenue through the abolition of the special pilot system, since the ships employing special pilots would no longer be called upon to pay the unofficial bonuses which in the District of Montreal varied in 1958 between \$15 and \$25 per trip, depending upon the size and type of ship. Since the loss was borne by the special pilots, most of whom would become Grade A pilots, the Shipping Federation insisted that the revenue derived from Class A additional charges be shared exclusively among the Grade A pilots and that the sharing be handled by the Pilotage Authority. This view was opposed by the pilots on the ground that the sharing of pilotage revenues was a question that concerned themselves only. The Shipping Federation was aware of the existence of the partnership deed whose purpose was to pool pilotage earnings. A compromise solution was

adopted: the pilots amended their pooling arrangement so that the Grade A pilots would be granted a fixed bonus for each vessel exclusively pertaining to their grade which they piloted, the proposed Class A charge was replaced by an increase in trip rates and the Pilotage Authority refrained from imposing any control.

The stand taken by the shipping representatives was apparently a preventive measure aimed at curbing the power of control which the pilots as a group were expected to have if they succeeded in their plan to obtain their incorporation. It was in the course of these negotiations that the shipping representatives learned from the pilots' representatives that this was their intention. The apprehension of the Shipping Federation was such that Captain Matheson, without going through the Advisory Committee, in a letter dated January 7, 1959, addressed to the Director of Marine Regulations, D.O.T., made direct representations asking that the pilots be prevented from forming themselves into a corporation and suggesting that they become salaried employees but without the status of civil servants.

The committee, however, unanimously recommended the abolition of the special pilot system and the establishment of a grade system. This recommendation was favourably received by the Pilotage Authority and immediately implemented (P.C. 1959-459, dated April 14, 1959).

The end of the Advisory Committee as a negotiation forum came shortly thereafter when the pilots also by-passed the committee on the question of tariff revision. Some time earlier the pilots had engaged two consultants, *inter alia*, to study the pilotage tariff and its structure. On the strength of the consultants' reports the pilots had made direct representations to the Pilotage Authority of which the Shipping Federation became aware only when it received from the Pilotage Authority copies of the pilots' brief after the January 29, 1959, committee meeting. The pilots' brief contained two proposals which the shipping representatives considered unacceptable:

- (a) a new tariff structure based on the earning capacity of vessels;
- (b) a 10 per cent overall increase over the pilotage revenues of the previous year.

The fifth meeting of the Advisory Committee which was held February 27, 1959, was entirely devoted to debating this question. The shipping interests vigorously opposed the proposal and no agreement was reached. However, one of the Pilotage Authority's representatives, Captain D. R. Jones, informed the meeting that the Pilotage Authority considered that a tariff revision was justified and that it would be brought into force before the beginning of the navigation season.

Following this meeting, the Shipping Federation requested the Pilotage Authority to delay its final decision but on March 5, 1959, the Pilotage Authority informed the Shipping Federation that the decision was final and,

furthermore, that on that day the river pilots had been so informed at a meeting they had had with the Authority's representative. The Federation riposted with a telegram of protest to the Minister of Transport in which it sought an interview. In a telegram dated March 9, the Minister invited the Shipping Federation to meet his Deputy Minister March 16. The interview took place but the decision remained unchanged. On March 20, the Shipping Federation addressed a formal letter of protest to the Deputy Minister. The tariff was effectively amended a few weeks later (P.C. 1959-459 dated April 14, 1959).

In the months that followed, the tariff was altered a number of times to take care of new situations. However, the requests and representations made and even the meetings that took place between all the interested parties were all outside the framework of the Advisory Committee which, after its fifth meeting on February 27, 1959, had restricted its activities to its assumed function of a quasi-court.

(2) RECOMMENDATIONS RECEIVED REGARDING THE RE-ORGANIZATION OF THE DISTRICT

In its brief, the Shipping Federation of Canada recommended that the harbour of Montreal be made a separate District for pilotage purposes, i.e., that the present District be divided into two Districts, a harbour District 36 miles long and a river District from Sorel to Quebec 105 miles long. While at the Commission's hearings the National Harbours Board remained neutral on the question, its representatives recommended that, if the foregoing proposal were implemented, the function of Pilotage Authority should be vested in the Port Authority. The pilots who had formerly advocated the partition of the District into three separate, autonomous Districts, the dividing lines being at Trois-Rivières and Marien Street wharf (i.e., an 8.6 mile long harbour District from St. Lambert lock to Marien St. wharf, a 59.5 mile long upper river District from Marien St. wharf to Trois-Rivières, and a 73 mile long lower river District, from Trois-Rivières to Quebec). The Pilots' Federation did not again raise this former proposal before the Commission; instead they advocated the *status quo* in their brief to the Commission and, through the Canadian Merchant Service Guild brief which was filed later, strongly opposed the suggestion that the Harbour Authority should become the Pilotage Authority. The Dominion Marine Association also was not in favour of vesting in the Port Authority the function of Pilotage Authority.

The supporting arguments of the Shipping Federation may be summed up as follows:

- (a) The territorial competency of the harbour pilots should coincide with the legal limits of the harbour.

- (b) For the safety of navigation and the efficiency of port operations, highly trained, skilled harbour pilots should be available.

The first argument fails to take into account the nature of pilotage. It is an all too frequent error to establish the limits of a Pilotage District in relation to boundaries that exist for other purposes and do not correspond to the actual needs of pilotage. Except for the isolated case of Contrecoeur, there is no need at present for berthing and unberthing services in the 21.5 nautical mile channel east of the present harbour pilot limit (i.e., the former downstream harbour limit at the downstream end of Ste. Thérèse Island) as far as the new downstream limit of the harbour. The fact that this sector was placed under the jurisdiction of the Harbour Authority does not in itself create a need for harbour pilotage. The argument that considerable developments are expected in that region has little value until they have actually materialized and this is still not the case. When this occurs, it will be time to re-assess the situation and reorganize the pilotage service to meet the new needs.

The second argument is at first sight very much the same one the pilots had advanced a few years earlier when they recommended the creation of a separate group of pilots to handle all ship movements within the harbour of Montreal. They had argued that the increasing difficulties of navigating within the harbour due to ever growing numbers of larger vessels warranted the creation of a group of local specialists. To counteract the expected objection from the shipping interests on the basis of increased cost, the pilots had stated that substantial savings would result from the fact that rested harbour pilots whose functions would be substantially limited to berthing and unberthing would generally be able to dispense with tugs.

However, the Shipping Federation's proposal is substantially different from the one the pilots had made in that the harbour pilots would, in effect, become river pilots because berthing and unberthing would become merely an accessory duty at the end or beginning of a river trip throughout a 36-mile District. The harbour trip from St. Lambert lock to Lanoraie takes about four hours under normal conditions, i.e., two to three hours longer than a move from St. Lambert lock to Marien Street wharf. If a group of highly trained specialists, trained specifically to take charge of berthing and unberthing, existed, (which need has not yet been established) the proposal would be a retrograde step since this would mean the disappearance of the present group of harbour pilots whose function is limited to movages.

The argument that river pilots are too fatigued to berth a ship after a river trip applies only in a limited number of cases, since it does not apply to ships in transit or to downbound trips. Even for upbound trips, it has not much greater relevance now that a changeover of pilots is compulsory at Trois-Rivières.

It was suggested that when the harbour is congested in April and November the existence of two groups of pilots with well-defined, distinct

jurisdiction detracts from the efficiency of harbour operations in that otherwise avoidable delays occur when last minute changes in the destination of vessels make it necessary to assign river pilots instead of harbour pilots. This situation would occur whenever it is necessary to send vessels to Lanoraie because the Longue-Pointe anchorage is fully occupied.

However, delays of this nature should not occur. It is, first, a problem of proper liaison between the Harbour Authority or Marine Traffic Control and the Pilotage Authority and, for the latter, merely a question of despatching. When the Harbour Master or Marine Traffic Controller is planning port operations he should be aware of the situation at the Longue-Pointe anchorage and should know in advance when it will become necessary to use Lanoraie which is beyond the harbour pilots' jurisdiction. If the Harbour Authority and the Marine Traffic Controller keep the Pilotage Authority informed, there should be no problem. However, if this situation is likely to occur, it is the responsibility of the Pilotage Authority to arrange for the constant availability of a number of river pilots to meet such eventualities. Pilotage is a service; hence, it should be planned to meet demands created by local circumstances over which shipping has no control. Furthermore, no statistics on the incidence of such cases were given, but it would appear they are rare.

The proposal, which means the discontinuation of the changeover of pilots at Trois-Rivières, raises the advisability of extending the length of river assignments in the lower part of the District by adding 32 more miles of difficult channel navigation up to the proposed changeover point at Lanoraie.

At the request of the Shipping Federation, the then Regional Superintendent of Pilots, Captain W. A. W. Catinus, prepared a table indicating the time taken by 12 ships chosen at random to cover the distance between Quebec and Sorel. All these vessels berthed at Sorel but the berthing and unberthing time would be approximately the time they would have taken to cover the distance between Sorel and Lanoraie. Therefore, the times quoted appear accurate enough (Ex. 962).

Name	Quebec-Sorel	Sorel-Quebec
<i>World Cavalier</i>	7:55	6:15
<i>Runswick</i>	7:40	7:30
<i>Fixos</i>	9:00	6:55
<i>Metohija</i>	7:45	6:39
<i>Regina</i>	7:40	6:30
<i>Helga Oldendorff</i>	7:25	7:15
<i>Praunheim</i>	8:55	8:20
<i>Hajduk</i>	13:00	11:00
<i>Lesozavodsk</i>	7:50	7:00
<i>Justinian</i>	8:15	6:45
<i>Dorset</i>	7:10	6:50
<i>Propontis</i>	10:40	9:15

However, this table can not convey a complete picture in that it does not take into account passenger vessels, which are much faster, and inland and coastal vessels, which are generally slower.

The Shipping Federation stated that the Lanoraie anchorage would be an ideal area to effect the changeover of pilots, the channel there being wide and straight for three to four miles and free of any obstructions with a uniform 1.7-knot current. It would be preferable to Longue-Pointe because the channel is twice as wide and there is less traffic. However, these views are not shared by the pilots. Pilot Orance Hamelin stated that the Lanoraie area is precarious because it is exposed to particularly violent winds. In order to counteract them ships would have to maintain high manœuvring speed to remain in the channel, thus making it extremely difficult for the pilot vessel to come alongside and also creating a hazard in the confines of an anchorage.

As to the advisability of a Port Authority being entrusted with the function of Pilotage Authority, the Commission has already expressed its views in its General Recommendation 18 (Part I, pp. 510 and ff.). Under the present system, the Harbour Authority in Montreal does not meet the requirements.

However, when studying the reasons which prompted this recommendation by the Montreal harbour officials, it is realized that it arose because of their frustration (vide pp. 661-2).

As stated earlier, it is considered that harbour legislation should make it an offence for anyone who fails to obey the Harbour Traffic Control Regulations or the lawful orders given by the harbour controllers, whether the offender be a ship's officer or a pilot, and should empower the Harbour Authority to prosecute the offender directly. Since the Harbour Authority is responsible for the safety of navigation within the harbour, it should have the power and the means to investigate on its own any casualty, accident or incident affecting the safety of navigation and the efficiency of port operations, and to take the indicated remedial action, whether a pilot is involved or not. Improved liaison between the Harbour Authority, the Pilotage Authority and Marine Traffic Control should be achieved. A first step toward greater cooperation would be for the Pilotage Authority to be composed of an *ad hoc* Board on which the Harbour Authority would have a representative (Part I, p. 511).

4. PILOTS

(1) NUMBER OF PILOTS

The By-law leaves the determination of the required number of pilots to the administrative decision of the Pilotage Authority after consultation with the Pilots' Committee concerned (as to the legality of this provision, vide Part I, pp. 255 and ff.). There is no criterion established, either legisla-

tive or administrative. Each time vacancies occur or the pilots request an increase in their number, the question is studied afresh, a process which causes much contention and frustration as well as a serious loss of time for all concerned.

Formerly, the District By-law provided a legislative criterion. In 1927, it was an average of 60 trips (full transits) per pilot (50 pilots for each 3,000 trips per annum). In 1949, this number was raised to 70 per annum calculated according to the average of trips for the three previous years, thereby making allowance for non-recurrent fluctuations. The criterion soon became a legislative dead letter, so much so that, when it became definitely obsolete on account of the administrative division of the District at Trois-Rivières in 1959, it was not felt necessary either to delete or to modify the provision to meet the new situation. It was deleted during the 1961 consolidation of the By-law.

For a more complete study of the question and the Commission's comments and recommendations, reference is made to pp. 225-231. For statistics on the evolution of pilots' strength, reference is made to the tables pp. 620 and ff. and pp. 760 and ff.

(2) RECRUITING AND TRAINING OF PILOTS

The method of recruiting candidates for pilotage and the required training to qualify them as pilots depend on the nature of the pilotage service to be rendered and the extent of the required qualifications already possessed by the candidates. Therefore, the licensing requirements for river pilots and those for harbour pilots differ substantially.

(a) *Recruiting and Training of River Pilots*

On account of the extensive local knowledge and experience required to become expert in the navigation of the ship channel between Quebec and Montreal, including both harbours, and to berth and unberth ships in these and other harbours in the District, and because of the absence of a sizeable pool of qualified mariners experienced in these waters from whom to select potential pilots, it has been necessary to adopt an extensive apprenticeship system in the Montreal District (Part I, p. 252).

Recruiting methods, apprenticeship requirements, surveillance and selection arrangements for candidates and pilots are, except for a few details, the same as in the Quebec District (for details see pp. 231 and ff.). In fact, the Quebec system was inspired by Montreal's experience. The first meaningful reforms were adopted in 1956 (P.C. 1956-1499) which introduced the requirement of theoretical study at the Rimouski Marine School, but it was not until the 1961 revision of the By-law that the complete revision of the system devised by the pilots and agreed to by the Advisory Committee in 1959 was given effect.

As in Quebec, newspaper advertisements are used to invite candidates. The selection of candidates and pilots, and surveillance of the apprentices' training are responsibilities of the Board of Examiners composed of representatives of the Pilotage Authority and the pilots. As a rule, the apprentices are recruited from the ranks of pre-selected candidates who have attended a two-year course at a marine school approved by the Authority, have obtained the diploma for that course and have served as a deck officer for the required period (formerly 12 months, raised to 36 months in 1967). The number of apprentices is determined by the Board of Examiners to meet foreseeable requirements for pilots. Apprentice licences are issued by order of seniority on the qualified candidates list kept by the Board of Examiners. The minimum duration of apprenticeship is three years. In addition to the required number of trips to be performed throughout the District, the apprentice must, during each of the first three years of his apprenticeship, undergo a course of training aboard a vessel selected by the Board of Examiners and a course of instruction determined by the Board of Examiners given at a marine school, and write an examination. Repeated failure to pass the examination or comply with the other apprenticeship requirements will result in the cancellation of the apprentice's licence. An apprentice who has complied with these requirements and who possesses a Certificate of Competency as First Mate of a Home-trade Steamship (unlimited as to tonnage), or of a higher grade, is eligible to be examined for a pilot's licence when a vacancy is created and it is his turn on the eligibility list. An apprentice holding a temporary pilot's licence takes precedence. An eligible candidate who has successfully passed the pilot's examination before the Board of Examiners and meets the physical and mental fitness requirements is issued a probationary licence.

The main points of difference with the Quebec system are the following:

- (i) It is possible to recruit apprentices directly from the ranks of qualified, experienced mariners who have not reached the age limit. This provision was added by an amendment to the By-law in 1967 which, at the same time, *inter alia*, raised the age limit from 30 to 35. The requirements for Grade Eleven basic education and a diploma for passing the two-year course in navigation at an approved marine school are waived, but the competency requirements are higher: to become apprentices such mariners must hold a Canadian certificate not lower than Master of an Inland Waters Steamship, or as First Officer of a Home-trade Steamship, or as Second Officer Foreign-going, and must have served at least 36 months as a deck officer in charge of a watch in such vessel. In contrast, no Certificate of Competency is required of selected candidates to enable them to become eligible for apprenticeship. Such a certificate need not be obtained before the expiration of three months following the three years of apprenticeship. The

required minimum certificate is First Mate of a Home-trade Steamship (unlimited as to tonnage). The 36 months' deck service which must be completed prior to becoming an apprentice may be served in any ship. No doubt this provision was added to forestall a shortage of qualified selected candidates to meet the expected demand for apprentices.

- (ii) In Quebec, a selected candidate may not receive an apprentice licence until he has obtained his marine qualifications and the date of his Certificate of Competency is the date he becomes an apprentice, which, as seen earlier, is not the case in Montreal. The Quebec requirement appears to be more logical. Because a pilot is a specialist in navigation, it seems normal that he should be a fully qualified mariner before beginning training for his *expertise*.
- (iii) The Montreal By-law provides that a third failure in the final examination automatically entails forfeiture of the apprentice licence, a feature that has been asked for by the Quebec pilots but so far has not been incorporated in the Quebec By-law.
- (iv) The course of instruction to be followed each apprenticeship year is a By-law requirement and, therefore, is a compulsory feature. Failure to comply with this requirement may result in cancellation of the apprentice licence. (This is an essential feature which should be added to the Quebec District By-law, even if it entails the Pilotage Authority assuming responsibility for these courses through the Board of Examiners.)

The course of instruction for apprentices which the Board of Examiners has drawn up is as follows:

- (i) the first year, technical knowledge of the ship channel;
- (ii) the second year, landmarks along the ship channel and the regulations of the various harbours in the District;
- (iii) the third year, pilotage regulations and other related regulations, such as those concerning the control of water pollution and the St. Lawrence River Navigation Safety Regulations, the procedure for reporting shipping casualties, and special studies relating to the art of ship handling and special features of the ship channel, such as prohibited anchorage areas.

This formal course of instruction is given in the Marine Institute, now located in Quebec, by the regular instructional staff and also by Montreal pilots.

The apprentices receive no official remuneration, a situation which the Montreal pilots have also recommended should be corrected.

As in the Quebec District, the pilots receive unofficial remuneration from certain vessels pursuant to arrangements made by the Shipping Federa-

tion with its members: \$12 per full trip for a first-year apprentice and \$15 thereafter. The situation is the same as in the Quebec District (pp. 237-238) with the difference that the apprentices are not given the choice of ships but are despatched on the basis of tour de rôle and ship arrivals (except passenger vessels). Hence, an apprentice is precluded from selecting ships that pay unofficial remuneration.

On January 5, 1966, the Montreal river pilots submitted a brief to the Pilotage Authority requesting that the apprentices be paid an official remuneration and stating that it was in the interest of the service to remunerate them. They denounced the prevailing system which left the amount of the apprentices' remuneration to chance voluntary contributions from only some of the vessels employing pilots and which, in any event, left the level of remuneration far too low. In their brief, they recommended that apprentices be paid by the Pilotage Authority an annual salary of not less than \$3,000, the cost to be covered by a 5 per cent surcharge on pilotage dues.

For the Commission's comments on the pilots' proposal, reference is made to pp. 260-261.

At the time of the Commission's hearings, the Regional Superintendent, Captain W. A. W. Catinus, found that the new apprenticeship system was working efficiently, that the Board of Examiners was discharging its responsibilities adequately and that the system ensured sufficient numbers of qualified, competent pilots. His only criticism was that twelve months' sea experience was not enough, especially since high standards of qualification were being sought. As seen earlier, this drawback has since been corrected, the sea experience required having been increased to 36 months in 1967.

Captain J. J. Gendron expressed the opinion that to obtain competent, skilled pilots training should begin at an early age because pilotage as a vocation "is not suddenly acquired at 45 years of age". Therefore, he was against recruiting pilots from those who had already made a career as Masters or Ship's Officers.

COMMENTS

For the Commission's comments and recommendations on the present system of recruiting and training pilots, reference is made to pp. 259 and ff.

The *de facto* division of the District at Trois-Rivières and the ensuing administrative limitation of the river pilots' competency to either the lower or upper sector of the District is not reflected in the training of apprentices. It is considered that failure to take this factual situation into account is an unnecessary imposition upon the apprentices and is not conducive to the acquisition of a high standard of *expertise*. Only legislative difficulties prevented the legal division of the District but a *de facto* division was effected by dividing the pilots into two groups, each being assigned to one of the two sectors exclusively. Although the Pilotage Authority has continued to issue

licences unlimited as to territory, it would fail in its responsibilities if it were to allow a pilot from one sector to be transferred to the other, either temporarily or permanently, without first requiring him to undergo fresh training in the other sector and be re-examined on local knowledge. To remain expert it is not sufficient for a pilot simply to pass the required examination, he must also maintain his local knowledge and skill in navigating the ship channel of his sector by constant experience. This is why sec. 336 C.S.A. provides for the automatic forfeiture of a pilot's licence after two years of non-usage. This being so, it is considered that the apprentice pilots' training in the ship channel should be limited to one of the two sectors as if each were in a separate District.

Temporary Licences

According to the governing legislation, there should be two types of temporary licence available for the Montreal river pilots: temporary licences under sec. 338 C.S.A. and temporary licences to meet an emergency situation.

A Montreal river pilot who holds a permanent licence, provided he is physically and mentally fit, is entitled under sec. 338 to be issued with a one-year temporary licence which is renewable until he reaches the age of 70, since no regulations were made under subsec. 329(i) C.S.A. to provide for compulsory retirement at the age of 65. Section 3 of the "Regulations Governing Montreal Pilots Pension Fund" which states that 65 is the normal pensionable age is merely a provision concerning the management of the Pension Fund, thus making it possible to grant a pension in the event of voluntary retirement beginning at age 65 (vide Part I, p. 266).

In fact, this is the practice followed in Montreal. Pilots are permitted to retire on a voluntary basis at 65 but, if they elect to continue piloting, temporary licences are issued. For instance, according to the 1963 annual report one pilot then aged 68 was still active with such a temporary licence.

Section 34 provides for the issuance of temporary licences to qualified apprentices to meet an emergency. This legislative provision provides the necessary flexibility in a system of controlled pilotage where the number of permanent licences is limited to those required to meet the expected demand for service. For further comments, vide Part I, p. 270.

The By-law does not provide for the issuance of temporary (probationary) licences and, contrary to the practice still followed in the Quebec District, the first licence granted is permanent.

COMMENT

The grade system would be further improved if the probationary licence requirement were made an integral part of it. The first licence to be issued should be probationary and last for a sufficient period to enable the Pilotage Authority to appraise each new pilot's skill and practical knowledge.

Grading of Pilots

The grading or classification of pilots as to legal competency (Part I, p. 263) to navigate vessels in relation to their size and type was a necessary new feature in pilotage that was introduced when the special pilot system was abolished. Former pilotage legislation contained a special statutory provision for the District of Montreal providing for grading but on a much smaller scale. By an amendment to the Pilotage Act in 1879 the Montreal Pilotage Authority was authorized to issue second-class licences and fix lower rates for the price of their services. This provision was abrogated when the 1934 C.S.A. was enacted.

The grade system has been declared illegal by the courts under the present statutory legislation (vide p. 256), but this irregularity has been temporarily covered for the Montreal District by sec. 7 of the 1969 amendment to the Canada Shipping Act (p. 571).

The special pilot system that previously existed in the District of Montreal was a constant source of contention with the shipping interests and a source of friction among the pilots because it interfered with a system of controlled pilotage. Ever since the Montreal pilots established and operated their own unofficial tour de rôle system for those who were not special pilots they have encountered the same difficulties as in the Quebec District. In 1959, the shipping interests and the pilots finally came to an agreement with the Pilotage Authority about the need to abolish the special pilot system. The grading of pilots was adopted to replace the control formerly exercised by the shipowners who through the appointment of special pilots could ensure that only thoroughly experienced pilots were allowed to take charge of passenger vessels and larger ships. The changes were effected immediately after the agreement was reached by an amendment to the By-law dated April 14, 1959 (vide p. 613). It preceded by one year the implementation of a similar system in Quebec.

The system is substantially the same as the one adopted in the Quebec District in 1960. The few differences that exist were rendered necessary by the greater difficulties of navigation due to the physical features and limitations of the ship channel in the Montreal District. The period in Grade C was made three years instead of two, and the Grade B competency was first limited to 7,000 NRT but raised to 8,000 in 1967 instead of 10,000 as in Quebec.

Under the new system, the pilots were graded in three main categories:

- (i) a first minimum three-year period called Grade C, in turn divided into three one-year stages referred to as Grade C1, C2 and C3, the limit of the pilot's competency as to size of vessel being respectively 1,500 NRT, 2,500 NRT and 4,000 NRT;

- (ii) the basic grading for a full-fledged pilot, Grade B, with a competency tonnage limit of 7,000 NRT, to which Grade C pilots could be promoted after completing the Grade C period provided they passed an examination as to competency;
- (iii) Grade A with competency unlimited as to size and type of ship, granted at the discretion of the Pilotage Authority to Grade B pilots; Grade A pilots automatically reverted to Grade B at 65 years of age; they could also be degraded if found incompetent or unsuitable for Grade A.

The By-law also provided as a transitional measure that all pilots then holding a licence would automatically be graded B. The 7,000 NRT limit had been arrived at after consultation with the shipping interests and the pilots were to ensure that only thoroughly experienced pilots were assigned to larger vessels. Twenty-six pilots were then graded A.

In 1961, some modifications were made to improve the system:

- (i) Satisfactory service was made a requirement for upgrading and the examination requirement for the granting of Grade B was abolished.
- (ii) At the age of 65 or after, a Grade A pilot could be graded C instead of Grade B, but only at his own request.
- (iii) The competency of Grade C1 and C2 was increased to 2,000 NRT and 3,000 NRT respectively.

The main purpose of the 1961 amendment was to stress the point that upgrading was not to be automatic after the prescribed lapse of time but was subject to satisfactory service. In fact, on a number of occasions, upgrading has been delayed on account of an adverse record. After *M. V. Beechmore* grounded August 5, 1961, in Montreal harbour, the pilot's promotion from Grade C to Grade B was delayed until the expiration of two years after the date of the casualty, as recommended by the Investigating Officer (Ex. 1332). The pilot who was held responsible for the *Inga Bastian* striking Victoria wharf October 11, 1962, was told that he would not be promoted from C2 to C3 until he had successfully completed 25 movages in Victoria basin because it was realized that he needed more experience handling ships in the current there. His promotion was not actually delayed because he met this requirement before he was due for it.

In 1963, on account of the increase in the number of larger vessels, it became difficult to share the workload equitably among the pilots because of the limited number of Grade A pilots. There were two possible solutions: increase the number of Grade A pilots, or raise the tonnage limit of vessels that could be handled to a level that would re-establish the balance.

The Pilots' Committee chose the second solution and recommended to the Pilotage Authority that the tonnage limit for the Grade B pilots be

raised from 7,000 tons to 8,000 tons. The Pilots' Committee was satisfied that all the Grade B pilots were competent to take charge of vessels of somewhat larger size and that, on the other hand, it was preferable not to increase the number of Grade A pilots. In fact, this was the only logical solution but it is doubtful whether 8,000 NRT was high enough. However, the proposed solution was in conformity with the philosophy of the grade system in which Grade B is the grade of the fully qualified pilots who should handle the bulk of pilotage work and the few most difficult or unusual assignments are reserved for a small selected group of particularly skilled Grade A pilots. The solution was also the only one compatible with a pooling system which requires that the majority of participants share on an equal basis.

When the Shipping Federation was consulted, it opposed the idea but, after further study and taking into account the report made by the local Supervisor and the Regional Superintendent on the difficulties met in despatching pilots under the 7,000-ton limit, the Pilotage Authority raised the Grade B tonnage limit to 8,000 NRT by an amendment dated January 10, 1964.

Since the vessels that were within the exclusive competency of Grade A pilots were not affected by a Class A additional charge as in Quebec, the change in the competency of the Grade B pilots did not require a tariff revision.

In 1967, in addition to satisfactory service, a period of eight years of active service was added as a prerequisite to upgrading from Grade B to Grade A, and a pilot's right to be reclassified to a grade lower than B was advanced to the age of 60 and extended to Grade B pilots as well.

In addition to the requirement of satisfactory service, the length of the three stages in Grade C was modified for C1 to six months or 100 assignments whichever came later, and to 12 months and 18 months for Grades C2 and C3, and the maximum tonnage for Grade C3 was raised to 5,000 NRT. For the error in drafting, in the new provision concerning Grade C1, vide f.n.1, p. 571.

For further comments on the grade system, reference is made to p. 257.

(b) Recruiting and Training of Harbour Pilots

The only difference in the qualifications required of the harbour pilots as compared to the river pilots is that their local knowledge and experience in shiphandling extend over a comparatively small area of confined waters, i.e., the 12.5-nautical mile upper section of Montreal harbour from St. Lambert lock to the downstream end of the Island of Montreal. Hence, as

is to be expected, the required local knowledge can be obtained by qualified, experienced mariners in a much shorter training period.

A formal period of training under the direction of the Pilotage Authority, i.e., an apprenticeship period, is a necessary prerequisite to obtaining a pilotage licence unless the Authority can draw on a sizeable number of qualified mariners who are constantly manoeuvring, berthing and unberthing ships in local waters. Since this is not the case in Montreal harbour, it has been necessary to set up an apprenticeship system. Unfortunately, this factual situation is not reflected in the pilotage regulations, as it should be.

In 1957, when it was decided to create a group of harbour pilots (pp. 625 and ff.) whose sole responsibility would be movements in Montreal harbour, the Authority was faced with the problem of recruiting candidates for harbour pilotage from the ranks of qualified mariners and ensuring that they acquired the necessary local training before being licensed. The Montreal river pilots had strongly opposed the proposal of the Shipping Federation that the new harbour pilots be recruited from their number but offered to give intensive training to mariners recruited for this purpose by the Pilotage Authority. The problem of financing the training of the first group of candidates was settled when the Shipping Federation offered to assume the cost.

Following these agreements in early May 1957, the Pilotage Authority formed a selection committee composed of representatives of all the parties concerned, including the Harbour Master. The presence of representatives of the shipping interests was of a temporary nature.

One hundred and thirty eight candidates answered the advertisement which required a Master's certificate, either foreign-going or for inland waters, with, in addition, actual experience in command. Twelve of these were chosen after the Selection Committee had perused their credentials and conducted a professional examination.

Since no selected candidate had any pilotage experience in the harbour, a training programme had to be arranged. The Shipping Federation undertook to organize this programme in cooperation with the river pilots' association, the United Montreal Pilots; Captain Matheson of the Shipping Federation was put in charge.

The programme was divided into two periods. The first consisted of one month of formal instruction given by two river pilots, A. Tremblay and R. Grenier, who were assigned by the United Montreal Pilots. Their lectures concerned the physical features of the harbour, its various berths, the ship channel, the regulations and other matters with which a harbour pilot

needed to be conversant. This was followed by a one-week, detailed survey and study of all the harbour waters from a tug under the direction of the two pilot instructors. This theoretical phase was followed by an examination to assess the candidates' progress. All the candidates except one passed the examination and were allowed to proceed with the second stage of training. The pilot who failed was required to undergo a further month of theoretical training.

The second stage was an indefinite period of practical training in manoeuvring, berthing and unberthing in the harbour with, and under the direction of, the river pilots who had been regularly assigned to ships and remained responsible for the movages, beginning with ships of small tonnage and gradually increasing to the larger ones. During this last part of their training when the trainees were considered capable of piloting on their own, they were granted temporary cancellable licences restricted as to competency. Three such licences were issued on July 29, four on August 9, three on August 23, one on September 23 and one on October 26.

The duration of this practical training was not uniform for all candidates. For instance, the three candidates who were former pilots of the Montreal-Kingston-Ottawa District were granted their harbour pilot's permanent licence on August 26, 1957, while the nine other candidates had to spend longer before obtaining theirs: four were licensed in September 1957, two in October, two in November and the last one in December. Before obtaining their licence, all the candidates were required to undergo another formal examination and a compulsory improvement course was given during the 1958 winter season.

This accelerated training was considered a complete success since in a relatively short period of time it had been possible to prepare the required number of harbour pilots, including extensive practical training, without any serious mishaps on the debit side. Pilot Chas. B. Lavoie, one of the first harbour pilots to be licensed, stated that it was not before the spring of 1959 that he felt at ease piloting in the harbour. He warned that the brief training they had had would no longer be adequate because of increasing numbers of larger ships and the considerable changes in the traffic situation since the opening of the Seaway.

This first training programme was financed by the Shipping Federation by way of voluntary contributions from its members amounting to a 25 per cent surcharge on dues for movages the candidates performed in the harbour. This additional charge was collected by the Pilotage Authority. The actual expenditures amounted to \$6,696.12, a relatively low figure which was made possible by the Shipping Federation and the Montreal river pilots providing the necessary administration and training free of charge. The

only remuneration paid to instructors was for the winter improvement course. These expenditures were as follows:

Remuneration during training paid to the 12 candidates forming the initial group.....	\$ 4,650.00
Remuneration paid to the candidate recruited in 1958.....	820.00
Remuneration paid to the instructors for the winter improvement course of 1958.....	780.00
Stationery.....	228.12
Insurance.....	218.00
Total.....	\$ 6,696.12

The item *insurance* represents the premium paid for liability insurance coverage to all concerned against casualties or accidents attributable to the fault of trainees.

The 25 per cent voluntary contribution yielded \$8,579.71, leaving a net surplus of \$1,883.59 which was remitted by the Pilotage Authority to the Shipping Federation of Canada when the training programme was completed.

Since that time the training programme has remained basically the same but the pilots' licences are now granted before the practical training stage and neither the Shipping Federation nor the river pilots bear any responsibility for the selection and recruiting of the harbour pilots. These duties are performed by the Pilotage Authority through its delegate, the Examination Board, composed as stipulated in the regulations, and by the harbour pilots. Sec. 48 of the District By-law provides for the Examination Board to be composed of the Regional Superintendent, or someone designated in his stead by the Pilotage Authority, as Chairman, three members of the Harbour Pilots' Committee, and an officer of the Department of Transport.

The pilots have always been opposed to direct shipping representation on the Board of Examiners. It was only on account of its administrative and financial contribution that the Shipping Federation had a direct representative on the provisory organization and selection board, and later up to 1961 had *de facto* representation on the Board of Examiners whose composition was in part left to be determined administratively by the Pilotage Authority (sec. 58 of the By-law added by P.C. 1957-987). It is in the exercise of this discretionary power that the Pilotage Authority asked the Shipping Federation to send one representative to form part of the Board of Examiners. However, the possibility of such an indirect representation was eliminated when the By-law was revised in 1961 (sec. 48).

In 1959, the number of harbour pilots was raised to 16 at the request of the Harbour Pilots' Corporation to handle the greater workload which

resulted from the increase in traffic following the opening of the Seaway. To lessen the chances of opposition to their proposal, the harbour pilots did not ask for an increase in moorage rates and undertook to finance the training of the candidates out of their common fund. The trainees were paid \$15 per day for the duration of the theoretical stage. During the practical stage they were no longer a financial burden since the licensing procedure had been altered so that a probationary licence was granted immediately after the theoretical stage.

The number of harbour pilots was raised again in 1965 to 18 at the request of the pilots and with the concurrence of the Shipping Federation. At the same time it was agreed to increase moorage rates by 10 per cent, of which 4.5 per cent was to provide additional revenues for the harbour pilots and 5.5 to finance the training of the two candidates.

When an advertisement for new candidates was published in 1965, the Board of Examiners had made a list of applicants whose credentials were in order and the two trainees were selected from them. In 1966, the pilots again asked for a further increase of two to be selected from the names remaining on that list. This further request was granted, despite the opposition of the Shipping Federation. This brought their number to 20 which remained unchanged until the beginning of 1969 when one pilot who retired voluntarily was not replaced.

The governing By-law provisions are very incomplete and do not reflect as fully as they should the practice to be followed:

- (i) Sec. 47 establishes the pre-requisites to licensing, i.e., Canadian citizenship and residence, a Certificate of Competency not lower than Master of an inland waters steamship (unlimited as to tonnage); experience as a Master or experience in piloting, the extent of which is left to the discretion of the Pilotage Authority; physical, mental and moral fitness and success in an examination before the Board of Examiners.
- (ii) Sec. 48 establishes the composition of the Board of Examiners.
- (iii) Sec. 49 stipulates certain topics that the theoretical examination for licensing shall include: local knowledge of the harbour, regulations affecting pilotage, "manoeuvring of ships with and without the aid of tugs" and other subjects and matters pertaining to the duties of a harbour pilot at the Board's discretion. The candidate must also undergo a medical examination as to his physical and mental fitness.
- (iv) Sec. 50 provides that the first licence is to be a one-year probationary licence followed by a permanent licence if the licensee is found suitable for the pilotage service. During the probationary period

the pilot is to receive remuneration as fixed by the Pilotage Authority after consultation with the Harbour Pilots' Committee.

However, the actual practice and procedure are as follows (Ex. 1539(h)):

- (i) *Recruiting.* Candidates for the service are sought through public advertisement in newspapers at regular intervals, i.e., every two years. This period corresponds to the length of time the eligibility list is valid. At the expiration of this period, the existing list becomes invalid and the process is repeated.
- (ii) *Selection.* Once applications are received, they are screened for basic requirements, i.e., age, citizenship, technical qualifications (Certificate of Competency), etc. The candidates who are found acceptable at this stage are called to meet the Board of Examiners and are given written and oral examinations. Based on the results, a list of eligible candidates is prepared in order of eligibility. This list is submitted to the Authority for approval. The selected candidates are called from that list when new apprentices are required.
- (iii) *Training.* An apprentice is required to undergo a four-month apprenticeship during which he must familiarize himself with every section of the harbour. For this purpose, he is required to perform a minimum of 12 movages per week in the company of a licensed pilot to cover all wharves and anchorage areas.
- (iv) *Examination for licence.* At the conclusion of the four-month apprenticeship, the apprentice is given an oral examination on local knowledge, primarily on the channel, currents, aids to navigation, berths, handling ships with or without tugs and local regulations.
- (v) *Probationary licensing.* If the Board is satisfied that an apprentice has demonstrated the necessary knowledge and experience to be a harbour pilot, the Pilotage Authority issues him a probationary licence valid for one year. Although the By-law does not prescribe any limitation as to tonnage, a probationary pilot is limited to vessels not exceeding 3,000 NRT for the first four months and 5,000 NRT for the remaining eight months.
- (vi) *Remuneration.* During the apprenticeship period, apprentices are paid out of the pool a remuneration of \$20 per day. A probationary pilot's remuneration is two-thirds of a full share of a pilot holding a permanent licence.
- (vii) *Permanent licensing.* At the expiration of the probationary period and upon proof of satisfactory service, a permanent licence is

issued. The proof of satisfactory service takes the form of a report made by the District Supervisor compiled after consulting the Pilots' Committee as to the probationary pilot's suitability.

Although the probationary licence actually corresponds to the Grade C of river pilots, the regulations do not provide for the selection of a small number of pilots corresponding to Grade A.

Since the By-law contains no provision made under subsec. 329(i) C.S.A., the harbour pilot is entitled to a renewable temporary licence under sec. 338 when his permanent licence expires, provided he is fit for duty.

The By-law is deficient in that it does not provide for issuing temporary licences to qualified candidates to meet emergency situations.

COMMENTS

The current training procedure is quite at variance with the original extensive theoretical and practical training that experience had proved necessary. At a time when the pilots' duties have become more exacting and when an ever increasing standard of qualifications ought to be required, this lowering of training requirements is regarded with apprehension by this Commission which can not avoid suspecting that the problem of financing the candidates' training may have been the determining factor and that the present system is a compromise between the public interest and the amount the pilots are willing to pay.

It is considered that the validity and adequacy of the training programme should be carefully reassessed, and any necessary corrections made if it is found that it is unlikely to produce candidates for licensing who possess the degree of *expertise* required for safe, efficient pilotage operations in the harbour.

As is required by law (Part I, p. 251) and because the public interest is involved, the prerequisites to become first an apprentice and then a pilot, as well as the detailed procedure for recruiting and training apprentices and for selecting pilots, should be fully established in the regulations. The regulations should also fix the amount of the apprentices' remuneration and lay down that it forms part of District operating expenses which are paid by the Pilotage Authority, normally out of aggregate pilotage earnings.

Despite the small number of pilots, the grade system should be adopted and the regulations provide for a temporary Grade A, i.e., for the selection of a few pilots from those best qualified to handle the most difficult and unusual assignments. Grade C should correspond to the period of the probationary licence and should be based on a combination of time, number and types of assignments and satisfactory service.