Canada

Laurentian Pilotage Authority
Administration de pilotage des Laurentides

Pilotage on the St. Lawrence & Saguenay Rivers: A Vital Component of the Canadian Marine Transportation System

Submission to
The Honourable Marc Garneau, P.C., M.P.,
Minister of Transport

July 2016

Table of Contents

I. Executive Summary and Recommendations

Shipping on the St. Lawrence and Saguenay Rivers, plays a vital role in the economic development and competitiveness of our region. The navigational challenges of our waterways make expert pilotage a necessity in terms of both the safety and efficiency of the marine transportation system. It is therefore essential that we take this opportunity to build on our success and consider how pilotage can best support Canada's marine transportation system.

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

Recommendations:

1. Address the current governance shortcomings by amending the *Pilotage Act* to provide the Pilotage Authorities with oversight and supervisory powers over the pilot corporations and their pilots.

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

3. Provide express legislative authority to the Pilotage Authorities to establish safety regulations of general application that are applicable during the provision of pilotage services. This would be subject to consultation with pilots, industry, interested stakeholders and Governor in Council approval.

4. Amend the *Pilotage Act* to provide legislative authority similar to that accorded to port authorities and found in paragraph 56(1)(b) of the *Canada Marine Act*. This would authorize the LPA to establish binding practices and procedures applicable to the pilot corporations and their pilots during the provision of pilotage services.

5. Provide the Pilotage Authorities with the legislative tools or means to introduce and prescribe the use of technology as well as ensuring that pilots acquire and maintain the requisite competencies to use this technology, in order to enhance safety and increase the efficiency of pilotage services.

6. Amend the *Pilotage Act* to permit the Pilotage Authorities, where pilot corporations operate, to hire a limited number of employee pilots to ensure resident in-house expertise and the proper conduct of their work and mission. For the LPA, the legislative authority to hire up to 10 employee pilots which includes 2 per district would provide adequate in-house expertise.

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

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

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

10. Provide the Pilotage Authorities with modern compliance and enforcement powers.

II. Introduction

The LPA welcomes the opportunity to comment on the recent CTA Review Panel Report. The observations and recommendations contained herein are intended to support and enhance our previous submission to the Review Panel dated December 11, 2014 as well as the joint submission of the LPA, Great Lakes and Atlantic Pilotage Authorities dated January 21, 2015.

The LPA is firmly of the view that the pilotage system and its governance can and should be improved to better support safety, competitiveness, economic growth and prosperity, while at the same time building on our excellent record. The observations and recommendations reflect our long-standing experience in the provision of pilotage services and are a reflection of formal and informal discussions undertaken with stakeholders. They are meant to modernize a system that has generally served the Canadian public and economy well in the past four decades, but that is nevertheless in need of improvements to keep pace with the current challenges of today as well as the needs of the future.

III. Overview of the Laurentian Pilotage Authority

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

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

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

As permitted under the *Pilotage Act*, the approximately 200 pilots providing pilotage services on behalf of the LPA have chosen to organize themselves into two separate corporations. The Corporation of Pilots of the Lower St. Lawrence (CPBSL) is

responsible for piloting ships from Les Escoumins to the Port of Quebec, and the Corporation of Pilots of the Central St. Lawrence (CPSLC) is responsible for piloting ships from Quebec to Montreal. These corporations are privately held for profit companies. Once in place, the *Pilotage Act* grants the pilot corporations an exclusive monopoly to operate in their respective territory. When pilots organize themselves in this manner, a Pilotage Authority is prohibited, by law, from hiring its own employee pilots.

IV. History

The *Pilotage Act* was introduced in 1972 following the recommendations drawn from the 1968 Royal Commission on Pilotage undertaken by Judge Yves Bernier. The *Act* has seen some minor modifications over the years but has remained generally unchanged in forty years.

Budgetary restraints in the early 1990s required the Government of Canada to review all of its systems of providing services and in this case it decided that all Canadian Pilotage Authorities had to be financially self-sufficient and operate in a more transparent and commercial fashion. As a result, the Government amended the *Pilotage Act* in 1998 to stop all Parliamentary Appropriations to the Authorities, signalling to the Authorities and the clients of the system that commercial and private industry practices should be adopted in the delivery of pilotage services in Canada. At the time, the final offer arbitration method was also introduced in the *Act* as a means to resolve disputes relating to the renewal of commercial service contracts with the pilot corporations.

In the same period, transportation in Canada and more specifically shipping and technology has changed significantly. Our experience in managing pilotage services over the years and working with the pilotage corporations has led us to the conclusion that the current governance framework no longer fully meets the needs of the marine transportation system. We therefore agree with the CTA Report that this is the opportune time to modernize the *Pilotage Act* to enable the LPA and pilotage in general to better support and promote competitiveness, economic development while building on our enviable safety record.

> *The Review is convinced that it is an opportune time to modernize pilotage requirements and their accompanying regulations to reflect these innovations, so that pilotage enhances rather restricts competition and provides valued services to mariners.*
>
> CTA Review Panel Report, Volume 1, p. 233.

V. Challenges with the Current Legislative Framework

A. Governance

As mentioned above, the LPA and the Pilotage Authorities in the other regions of Canada are Crown corporations governed by the *Pilotage Act*, the *Financial Administration Act*, and are accountable to Parliament. This public accountability framework ensures the independence of the Pilotage Authorities from commercial interests and addresses the need to protect, above all, the public interest.

This framework and inherent checks and balances work particularly well for those Pilotage Authorities with employee pilots. For such Authorities, the legislative framework applies to all members of their respective organisations including employee pilots. Moreover, they can exercise management rights and powers to ensure that pilotage work is carried out in a manner consistent with the legislative mission and in the public interest.

Where pilots are not employees of the Authority but rather are organized as separate privately incorporated for profit enterprises and businesses, the Pilotage Authority has no management rights or powers over the pilots and how the work is conducted. The relationship between the Authority and the pilot corporation is purely and solely a commercial one. Furthermore, the legislative and parliamentary checks and balances mentioned above do not apply to the pilot corporations. The only protections to safeguard the public interest are mainly the capacity of a Pilotage Authority to negotiate an adequate commercial service agreement and the prohibition against the denial of services by a pilot corporation during the negotiation and life of the commercial service contract. However, as indicated in our submission, these safeguards have proved to be wholly inadequate.

The Bernier Royal Commission Report on Pilotage recognized the need for an appropriate public oversight mechanism for the pilot corporations and recommended that they report and account to a Pilotage Authority.

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

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

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

The Bernier Royal Commission also formulated a recommendation to have increased surveillance and reappraisal powers be attributed to the Pilotage Authorities. This recommendation was made in the context that since Authorities bear the responsibility for ensuring that adequate standards are provided and maintained, it necessarily follows that Authorities must have the effective means of surveillance.

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

Unfortunately, these fundamental protections and governance objectives were not fully achieved or implemented. The *Pilotage Act* as currently drafted and interpreted by the courts fails to provide the Pilotage Authorities sufficient oversight and supervisory powers over the pilot corporations and their pilots. Moreover, it has also allowed the commercial service contract negotiation and arbitration process to be used to impose requirements and restrictions to navigation on the marine industry that go beyond those set out in the *Act* and regulations. This has had a direct impact on the efficiency and cost of rendering pilotage services to the marine industry.

The LPA therefore agrees with the CTA Report that the governance of Pilotage Authorities is problematic and that the *Pilotage Act* should be modernized to address its governance and other shortcomings.

> *However, the governance of ...pilotage services remains problematic.*
>
> CTA Review Panel Report, Volume 1, p. 13.
>
> *The Pilotage Act, which establishes four separate pilotage authorities, should be modernized...*
>
> CTA Review Panel Report, Volume 1, p. 232.

The CTA Report also stresses the importance of harmonizing the way the regional Pilotage Authorities contract for and provide services. It is important to point out that the primary reason for the current differences in the way Authorities contract for and deliver services is not due to the existence of four Pilotage Authorities. In addition to the regional and local nature of pilotage, the differences are principally driven by the fact that the *Pilotage Act* leaves the choice and decision to pilots to determine whether to become employees of a Pilotage Authority or organize themselves as a pilot corporation. Where pilots choose to establish and operate as a pilot corporation, the capacity of a Pilotage Authority to manage and make final decisions on the delivery of services and pilotage requirements is significantly reduced. Therefore, simply merging the four Pilotage Authorities into a single entity will not resolve these issues.

Finally, the efficiencies to be gained through the merger of the Authorities appear to be minimal and may adversely impact the capacity to make decisions that best respond to local needs. Having said that, the LPA would be open to considering such a merger, or alternatively with its Great Lakes counter-part provided that the fundamental concerns expressed in this submission are also addressed and the benefits of the merger to clients, stakeholders and the general management of pilotage in Canada are clearly demonstrated.

B. Circumvention of the Regulations-Making Process

Since the inception of the *Pilotage Act*, numerous safety related rules, requirements or practices placing restrictions on navigation have made their way into commercial service contracts with the pilot corporations. Safety related rules and procedures have also been set by arbitral decisions when decisions of the LPA have been challenged by the pilot corporations or have been the subject of the final offer selection process mandated under the current legislation.

The current practice of including matters subject to regulation in service contracts circumvents the federal regulatory making process and inappropriately ties the hands of the LPA. This usurps the role of the Governor in Council in approving pilotage requirements and prevents the LPA in exercising its judgement in the public interest.

This particular problem was noted both by the then Minister of Transport in his letter to the LPA dated November 15, 1999 and by the Canadian Transportation Agency in its decision of November 29, 2002 (Decision No. 645-W-2002).

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

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

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

The LPA fully agrees with these directives but no powers have been provided under the *Pilotage Act* to allow their implementation. Stripping the existing service contracts of these types of provisions requires the consent of the pilotage corporations. The LPA has been trying to address this issue by taking the position that service contracts should no longer include or be used to address matters coming within the scope of the regulation making power of the Authority, particularly if it directly impacts clients of the pilotage system.

However, this approach has been rebuffed by the CPSLC, arbitrators and the Federal Court. The main rationale provided by the Federal Court in *Pilotes du Saint-Laurent Central Inc v Laurentian Pilotage Authority*, 2002 (FCT) 846 and relied upon in a recent arbitration decision for rejecting this approach is that the *Pilotage Act* provides the Pilotage Authorities with concurrent powers to regulate and enter into a commercial contract agreement for pilotage services. More specifically, the court has held that the *Act* imposes no limit on the conditions or subjects that can be negotiated or imposed by arbitral decision. If Parliament wanted to limit the scope of the service contracts that could be entered into or imposed by an arbitrator it could have done so.

In our opinion, interpreting the contracting power in the *Pilotage Act* as virtually limitless defeats and subverts the purpose and objectives of the legislation by removing the very safeguards it was intended to provide to those subjected to compulsory pilotage services. It must therefore be exercised in a manner that does not result in the circumvention of the regulatory power, the role of the Governor in Council or the denial of basic rights and protections.

We firmly believe that rules related to the safety and efficiency of navigation should not be the subject of private service contract negotiations where these issues are intertwined

with questions of compensation and remuneration of pilots. Moreover, it gives pilot corporations, who are in a conflict of interest, a final say on pilotage requirements that are imposed on the marine industry.

To protect the public interest and ensure that appropriate checks and balances are in place it is essential that the *Pilotage Act* be amended to clearly state that commercial service contracts with the pilotage corporations and by extension arbitration decisions cannot include subject matters covered under the regulation-making powers of the Pilotage Authorities. Justice Bernier in the Royal Commission Report on Pilotage recognized the need for this protection and limitation.

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

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

This approach also ensures that the final say on what are the applicable rules and requirements for pilotage rests with the public body and the executive government that are responsible to Parliament, after appropriate consultations with stakeholders, and not with privately incorporated for profit pilotage companies.

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

Canada

C. Pilotage Requirements and Technology

Regulations and Rule-Making

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

However, the current *Pilotage Act* does not provide the LPA with clear and express powers to achieve these objectives. The current regulation-making authority found in section 20 is concerned principally with the establishment of obligatory pilotage areas, prescribing ships subject to mandatory pilotage and the qualifications and emission of pilotage licences and certificates. To some extent, it is this void in legislative powers that led to the inclusion of safety related rules in the service contracts as an attempt to circumscribe the discretion of the pilot corporations and their pilots.

In addition to regulations-making, having other appropriate instrument choices and tools at our disposal are essential to meet our operational needs. For these reasons, we would also propose to include in the *Pilotage Act* a legislative authority similar to that accorded to port authorities and found in paragraph 56(1)(b) of the *Canada Marine Act*. This would authorize the LPA to establish binding practices and procedures to be followed by the pilot corporations and their pilots during the provision of pilotage services. The ability to establish binding practices and procedures would provide the LPA, which has contract pilots, powers similar to those that can now be exercised by other Pilotage Authorities over their employee pilots.

Technology

The LPA agrees with the CTA Review Report that improving safety and efficiency through the effective use of technology and innovation should be a key priority and driver. Some important gains have been achieved through the acquisition of portable pilot units and other initiatives. Although there are limits to current technologies, we should constantly explore ways to improve and use technology to the benefit of the marine transportation system. However, our capacity to introduce new technologies and efficiencies is limited by the need to reach agreement through the service contracts with the pilot corporations. Therefore, providing the LPA with the legislative tools or means to introduce and prescribe the use of technology, as well as ensuring that pilots acquire

the requisite competencies to make the full use of technologies, would be a welcome tool to enhance safety and increase the efficiency of our services.

> *The Pilotage Act, which establishes four separate pilotage authorities, should be modernized to take into account new vessel and navigational capabilities to reflect circumstances where risk is reduced, as well as technological advances such as electronic charting, GPS and Automatic Identification Systems (AIS), and other innovations (shore based pilotage, tracking etc.).*
>
> CTA Review Panel Report, Volume 1, p. 232.

Review of Compulsory Pilotage Areas and Requirements

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

On the other hand, relevant triggers that can and should lead to the conduct of reviews include changes in ship size and volume, traffic levels, technological developments, geographical and navigational complexities as well as other factors and challenges.

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

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

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

With respect to Pilotage in the North, the LPA agrees with the CTA Report that the lack of pilotage services raises concerns that should be addressed.

In-house Pilotage Expertise

Access to objective pilotage expertise is essential to striking the right balance in terms of safety of navigation and ensuring that pilotage services are rendered as efficiently as possible. Whether related to questions of double pilotage, draught levels or restrictions to night-time departures, objective pilot expertise is critically important in good decision-making and the protection of the public interest. However, the *Pilotage Act* prohibits Pilotage Authorities, where pilot corporations are operating, from hiring their own employee pilots. The LPA therefore finds itself having to rely exclusively on pilotage advice from pilotage corporations and pilots that are in an inherent conflict of interest position.

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

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

For these reasons, the *Pilotage Act* should be amended to permit the Pilotage Authorities to hire employee pilots including in areas where pilotage corporations are operating to ensure they have access to internal and objective pilotage expertise.

In order to provide itself with adequate in-house pilotage expertise, it would be sufficient for the LPA to hire up to a maximum of 10 employee pilots. This would allow the LPA to have 2 employee pilots per district as well as some added capacity. The employee pilots are not intended to be in competition with the pilot corporations, but would be allowed to perform a sufficient member of assignments to maintain their competencies and keep their licences current. This would allow the LPA to better meet its mandate and have pilots to represent it in PRMMs, to advise it on the implementation of recommendations and the developments of binding safety rules, practices and procedures.

D. Accident Reviews

The hallmark of a modern and responsive pilotage system also includes the ability to effectively review events leading up to an incident or accident and taking appropriate

measures to address shortcomings to reduce the risk of reoccurrence. Waiting 6 months to a year for a Transportation Safety Board Report is not an option given that the pilot implicated in the accident can return to active duty within a few days.

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

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

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

E. Efficient, Timely & Flexible Tariff Setting Mechanism

Tariff Setting Process

The *Pilotage Act* requires that pilotage tariffs be fixed at a level that permits the Authority to operate on a self-sustaining financial basis, and that the tariffs set be fair and reasonable. To achieve self-sufficiency, tariff adjustments are made based on the financial and operational requirements. The Authorities rely on projections of future traffic levels and the corresponding revenue and expenses to determine appropriate revenues and tariff levels to maintain its financial self-sufficiency.

In most commercial operations, tariffs may be changed rapidly when conditions require it. However, the legislation was not adequately amended and failed to include a nimble and efficient tariff setting system to allow the Authorities to effectively deal with quickly changing commercial, economic and traffic situations. From beginning to end, the tariff approval process can easily take 8 months or more. The complexity of the approval

process involves Transport Canada, the Department of Justice, Treasury Board Secretariat and ultimately the Governor in Council.

Delays in implementing tariff changes result in inefficiencies, and create obstacles to the proper financial and operational management of the Pilotage Authorities. Moreover, tariffs once approved become enshrined in regulation and cannot be adjusted downward (without undertaking the regulatory process again) to provide rebates or reductions to industry in situations where the Authorities have met their financial targets earlier than anticipated. Nor does the legislation allow special arrangements in terms of tariffs to help attract new business, or assist industry in remaining or becoming more competitive. The CTA Report essentially reached the same conclusion.

> *Pilotage fees are subject to a cumbersome and lengthy regulatory process, as they are published in the Canada Gazette for public consultation. The approval process takes so long that market conditions can change in the interim, and there is no easy way to modify the charge without repeating the whole process. While consultation occurs along the way, the process can be viewed as neither responsive nor efficient.*
>
> CTA Review Panel Report, Volume 1, p. 225.

Amending the Pilotage Authorities' tariff setting process to one similar to that used by the port authorities' under the *Canada Marine Act* would yield important benefits for the Authorities and the maritime industry. The Authorities could implement tariff changes within 60 days rather than 8 months, and make tariff adjustments when appropriate. The safeguards and appeals intended to protect clients and the public interest would remain unchanged including the grounds of appeal that currently exist under the *Pilotage Act*.

Role of the Canadian Transportation Agency and Arbitrators

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

Steps to prevent this from happening again were commenced at the time but were not ultimately put in place. Hence, this situation could easily arise again. This is therefore the opportune time to put adequate safeguards in place to protect the financial well-being of the Pilotage Authorities.

This can be achieved by amending the *Pilotage Act* to ensure that an arbitrator in choosing one or the other of the final offers takes into account the objects of the Authority under section 18 of the *Act*, its corporate plan summary, including the requirement that an Authority be financially self-sufficient. The Canadian Transportation Agency in turn would also have to take the objects of the Authority into account, its corporate plan summary as well as the offer selected by the arbitrator. Alternatively, the Agency could be mandated to both oversee the tariff and final offer selection process to ensure consistency in decision-making.

F. Modern Compliance and Enforcement Powers

Ensuring that the pilotage legislation and regulations are respected is critical to achieving our stated objectives and mission of providing, for the safety of navigation, an efficient pilotage service. In our opinion, the current compliance and enforcement provisions are inadequate and do not reflect modern best practices. More specifically, enforcement tools under the *Act* are limited to criminal proceedings for the imposition, on summary conviction, of small fines ranging from a maximum of $5,000 to $10,000. No other compliance or enforcement tool is available under the *Act*.

Consistent with modern compliance and enforcement policies, we would propose legislative changes to include additional compliance tools such as administrative monetary penalties (AMPS) for a violation of the *Pilotage Act* and regulations. This type of enforcement tool is found in a variety of transportation legislation including the *Canada Shipping Act, 2001*.

VI. Conclusion

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

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

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

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

Fulvio Fracassi
Chief Executive Officer

Canada