



L'ASSOCIATION DES PILOTES MARITIMES DU CANADA
CANADIAN MARINE PILOTS' ASSOCIATION

7 June 2018,

The Honourable Marc Garneau, MP
Minister of Transport
330 Sparks
Ottawa, ON K1A 0A6

Dear Minister Garneau,

Pilotage Act Review – Report by Marc Grégoire

The *Pilotage Act* Review, initiated in the context of the Oceans Protection Plan (OPP) and focused on safety and efficiency, has the unreserved support of Canadian marine pilots. The Canadian Marine Pilots' Association (CMPA) and local pilot groups across the country appreciate the consultative nature of the process and have made every effort to participate constructively in the Review. We believe it offers an opportunity to make meaningful improvements to Canada's pilotage system and, as the Government gives consideration to the Report prepared by Marc Grégoire, we reiterate our commitment to work collaboratively with you and your officials.

As important as Mr. Grégoire's Report is, it is just as important to keep in mind the dozen studies by independent specialists which Transport Canada commissioned as input to the Review. These studies provide a definitive analysis of some of the most significant issues under consideration and, as such, have standing in their own right.

The Grégoire Report contains many recommendations that the CMPA supports, and that can make valuable contributions to Canada's pilotage regime. This includes recommendations to foster greater transparency between pilot corporations and pilotage authorities; to better define the purpose and objectives of the *Act*; to have more robust enforcement and compliance provisions; to provide First Nations with a meaningful role in the governance of the system; to expedite tariff-setting; and to implement measures aimed at better protecting the Arctic.

That said, the Report makes three recommendations (3,8,22) that we believe will not improve the pilotage system, and are actually detrimental to its performance, especially in regard to safety of navigation and public confidence. For the reasons discussed below, we respectfully request that you not proceed with implementation of these proposals.

Before discussing why the three recommendations are inconsistent with the intent of the OPP and the objective to protect and improve the safe performance of the system, it is necessary to bring to your attention two underlying flaws in the Report that contribute to the unsound nature of the recommendations¹.

¹We are leaving aside analysis of factual errors that do not impact the Report in quite the same fundamental way as the two flaws discussed here. For ex., the statement that "pilots are able to set their prices at a level above the cost of providing their service" (Report, p. 23), which is presented as fact but with no substantiation, is in itself erroneous as pilots do not "set their prices" – compensation and tariffs being the object of a process set out by the *Act*.



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Omission of key findings from independent expert studies

The dozen studies commissioned by Transport Canada were intended to provide the Review with analysis on topics requiring specialized expertise. The objective quality of the findings from these independent studies should have meant that they established the generally accepted point of departure for all subsequent discussion and conclusion. In fact, this was not the case, resulting in a crucial disconnect between the Report and the independent evidence found in the expert studies.

For example, much was made by some stakeholders of pilotage charges, which they considered to be too high. This concern was clearly recognized, as evidenced in the Report:

One of the drivers behind the Pilotage Act Review is the commonly-voiced industry perspective that pilotage costs in Canada are too expensive (Report, p.19).

This stakeholder preoccupation with pilotage costs was addressed in the comprehensive Transport Canada-commissioned study by the AIM Group on *Economic and Competitive Considerations in the Provision of Marine Pilotage in Canada*. The study is informed by a review of no less than 53 typical Canadian pilotage assignments involving various vessel types and cargo from Canada's four pilotage Regions and by specific analysis conducted from the point of view of service reliability and responsiveness, of safety, and of specific trades.

The national level findings of the study state:

*In 2016 the magnitude of pilotage costs amounted to approximately one-tenth of one percent of the value of Canada's maritime trade. This figure essentially matches the finding of the 1967 study by Campbell (...). **Therefore, in the context of the national economy as a whole, pilotage costs do not negatively affect Canada's trade competitiveness for importers and exporters based on the cost of pilotage compared to the value of marine trade** (p. 30).*

The fact that pilotage charges have proportionately remained virtually the same for over 50 years, a phenomenon considered by the study's authors to indicate that these costs are reasonable, while acknowledged in the Report, is then dismissed (Report, p.20).

The findings pertaining to the cost of shipping containers state:

***The magnitude of total pilotage cost for either a container importer or exporter is not likely to affect their transport routing decisions because other cost factors are more significant.** The conclusion is based on the data that shows that pilotage costs are lower than the charges for other services that contribute to overall freight rates (p. 45).*

The findings regarding dry bulk shipments with Lake/River/Fjord and Port Pilotage state:

The netback price received by Canadian dry bulk exporters is not significantly affected by the cost of marine pilotage in a port-related pilotage assignment (p. 46).



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The findings regarding the shipment of crude oil state:

*Given the fact that world crude oil prices have exhibited significant price volatility, **the cost of marine pilotage would have a minimal effect on the market price and, therefore, on Canadian competitiveness overall** (p. 49).*

In fact, there is virtually only one situation identified in the study where pilotage costs might affect competitiveness, that relating to certain low-value export cargoes “that absorb both the inbound and outbound marine pilotage costs due to a trade lane imbalance in cargo volume (...) because dry bulk ships need to arrive at the marine terminal empty (or in ballast condition)” (p. 39). These cargoes represent only a very small share of total commercial traffic.

The findings quoted above from the AIM Group study which validate the conclusion that pilotage costs are almost never a significant factor affecting competitiveness, are absent from the Grégoire Report. Given that this question of cost was of such concern to users, the failure of the Report to reflect the findings from the study (that was commissioned for the very purpose of informing the Report) is egregious, in that it mischaracterizes the performance of the system by ignoring or understating its qualities.

In a similar fashion, in respect of other evidence produced to demonstrate the reasonableness of pilotage costs, the Grégoire Report declines to accept the results of analyses showing Canadian pilotage costs to be significantly lower than in many other jurisdictions, and demonstrating that increases of pilotage charges beyond CPI coincide with tremendous increases in average vessel sizes resulting in significant cost-savings and productivity gains for shippers and shipowners.

The Report fails to accept these findings on the basis that the analyses may not have taken account of every factor that might pertain, yet the Report offers no study or examination to support a contrary conclusion, i.e., that Canadian costs are out of line. In effect, despite the evidence, the Report goes out of its way to avoid an opportunity to dispel the notion that pilotage costs have a negative impact on efficiency or competitiveness.

In respect of the operating performance of the system, the same AIM Group study addressed questions related to safety, service reliability and responsiveness. The findings state:

*From the perspective of reliability and responsiveness, **the market for marine pilotage functions efficiently and does not impede economic competitiveness** (p. 59).*

*The present system does not systemically create situations where poor safety practices give rise to extra costs for ship owners or cargo interests. As a result, **the competitiveness of Canada's marine trade is not adversely impacted** (p. 66).*

While the Grégoire Report recognizes the pilotage system's outstanding safety performance – after all, a 99.92% incident-free record with 250,442 pilotage assignments in the 2012-2016 period can hardly be ignored – it does not recognize the connection between safety and economic competitiveness. The conclusions of the AIM Group study cited above in respect of safety, service reliability and responsiveness are ignored entirely in the Report.



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The findings from other independent studies commissioned in the context of the Review are also not reflected in the Report. The Review's discussion on governance ignores what KPMG identified as "the most widely accepted model internationally" for the delivery of pilotage service in its review of the practices of 15 jurisdictions (KPMG, Report on Pilotage Service: International Practices, p.26)². The Report also ignores KPMG's finding that the public interest is best served "through pilotage services being provided, on an exclusive basis, by a single group of pilots in any given compulsory area" (KPMG, Report on Pilotage Service: International Practices, p.1). This KPMG study finding will be discussed further below.

On navigational technology, the Report implies there might be technology that could assist with vessel navigation in pilotage waters that is *not* currently being used. In fact, not a single specific "new" or "unused" technology is identified in the Report, nor were any discussed in the roundtables convened by the Review. The findings of the study by Capt. Denys Pouliot on "Pilotage Operations" commissioned by Transport Canada (p.48-49), which states that pilots embrace the latest technology, are not mentioned in the Report:

Canadian pilots are very aware of new technologies and endeavour to stay current on electronic navigation. For several years, pilots have been adapting new technologies to improve service efficiency while maintaining the same level of safety.

These omissions indicate a significant problem with the approach taken in the Report, which is to say, a failure to include much of the independent analyses and findings developed during the process that confirm the efficacy of the current system.

Lack of consideration of impact on safe navigation

Like most systems, the component parts of the pilotage system are inter-dependent. Changes to one component will necessarily have consequences on other components. The Report shows no overarching regard for how various recommendations will impact the performance of the system as a whole. Nowhere is this as vital as when considering the effect on safe navigation of a given recommendation. In this regard, the analysis in the Report is inadequate.

For example, the Report recommends that "the authority to make all regulations pertaining to pilotage safety" should reside with the Minister of Transport rather than the pilotage authorities (recommendation 12). One of the fundamental and well-accepted principles of a high-performing pilotage system is that local knowledge and regional differences must be respected. The Report, however, provides no evidence of a formal and rigorous assessment of risk associated with the recommendation, and of how regional differences would be respected and local knowledge protected.

The above example is by no means the only one, as is evident from the discussion below on the three recommendations of greatest concern to the CMPA.

² "In this business model, the private sector group responsible for delivering pilotage is collectively the licensed pilots" (KPMG, Report on Pilotage Service: International Practices, p.25).



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Proposals that will endanger Canada's pilotage system

Abolishing the single service-provider model for pilotage services

The independence of pilots from commercial pressure is an essential characteristic of the pilotage system to ensure that safety is never compromised. To maintain this independence, it has long been accepted throughout the world that pilotage should be provided by a single group of pilots in any pilotage district.

As mentioned above, the KPMG study commissioned by Transport Canada is very clear: *Most jurisdictions, including the European Union, the United States and Canada, have concluded that **the public interest and marine safety are best served through pilotage services being provided, on an exclusive basis, by a single group of pilots in any given compulsory area*** » (KPMG, Report on Pilotage Service: International Practices, p.1).

As indicated earlier, the finding above is not even mentioned in the Report. Recommendation 8 actually violates this principle, to create a situation where more than one group of pilots in a given pilotage district could provide service.

In such a regime, pilotage service users would be able to play off one group of pilots against another to serve commercial imperatives, thereby accommodating business interests and cost-cutting preoccupations over safety and the public interest.

The few jurisdictions (e.g., Florida) that have experimented with such an approach typically found it to be detrimental to safety and the public interest. The Grégoire Report is incomplete in its analysis of this question. In fact, it is misleading in that it fails to appreciate that it is not the "monopoly" of a pilotage authority that protects against competitive commercial pressure but, instead, it is the circumstances of the actual delivery that are crucial. As long as there is a choice between pilot groups, there is a clear danger that this choice will be influenced by commercial and other considerations that have nothing to do with safety.

Although not referenced in Mr. Grégoire's Report, the experience of the State of Florida pertains. After briefly exposing its pilotage system to a competitive environment in the mid 1980s, with damaging results, a review conducted by the State determined that if pilots must compete against one another, there is a likelihood a pilot will compromise safety considerations in order to accommodate the financial interest of the shipowner. This finding was reflected in new legislation governing pilotage subsequently passed by the Florida legislature:

"Piloting is an essential service of such paramount importance that its continued existence must be secured by the state and may not be left open to market forces." (FL Stat 310.0015).



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While safety is paramount, the fact is that the recommendation to allow pilotage authorities to use more than one pilot group in the same district is also very likely bad economics. For example, if a pilotage authority employed its own pilots as well as contracted pilotage services from a pilot corporation, there would be competition between the two to attract and retain pilots, almost certainly triggering upward pressure on compensation, leading to higher tariffs for users. Even worse, the resulting rising cost would only increase pressure to cut corners that could jeopardize safety.

This point was not lost on KPMG, although it never made it in the Report:

*Although natural monopolies can have negative impacts on consumers in some industries, there are potential benefits to consumers and the public from a regulated-monopoly business model in pilotage. One important consideration, as previously discussed, is that competition in pilotage can have greater negative impacts compared to a monopoly. **When pilots or pilot organizations compete, there can be an incentive to cut costs through reduced focus on safety and quality.** (KPMG, Report on Pilotage Service: International Practices, p.71)*

The experience has been that the competitive models have often failed (e.g. Alaska and Queensland). (KPMG, Report on Pilotage Service: International Practices, p.9).

It bears repeating that this recommendation has been brought forward, not only without demonstration that it will enhance safety, but also without the formal and rigorous assessment of risk that is required of a recommendation that impacts such a fundamental principle of any high-performing pilotage system.

Issuing pilotage certificates to non-Canadians

The issuance of pilotage certificates to Canadian masters and officers that have demonstrated knowledge of local waters eliminates the requirement to board licensed pilots in compulsory pilotage areas.

Recommendation 22 of the Report proposes extending eligibility for pilotage certificates to foreign masters and officers. The recommendation is driven by a very specific issue on the west coast involving US tugs and barges transiting to and from Alaska to the State of Washington. The fact that pilotage requirements for these vessels are currently waived is a serious issue, but the proposed solution is certainly heavy-handed, in that it establishes a new practice nation-wide; a practice that in certain cases would impact safety.

Moreover, creating a regime whereby any commercial vessel, including tankers, could transit compulsory pilotage areas without a Canadian onboard raises security issues, especially in respect of waters shared with the US (e.g., the St. Lawrence Seaway).

In any event, the recommendation is un-necessary, because the Pacific Pilotage Authority is currently developing an initiative to address the specific issue that gave rise to a concern in the first place, without impacting operations everywhere else in the country.



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Merging the Laurentian Pilotage Authority (LPA) and the Great Lakes Pilotage Authority Pilotage (GLPA)

It is self-evident that the climatic conditions, navigational challenges, type of marine traffic, and available infrastructure vary greatly from region to region. It follows that, for a pilotage system to be effective, its framework must fully take into account regional differences and the need for local knowledge. This is best ensured through local decision-making, under effective ministerial oversight.

Merging the LPA and GLPA, as proposed in recommendation 3, with a view to the eventual amalgamation of all regional authorities, is not supported by the available evidence; in fact, the findings of the KPMG study commissioned by Transport Canada on "Pilotage Governance Models Assessment" state that it would be disadvantageous to proceed with such a merger. The KPMG analysis indicates the current model is better-positioned to manage cost pressures in the long term than the proposed GLPA-LPA amalgamation, which leads to the conclusion that any immediate cost-saving would be offset by future cost increases. The study also indicates that the merger would lead to the perception that the public interest was not as well served, and also that amalgamation would raise disruptive implementation issues (KPMG, Pilotage Governance Models Assessment, p. 113).

The CMPA also believes that, to the extent this recommended merger is seen as the precursor to a total amalgamation of the regional pilotage authorities, it undermines the local character of pilotage, which goes against the stated preference of "the majority of stakeholders" (Report, p. iv).

Mr. Grégoire also states: "merging the two organizations would require that the (pilotage) certification programs would be harmonized, which could result in more certification in the Laurentian Pilotage Authority's districts" (Report, p.41). Notwithstanding that this contradicts the approach he proposes in recommendation 23 (that Transport Canada promote a national certification program), this echoes the calls of some users to extend into the Laurentian Region the certification system currently in place in the Great Lakes Region, perhaps in the hope of bypassing the requirement to demonstrate fluency in French which, because French is the language of communication on the St. Lawrence, is one of the conditions to obtain a pilotage certificate in the Laurentian Region. This point also supports the contention that the regional considerations associated with pilotage are of vital importance.

Conclusion

Caution must be exercised before introducing change in a high-performing system like Canadian pilotage where safety has to be the overriding consideration. This is especially the case at a time of great public concern about safe navigation, particularly in the context of the proposal to exponentially increase tanker traffic on the west coast. As Mr. Grégoire himself notes: "the public grows steadily more risk-averse and the 'social licence' for marine transportation declines" (Report, p.32).



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In such a context, the onus rests squarely on those who advocate change to demonstrate, without leaving reasonable doubt, that safety will in no way be compromised. The Report fails to do this. Despite expressions of concern about safety, the Report ends up making light of it, putting forward proposals that will endanger Canada's pilotage system. We respectfully ask that you do not implement recommendations 3, 8 and 22; their implementation would only eclipse the real improvements that can result from other recommendations.

In closing, I reiterate my offer to meet, at your convenience, a pleasure that I have not yet had, but that I look forward to.

Yours sincerely,

Simon Pelletier
President

Cc: Mr. Lawrence Hanson, Assistant Deputy Minister, Policy
Ms. Lori MacDonald, Assistant Deputy Minister, Safety and Security
Mr. Colin Stacey, Executive Director, Portfolio Senior Personnel and Governance