



OFFER LETTER

Ottawa, 28 November 2023
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BY EMAIL

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*Via email to DFO.CCGERCostRecoveryRSP-
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**RE: *BARGE NORMAN MCLEOD* — Lanoraie, Quebec
Incident date: 2018-08-09**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the barge *Norman McLeod* (the “Vessel”), which grounded on or about 9 August 2018, in the St. Lawrence River near Lanoraie, Quebec (the “Incident”).

[2] On 8 August 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$8,157.21 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] The submission has been reviewed and a determination with respect to its claims has been made. This letter advances an offer of compensation to the CCG pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$7,124.36 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the CCG’s submission.

THE SUBMISSION RECEIVED

[6] The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims, and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The narrative

[7] According to the narrative, on 9 August 2018, the CCG was notified of a grounded vessel in the St. Lawrence River near Lanoraie, QC. The vessel ran aground after its anchor chain parted and drifted down the river. It was carrying approximately 11,000 metric tonnes of heavy fuel oil, and it was connected to the tug *Everlast* although only the vessel grounded.

[8] The master of the tug deployed both anchors while the crew inspected the vessel for damage and pollution. No damage, water ingress or pollution was detected.

[9] The master hired *Ocean Intrepide* and the tug *Ocean Sept-Îles* to help refloat the vessel, and had two containment booms and a pollution craft on board in case an oil spill occurred. The plan was to use a tug for each side to move the vessel into deeper water, and then tow it to the Sorel-Tracy terminal.

[10] The CCG accepted the master's recovery plan and set up an Incident Command Post comprising of seven people to respond to the incident. They planned to use a helicopter with two ER officers on board to monitor the recovery plan from the air.

[11] The helicopter arrived at 1300 and the *Ocean Intrepide* was available at 1345. Operations to refloat the vessel started at 1425 and it was afloat by 1443. CCG personnel in the helicopter affirmed that there were no pollutants in the water surrounding the vessel, and no water ingress was reported onboard.

[12] The pilot of the *Everlast* was granted permission at 1525 to tow the vessel to the Sorel-Tracy terminal, after which a dockside inspection was carried out. There was no need for an in-water survey because there was no sign of damage from the grounding.

[13] The case was closed on 10 August 2018. That concluded the CCG operation.

Cost summary

[14] The CCG submission summarizes the claimed costs as follows:

| Schedule | Cost claimed (\$) |
|---|-------------------|
| 1. Material and supplies | Nil |
| 2. Contract services | Nil |
| 3. Travel | 19.60 |
| 4. Salaries – Full time personnel | 2,046.33 |
| 5. Overtime – Full time personnel | 456.79 |
| 6. Other allowances | Nil |
| 7. Salaries – Casual personnel | Nil |
| 8. Ship costs (excluding fuel & overtime) | Nil |
| 9. Ship propulsion fuel | Nil |
| 10. Aircraft | 5,351.18 |
| 11. Pollution countermeasures equipment | Nil |
| 12. Vehicles | 67.56 |
| 13. Administration | 215.75 |
| Total claim | 8,157.21 |

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under section 103 of the MLA

[15] The Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[16] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[17] The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

[18] Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, and are therefore potentially eligible for compensation.

[19] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

Findings on the evidence submitted by the CCG

The facts of the Incident as set out by the CCG are generally accepted

[20] This description of the material events in the CCG narrative is accepted as generally accurate.

The Vessel posed a pollution threat and some of the measures taken are admissible

[21] This vessel was loaded with approximately 11,000 metric tonnes of heavy fuel oil aboard. Considering the amount of oil on board, it is accepted that there was a risk of oil pollution meriting at least an initial response.

[22] The initial part of the response, carried out by the CCG duty officer, is unimpeachable. As well, while it turned out that the risk of a release was low, the use of a helicopter for an overflight, involving two CCG personnel, is accepted as sensible and reasonable in the circumstances.

[23] The response involved seven CCG personnel. The documentation submitted in support of the claim does not demonstrate what the personnel beyond the duty officer and personnel aboard the helicopter contributed. Time was spent communicating and liaising after those tasks had apparently been carried out by the duty officer, and at a time when the risk of a discharge was known to be limited.

CLAIM AND OFFER DETAILS

[24] The CCG presented its claimed costs and expenses to the Fund across six schedules, each of which is outlined below.

[25] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below explain why certain portions of the CCG's claim have been allowed while others have been decreased.

Schedule 3 – Travel

Claimed: \$19.60

[26] The travel costs arise from the lunch of one of the two CCG ER personnel that travelled from Quebec City to Lanoraie by helicopter. The expense is not in line with the National Joint Council (NJC) directive rates for the period in effect. The appropriate value would be \$19.20. That amount is allowed.

The travel portion of this claim is allowed in part in the amount of \$19.20.

[27] These costs are for the seven CCG Response Specialists at various levels and hourly rates. The claim provides the total hours worked for each individual and the respective hourly rates, but the description of what work was performed was limited.

[28] The table below demonstrates the hours claimed, and the strikethroughs and red text are the amounts accepted. The reasons for the edits are below.

| Rating | Hourly rate (\$) | Hours worked (start to finish) | Regular hours work | Cost (\$) with EBP (27%) |
|--|------------------|---|-----------------------|---------------------------------|
| August 9, 2018 (Thursday) | | | | |
| (GT-07) | 45.51 | 0800-1600 (assumed) | 7.5 | 433.47 |
| (GT-05) | 38.09 | | 4.3 0.0 | 205.59 0.0 |
| (GT-05) | 40.80 | | 5.5 0.0 | 285.00 0.0 |
| (GT-04) | 36.35 | 0815-1615 (assumed) 0815-0915 | 7.5 1.0 | 346.24 46.16 |
| (GT-05) | 34.95 | 0800-1600 (assumed) 0900-1600 | 7.5 6.5 | 332.92 288.51 |
| (GT-04) | 32.96 | 0800-1600 (assumed) 0900-1600 | 7.5 6.5 | 313.96 272.08 |
| (PM-03) | 33.90 | | 3.0 0.0 | 129.16 0.0 |
| Coast Guard regular salary cost total (as per claim) | | | | 2,046.33 1,040.22 |

[29] The charges for the lead CCG duty officer (GT-07) are accepted.

[30] The hours of the GT-04 employees aboard the helicopter are reduced to 6.5 each to be consistent with the 1030 helicopter departure time, the actual departure time of 1203 and return time of 1550, as well as 1.5 hours to plan, prepare and travel to the Quebec City airport. The evidence does not establish why more hours than this are claimed for these employees.

[31] The salary of a third GT-04, whose task involved notifying the on-scene commander upon their arrival at the office, is reduced to one hour. Most of that employee's work was performed prior to 0815, and is therefore accounted for in the claim for their

overtime hours. There is no other supporting documentation for work done afterwards, so those hours are rejected.

[32] The salary claim for the other CCG personnel is rejected. The evidence does not demonstrate what measures these employees were carrying out and why their work was necessary, given that it appears to overlap with the tasks carried out by the lead officer.

The salaries portion of the submission is allowed in part in the amount of \$1,040.22.

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$456.79

[33] These costs are for the three CCG Response Specialists at various levels and hourly rates, at the 1.5x multiplier for overtime hours. The table below demonstrates the hours claimed:

| Rating | Hourly rate | Hours worked | 1.5 X | 2.0 X | Total OT hours | Cost (\$) |
|---|-------------|------------------------|-------|-------|----------------|---------------|
| August 9, 2018 (Thursday) | | | | | | |
| (GT-07) | 45.51 | 0230-0330 (assumed) | 1 | | 1.5 | 68.26 |
| (GT-04) | 33.96 | 0230-0815 (assumed) | 5.75 | | 8.625 | 313.53 |
| (AO-HPS-01) | 50.00 | 1600-1700 | 1 | | 1.5 | 75.00 |
| Coast Guard overtime salary cost total (as per claim) | | | | | | 456.79 |

[34] The overtime hour for the GT-07 employee is for the call from the ER duty officer regarding the grounding of the vessel, which is accepted. The overtime hour for the GT-04 is for work performed after the helicopter returned to Quebec City, which is accepted. The overtime hours of AO-HPS-01 are for her role as ER duty officer and gathering the initial information after being informed of the vessel grounding, which are accepted.

The overtime portion of the submission is allowed in its entirety.

Schedule 10 – Aircraft Costs

Claimed: \$5,351.18

[35] These expenses arise from the use of the helicopter for the purpose of monitoring the master’s recovery plan. The helicopter was used for 2.6 hours at a rate of \$1,730 per hour and fuel rate of 297 litres per hour multiplied by \$1.08, as well as \$19.20 for the pilot’s lunch.

[36] The flight log indicates an airtime of 2.6 hours which is consistent with the amount claimed. The helicopter made two trips from Quebec City to Lanoraie, an initial one to the incident site and another for the refloating. The formula used is as follows: airtime x operating rate. In this case, that amounts to \$4,498.00, which is the amount claimed.

[37] Fuel costs are calculated by this formula: airtime x fuel burn rate x cost per litre. In this case that amounts to \$833.98, which is in accordance with the amount claimed. The costs here are consistent with the charge-out rate and fuel cost per litre is lower than the receipt from the Trois-Rivieres airport.

[38] The flight log indicates that the pilot was required to work during and beyond regular meal hours, therefore reimbursement for this meal is a reasonable expense arising from the employee's duty. This is a travel cost but it is left in this section as submitted.

The aircraft portion of the submission is allowed in its entirety.

Schedule 12 – Vehicles

Claimed: \$67.56

[39] The CCG claimed \$0.22 per kilometre plus the \$67.56 daily rate for use of one vehicle, a Ford F-250 pickup, to carry CCG personnel to the airport and back.

[40] The CCG failed to submit a vehicle log or any fuel receipts. The cost claimed is consistent with the stated daily rate.

The vehicles portion of the submission is allowed in its entirety.

Schedule 13 – Administration

Claimed: \$215.75

[41] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries, travel, and aircraft expenses.

[42] The 3.09% rate is generally accepted as reasonable. When recalculating the administrative costs for the readjustments to the salary and travel claims, the sum of the recommended costs (Schedule 3 - \$19.20, Schedule 4 - \$ less EBP = \$759.36, Schedule 10 – \$5,351.18) becomes \$6,129.74. Applying the 3.09% administrative rate to this amount equals \$189.41.

The administration portion of the submission is allowed in the amount of \$189.41.

OFFER SUMMARY AND CLOSING

[43] The following table summarizes the claimed and allowed expenses:

| Schedule | Claim \$ | Offer \$ |
|--|-----------------|-----------------|
| 1 – Materials and supplies | Nil | Nil |
| 2 -- Contract services | Nil | Nil |
| 3 -- Travel | 19.60 | 19.20 |
| 4 -- Salaries – FT personnel | 2,046.33 | 1,040.22 |
| 5 -- Overtime – FT personnel | 456.79 | 456.79 |
| 6 -- Other allowances | Nil | Nil |
| 7 -- Salaries casual personnel | Nil | Nil |
| 8 -- Ships costs (excluding fuel and overtime) | Nil | Nil |
| 9 -- Ships propulsion fuel | Nil | Nil |
| 10 -- Aircraft | 5,351.18 | 5,351.18 |
| 11 -- Pollution countermeasures equipment | Nil | Nil |
| 12 -- Vehicles | 67.56 | 67.56 |
| 13 -- Administration | 215.75 | 189.41 |
| TOTAL | 8,157.21 | 7,124.36 |

Table 1 – Summary of amounts claimed and allowed.

[44] Costs and expenses in the amount of \$7,124.36 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[45] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA. You have 60 days upon receipt of this Offer to notify the undersigned whether you accept it. You may tender your acceptance by any means of communication by 16:30 Eastern Time on the final day allowed. If you accept this Offer, payment will be directed to you without delay.

[46] Alternatively, you have 60 days upon receipt of this Offer to appeal its adequacy to the Federal Court. If you wish to appeal the adequacy of the Offer, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal on Form 337. You must serve it upon the Administrator, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

[47] The MLA provides that if no notification is received by the end of the 60-day period, you will be deemed to have refused the Offer. No further offer will be issued.

[48] Finally, where a claimant accepts an offer of compensation, the Administrator becomes subrogated to the claimant’s rights with respect to the subject matter of the claim.

The claimant must thereafter cease any effort to recover its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund