

## BC Ferry Commission

### Submission from Members of Southern Sunshine Coast Ferry Advisory Committee

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BC Ferry Commission  
PO Box 9279 Stn Prov Govt  
Victoria, B.C.  
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12 Feb 2015

Att: BC Ferry Commissioners

#### **RECOMMENDATION**

Conduct review of the intent, scope and application of the requirement in the Coastal Ferry Act that the Commission must balance, in the manner the commissioner considers appropriate, the interests of ferry users.

#### **RATIONALE**

On 6 January 2015 the BC Ferries Commissioner published a notice seeking public comment on:

- (i) the regulatory quarterly and annual reports maintained by BC Ferries and provided to the commissioner under sections 65 and 66 of the Act;
- (ii) the submissions by BC Ferries for the next performance term including information on the current performance term, a 10 year capital plan and an efficiency plan;
- (iii) any other information on the commissioner's website that relates to the commissioner's powers and duties relative to the establishment of price caps for subsequent performance terms under section 40 of the Act.

This submission was prepared by members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC). The main role of Ferry Advisory Committee (FAC) members is seen as liaison between their communities and BC Ferry Services Inc. (BC Ferries); relaying BC Ferries information to the community and providing BC Ferries advice and insight into the concerns and opinions of people in those communities. BC Ferries appoints all members, based on volunteers and nominations from local governments and First Nations.

Our response focuses on item (iii) regarding other information on the commissioner's website that relates to the commissioner's powers and duties relative to the establishment of price caps. The rationale for limiting our comments to item (iii) is that:

- General comments on items (i) and (ii) were provided by the Ferry Advisory Committee Chairs group. We provided input into those comments and fully support them.

- There is little detailed financial information in the BC Ferries public submissions as it was likely contained within supplemental documents that BC Ferries provided to the Commission. BC Ferries September 30, 2014 letters forwarding the Performance Term Four and Capital Plan submissions to the Commissioner refer to supplemental documents and schedules requesting that the Commission and its advisors maintain confidentiality over these supplemental documents in the accordance with section 54 of the Act. BC Ferries stated that the documents contained information that is confidential and commercially sensitive.
  - **54** Despite any obligation imposed on the commissioner under this Act to obtain, maintain or make available information or records, the commissioner, every deputy commissioner, every employee of the commissioner and every inspector must not disclose or be compelled to disclose any information or record that is obtained in, or that comes to the person's knowledge during, the course of the administration of this Act or the course of any inspection authorized under this Act, unless and only to the extent that such disclosure is consistent with the *Freedom of Information and Protection of Privacy Act*.
- Our Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) is not considered to be an advisor to the Commission and the supplemental documents are therefore not available for our review and comment. We are not inclined to seek out this information through the Freedom of Information and Protection of Privacy Act. Even if we were successful in obtaining this information, it would likely require a substantial amount of work and delay. We therefore, unfortunately, feel that we are unable to provide meaningful comment on the fare cap calculations and potential impact on our residents and communities. We will provide that type of comment when the Commissioner's preliminary fare cap decision is publically communicated on or before March 31, 2015.

The Coastal Ferry Act defines the role of the Commission and sets specific requirements.

**38** (1) Without limiting any other power of the commissioner under this Act, the commissioner must, after considering public feedback obtained under this Act, regulate each ferry operator in relation to the core ferry services that are to be provided by that ferry operator and the tariffs, including, without limitation, reservation fees, that may be charged for those core ferry services, and must undertake that regulation in accordance with the following principles:

- (a) the primary role of the commissioner is to balance, in the manner the commissioner considers appropriate,
  - (i) the interests of ferry users,
  - (ii) the interests of taxpayers, and
  - (iii) the financial sustainability of ferry operators;

The phrase ‘in the manner the commissioner considers appropriate’ would appear to provide substantial independence in how the interests of ferry users are determined and considered during the process of balancing the interest of ferry users, taxpayers, and the financial sustainability of ferry operators. This flexibility and accountability to interpret and apply what is ‘appropriate’ is consistent with the independent status as detailed on the Commission web site:

“The Commission is independent of both the provincial government and of BC Ferries.”

The public were very impressed with the Commission’s Review of the Coastal Ferry Act consultations in the fall of 2011 and the report dated January 24, 2012. This raised expectations that there was potential for substantially improved consultation with the Ministry and BC Ferries about local issues. Sadly, this has failed to materialize and it was demonstrably diminished during the course of the 2012 and 2013 engagement processes when our access to almost all relevant data was denied under FOI legislation as that data was interpreted by the Ministry and BC Ferries as ‘cabinet confidences’.

Some of the recommendations in the Commission’s Review of the Coastal Ferry Act report resulted in changes in legislation. From our perspective, the most significant change was adding the requirement that the Commission consider the interests of ferry users. The purpose of this submission is to foster discussion about how the Commissioner is to determine and consider those interests.

The independent role of the Commission was mentioned extensively throughout the provincial government (Province) coastal ferry consultation processes in 2012 and 2013 in the context that it meant that ferry users have been considered. Ministry, BC Ferries, and the Consultation Contractor (Kirk & Co.) officials frequently responded to questions from the public with statements that implied that the specific route fares and service reductions were approved by the Commission; and that the Commission and the Province had considered the interests of ferry users. In the public meetings, that approach was largely successful in deflecting attention from the Ministry and BC Ferries; but in our opinion overstated the role of the Commission in determining local fares and service adjustments, and was therefore not helpful in clarifying the role of the Commission and maintaining the image of the Commission. It is unfortunate that a Commission official was not involved in the 2012 and 2013 Ministry consultations to hear the public input and provide an opportunity to increase the public understanding of the independent role and responsibility of the Commission. We are of the belief that ferry users and communities are prepared to accept change if they perceive that there is meaningful two-way consultation to explore options and conduct research to assess the local financial and social impacts, and that the involvement of an independent Commission has the potential to convince ferry users that user and community interests are being given significant consideration.

We understand that the original intent of the Coastal Ferry Act was to provide a ‘light-handed’ approach to regulation, with a minimum of intrusion into the day to day operations of the ferry operators. This high level objective is not well understood by the public at this time when the Province and BC Ferries are trying to communicate that the Commission is independent and is empowered to consider user interests. The public perception is that the Province is narrowly focused on balancing their budget interests and that equates to minimizing taxpayer contributions

and maintaining the financial sustainability of BC Ferries. This has been demonstrated by media coverage indicating that the Province or BC Ferries did not conduct any research on the potential economic and social impact on users and their communities. People have been left with the impression that the Province requires them to simply adjust even though there is no research, no meaningful long-term vision and strategies for the coastal ferry system, or an understanding of what the short term efficiency decisions are doing to residents, the region, and the province. This situation has raised public expectations that only the Commission is required / able to consider user interests and needs to step up to the challenge as required by the Coastal Ferry Act. One should therefore reflect on whether the Commission has the tools and resources to realistically represent the interests of ferry users. The Province has not undertaken any research / analysis of the needs of ferry users and ferry-dependent communities, and it does not appear from recent press coverage that they have any intention to study and consider the ferry customer's needs.

We bring forward the following examples that should prompt reflection on how the interests of ferry users are now being addressed. We ask that you look at the examples from the perspective of the users and coastal communities. Does it seem, as you would assess it from your perspective, that there has been sufficient consultation and attention to the interests of ferry users? We would ask the Commission to bring forward recommendations requiring more effective two-way community consultations when substantial changes are being considered. If the objective of the consultations is clearly stated and the process is transparent, we expect that the public will bring forward information and suggestions that will result in a 'better' solution for all stakeholders. We understand, as clearly stated on your web site, the Commission is not an ombudsperson acting to resolve any private disputes with the company nor an advocate to help communities and particular interest groups to lobby government. Our question is simply how does the Commission fulfill the requirement to balance ferry users interests and collect the background information from the public in order to be sufficiently informed and understand the potential impacts.

#### A. Service Reductions

At the Ministry's BC Coastal Ferries Community Engagement meeting in Gibsons on 30 November 2013, a member of the engagement panel said that the reduction of the Sunday sailing on Route 3 had been approved by the Commission. We publically challenged that statement during the meeting. We were later advised by the Ministry that the Commission had not approved the service reduction plan that was the subject of the Province's engagement and the rationale for not involving the Commission in development of the specific service adjustments is that service levels are a provincial policy matter; the Province and BC Ferries mutually agreed to make service reduction changes within the service contract.

Following is item from Commissioner's January 24, 2012 report at page 74:

*In conclusion, we believe the current level of capacity utilization is inefficient on some routes and needs to be improved. Service reductions need to focus on sailings which produce the largest cost savings, in order to minimize the total number of sailings which might be affected. The ability to do this in the short term is constrained by the lack of robust systems for reservations and point of sale. Once those systems are up-dated, it should be possible to offer an equal or improved level of service on a fewer number of total sailings. In the meantime, the Coastal Ferry Service contract should make provision for modest improvements to capacity utilization on sailings with an established history of low ridership. The contract should set a target, and empower the Commissioner to approve changes to the schedule to meet the target, following public consultations and with consideration for the best interests of ferry users and taxpayers.*

Recommendation #9 read:

9. *The Province should make provision for some improvements to capacity utilization within defined parameters. Subject to those parameters, the Commissioner should be given authority to approve specific changes to service levels, based on a consideration of the interests of ferry users, the taxpayer and the financial sustainability of the ferry operator.*

From the above, it appears that the Commission was generally supportive of making some schedule adjustments **following public consultations and with consideration for the best interests of ferry users and taxpayers**. Sadly, the engagement processes in 2012 and 2013 were viewed as placing the cart before the horse.

The engagement team learned about the impacts of their plan at the public open houses. That is, after the plan was completed and announced publically by the Province as a 'done deal'. That approach is not what was recommended in the Commission report that prompted the initiative. In developing the service reduction plan, the Province claimed to have considered the interests of ferry users, taxpayers and the ferry operator. They claimed that the plan was developed in a way to mitigate impacts to communities, as much as possible, by focusing on low-utilized sailings where both labour and fuel savings could be achieved. We question why the Commissioner was not asked for input on the specific adjustments in the current plan; and whether the independent regulator should have been engaged to provide input on whether the plan properly balanced the needs of ferry users.

#### B. Service Discontinuance

The Coastal Ferry Act legislatively requires the Commission to approve a service discontinuance (see extract below). In the Ministry's 2013 consultation process, representatives of the Ministry gave the impression that the elimination of Route 40 had been approved by the Commission. This implied that the reasonable requirements within the Act had been applied by the independent ferry regulator. However; we understand that the Ministry and BC Ferries independently agreed to discontinue the route by simply amending the Coastal Ferry Services Contract and thereby excluded the Commission from conducting a review that would have

otherwise been required by the Act. We believe that this abbreviated process undermined the public trust that would be expected had there been a credible independent review by the commissioner in order to determine and address the interests of ferry users and their communities. While we appreciate that the Province has the authority to make independent decisions on any matter, we are concerned how it affects the public trust that ferry users had a meaningful say in decisions that radically impact their position. While the decision may have satisfied the economic wishes of the Province and their service provider BC Ferries, it appears to have been made without meaningful consideration of the interests of ferry users and others.

#### **No discontinuance without authorization**

**44** (1) A ferry operator must not discontinue all or any part of a designated ferry route on which the ferry operator is to provide ferry transportation services under the Coastal Ferry Services Contract unless the ferry operator first obtains the authorization of the commissioner.

(2) A ferry operator that wishes to discontinue a designated ferry route must make application to the commissioner for the authorization required by subsection (1) and must, in that application, justify the requested discontinuance.

(3) Promptly after applying to the commissioner under subsection (2), the ferry operator must

(a) provide a copy of the application to the minister, and

(b) provide public notice of the application in the manner, with the information and for the period required by the commissioner.

(4) The commissioner may, before providing an authorization under this section, hold a public hearing on the application.

(5) If a public hearing is held under subsection (4), the commissioner must

(a) give notice of the public hearing in a manner that the commissioner is satisfied will bring the notice to the attention of the public, or

(b) order the ferry operator to provide notice of the hearing in the manner, with the information and for the period required by the commissioner.

(6) Despite subsections (3) to (5), the commissioner,

(a) promptly, and in any event within 3 months after receiving the full information required by the commissioner in relation to an application under this section, must issue the commissioner's preliminary decision on the application to the ferry operator and the government, and

(b) within 6 months after receiving the full information required by the commissioner in relation to that application, must issue the commissioner's final decision on the application to the ferry operator and the government.

(7) In assessing an application for authorization under this section, the commissioner must consider whether

- (a) another form of affordable transportation exists or is likely to be established to link the locations served by the designated ferry route,
- (b) it is possible to operate the designated ferry route economically at an affordable tariff level,
- (c) the government is willing to reduce the core ferry services required on, or increase its service fee contribution for, the designated ferry route, and
- (d) an extraordinary drop in traffic has occurred because of a change in the local economy or some other unanticipated factor.

- (8) The commissioner must not authorize the discontinuance of a designated ferry route unless
  - (a) the ferry operator has made a suitable economic case for the designated ferry route's discontinuance, and
  - (b) the commissioner is satisfied that increasing tariffs on the designated ferry route would not, because of a reduction in user demand or otherwise, result in designated ferry route revenues increasing to the extent necessary to enable economic operation of the designated ferry route.
- (9) If the commissioner agrees to authorize the discontinuance of a designated ferry route, the commissioner must
  - (a) publish, promptly after issuing the final decision under subsection (6) (b), a notice in a manner that the commissioner is satisfied will bring the notice to the attention of the public, stating
    - (i) that the designated ferry route is to be discontinued, and
    - (ii) the date on which that discontinuance is to take place, which date is, subject to subsection (10), to be one year after the date on which the final decision was issued under subsection (6) (b),
  - (b) order the ferry operator to post, on the ferries being used on that designated ferry route, notice of the authorization in the form, with the information and for the period required by the commissioner, and
  - (c) provide the authorization to the ferry operator and the minister in writing.

- (10) The date on which a designated ferry route discontinuance authorized under this section is to take place may be a date that is less than one year after the date on which the final decision was issued under subsection (6) (b) if the commissioner considers that there are extraordinary circumstances that require that earlier date, and in that event, the commissioner must set, as the date on which the discontinuance of the designated ferry route is to take place, the latest practicable date for that discontinuance.

- (11) A ferry operator that is authorized under this section to discontinue a designated ferry route may discontinue that designated ferry route in the manner, and in accordance with the terms and conditions, specified by the commissioner, but not otherwise.

## **C. Regulatory Exclusion**

We acknowledge that the Province has the power to exclude an independent regulator when making any policy decision. In doing so, we feel that it is a courtesy to the public to refrain from implying that the Commissioner has approved the decisions that result.

We are concerned about how that reduced process can reasonably be expected to satisfy the legislative intent to consider ferry user interests. In a streamlined process, we are confident that the Ministry will speak to taxpayer (budget) issues and BC Ferries will speak to issues regarding their financial sustainability. They have the resources and expertise to ensure that their individual interests are placed on the table. However, it begs the question as to how the interests of ferry users are determined / researched / balanced in a process where users and / or the Commission are not at the negotiation table? We believe that the public expects that the Commission has an important and independent role in identifying user and community interests and balances them in all circumstances with the expectations of the other two parties.

We acknowledge that we may have misheard or misinterpreted some statements during the Ministry's consultations. However, that should not take away from our recommendation for a current review of the intent, scope and application of the requirement in Coastal Ferry Act that the Commission must balance, in the manner the commissioner considers appropriate, the interests of ferry users.

We have attached copies of previous submissions to provide background:

- 2014 - BC on the Move: 10-year Transportation Plan
- 2013 - Coastal Ferries Community Engagement

We trust that these comments will be helpful to the Commission and we look forward to a discussion about the issue.