

LETTER BY FAX (613) 957-0474
BY E-MAIL WITH ALL ATTACHMENTS

June 26, 2009

Ms. Sheila Fraser
Auditor General of Canada
Office of the Auditor General of Canada
240 Sparks street,
Ottawa, ON. K1A 0G6

Dear Ms Fraser:

Re: The Toronto Port Authority

Further to our letter sent on June 10, 2009 requesting that your office conduct the Special Examination, we have excerpted passages of the minutes that highlight significant changes to the TPA's record. Below are a sampling of the changes and/or items struck from the previously approved, signed and initialed minutes archived in December 2008 that illustrate the re-write of the TPA's records including the deletion of admissions by a TPA director of improper conduct.

The re-written board minutes were approved by the other 5 members of the TPA board at a meeting held on June 4, 2009. Those five members are Mr. Mark McQueen, Mr. Colin Watson, Mr. Craig Rix, Mr. Sean Morley and Mr. Jeremy Adams. The latter two directors were appointed after the letters patent of the TPA were changed to allow for 9 directors and after Parliament was prorogued in December 2008. Mr. Adams was not a director in 2008 and Mr. Morley only attended one board meeting in 2008, December 23rd and only participated in a portion of the discussions. For clarity, an agreement was struck among the six directors in September 2008 to resolve the Chair issue (a copy of which signed by Mr. McQueen is attached) resulting in the following terms: Ms. McCarthy to March 27, 2008; *No Chair* from March 28, 2008 to September 8, 2008; Mr. McQueen, September 5-14, 2008; and Mr. Henley, September 15 to December 31, 2008.

To ensure that you have the complete record, we have provided a complete clean copy of the approved, signed and initialed minutes as archived in December 2008 as well as the re-written June 4, 2009 minutes that were sent to our attention via e-mail. Please note that we have not addressed each and every change to the previously approved minutes. Some additional information is included to support our statements and a complete record can be provided upon request.

1. **An insertion was made on page of the altered 2009 minutes that is false and is not supported by the document record.** The following new statement was inserted on page 4 of the revised April 22, 2008 minutes:

"The Chair indicated that the opinion that Mr. Henley was referring to had not been shared with all members of the Board, in particular, with Mr. Watson, Mr. Rix and himself".

The opinion referred to above refers to the formal written legal opinion of Davies Ward Phillips & Vineberg LLP ("Davies") concerning the unlawful appointment of Mr. Mark McQueen as Chair of the TPA Board on March 27, 2008 and is dated April 7, 2008. The April 7, 2008 Davies opinion

was attached in our earlier correspondence. The three signatories below (Henley, McCarthy and Reid) who were board members at the time wish to note that the statement referred to above was never made at the April 22, 2008 board meeting and conflicts directly with the record of documents and e-mail records that exist. By way of example, attached is an e-mail of April 9, 2008 from Mr. Christopher M. Henley, then Chair of the Governance, Nominating and Human Resources Committee to all directors of the TPA attaching the Davies' legal opinion— the very opinion mentioned above and provided to the board thirteen days before the meeting. Not only is this statement false there are e-mails from both Mr. McQueen and Mr. Rix on that day, April 9, 2008, confirming that they had received this e-mail. In fact, Mr. Rix's confirms in his April 9, 2008 e-mail not only receipt of the Davies opinion but also having read the opinion the same day. A copy of Mr. Rix's e-mail is attached. In addition to these facts, Ms Carol Hansell of Davies had previously provided her opinion as board counsel days earlier in an e-mail which was sent to all directors on April 3, 2008, a copy of which is attached. The e-mail opinion was discussed at a meeting of the Governance, Nominating and Human Resources Committee of the board on April 5, 2008 – for which the approved committee minutes are attached and the Davies opinion was discussed in detail. The list of participants included both Mr. McQueen and Mr. Rix, at the time a new member of the committee.

2. **Comments concerning the Chair of the Audit Committee, Mr. Watson, authorizing payments outside of his authority and which, based on legal advice received by the TPA's board could not be made without board approval have been stricken from the record.** On page 13 of the approved April 22, 2008 board minutes, the following statement has been deleted in the June 4, 2009 re-write "Mr. Watson said that staff did nothing wrong and noted that he as Chair of the Audit Committee had authorized the payments". Not only do the three signatories below that were present at that board meeting recall this statement being made but several directors have the statement recorded in contemporaneous notes taken at the time. Additionally, the auditor of the TPA was present on June 25, 2008 when the improper authorization and breach of internal controls was again discussed. Finally, it is recorded in Ms McCarthy's memo dated July 2, 2008 which all directors agreed would be appended to the June 25, 2008 board minutes. A copy of Ms McCarthy's memo is attached to the approved, signed and initialed June 25, 2008 minutes archived in December 2008.
3. **Large sections of the previously approved minutes have been erased from the record as well as many requests by directors for auditor attendance to discuss financial statements.** Again at the June 25, 2009 board meeting, the auditor did not attend to discuss the directors' concerns notwithstanding repeated requests. At that meeting, the 2008 financial statements were approved in a meeting lasting less than 10 minutes. Other examples of matters struck from the record include, but are not limited to, a number of references to the Minister of Transport's office direct involvement in matters within the sole purview of the TPA board, problems receiving board minutes in a timely fashion specifically with regard to dissents emanating from the March 27, 2008 board meeting, issues with the performance of the then CEO/Corporate Secretary Ms Lisa Raitt, misinformation received by the Minister of Transport. Please note that many of these issues were noted at the time for the record, were incorporated in prepared scripts for the meetings involved and noted in contemporaneous notes taken at the time. Yet these have now have been stricken from the record as part of the re-write of the minutes on June 4, 2009.

4. **The revised minutes make numerous changes to the discussions held about the new ferry.** They include, but are not limited to, a change in the resolution granting spending authority for a naval architect; statements by the then CEO (Ms Lisa Raitt) that were struck from the record such as "the TPA always said 6 turns per hour but Porter wanted 8 turns"; and other comments erased from page 4 of the September 11, 2008 minutes "Other board members noted that among other things they needed to understand the TPA's contractual obligations more fully before any decision could be reached on whether to build a ferry. Mr. Henley also noted that he asked at the audit committee to see the legal opinion on being able to sole source a ferry contract and would need to review what was subsequently distributed". These comments were stricken from the record that was re-written on June 4, 2009.

We will note that these are just some of the changes and deletions made to the record that five members of the TPA board pushed through on June 4, 2009 despite the objections of almost one-half of the board representing each of the three stakeholders and one-half of the board members who were directors during the 14 board meetings from March 27, 2008 to November 13, 2008. Moreover, the minutes had previously been approved and signed by the Chair of the Board and the then Corporate Secretary, a lawyer from Davies and had been sent for archiving by TPA management.

There are also changes to the minutes of November 4, 2008, November 13, 2008, and December 14, 2008. These minutes had not yet been approved but had been reviewed by the then Chair and prepared by the Corporate Secretary and circulated to all directors for the January 21, 2009 board meeting. A copy of the minutes sent to board members by the Corporate Secretary are attached in the approved, signed and initialed file to allow for a comparison with the re-written minutes that were approved on June 4, 2009.

Two further examples from the November 13, 2008 minutes circulated to January 21, 2009 board meeting highlight the kinds of changes made in the re-write. First, significant parts of the Chair's section of the circulated November 13, 2008 minutes were erased including: "The Chair informed the board that Mr. Reid had immediately informed him that he had been approached by Mr. Bob Deluce of Porter Airlines with an offer of a meeting to discuss joining the Porter Airlines board of directors. The Chair mentioned that Mr. Reid had declined the offer and also informed board's counsel of the overture" and "The Chair then observed that the Board should re-visit the conflict of interest policy in the future and suggested an appropriate time-to do this might be once the new member joins the Board". It is worth noting that Mr. Reid disclosed this approach (and immediately declined the offer) to avoid any possibility of a conflict of interest arising as we were then in the midst of our deliberations concerning the new \$5 million ferry contract and financing for the Toronto City Centre Airport.

The conflict of interest is relevant in that it became an issue at the January 21, 2009 board meeting as Davies had delivered an opinion (which is attached hereto) that Mr. McQueen was in conflict with regard to the Goodman's LLP file and that Mr. Watson was in conflict with regard to as a result of his relationship with Mr. Deluce. The latter issue was the subject of an examination by the Conflict of Interest and Ethics Commissioner. Mr. Watson voted in favour of the purchase of the ferry at that meeting and when the vote was called for again at the April 2009 meeting, he abstained. Notwithstanding his abstention, his vote was counted although another director registered a written dissenting vote that was not counted.

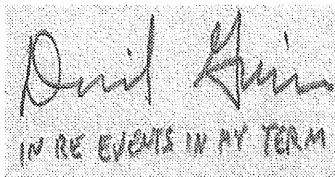
The issue of accurate board and committee minutes has been a recurring problem at the TPA and this re-write is only the latest manipulations of minutes, including re-writes by Goodmans LLP. The Goodmans LLP legal invoices specifically refer to reviewing and revising minutes and to e-mails with Ms Raitt regarding minute amendments. Thus, the question remains what changes were made to the minutes as a

result and why has one-half of the board been kept in the dark concerning the Goodman's LLP advice and these specific matters.

We view the re-writing of minutes containing untrue statements and incomplete, misleading and inaccurate accounts of the deliberations of the TPA board in 2008 as deeply troubling and a potential breach of the laws governing our activities. Fairness, honesty and integrity are not only a Canada Marine Act requirement of every director and officer of the TPA but are the fundamental underpinnings of good corporate governance. How can we as directors and the public have confidence and trust in the integrity of the TPA if the rules and obligations governing our operations are being flaunted.

The purpose of this letter is to note a few examples of the inaccuracies and to elaborate on the significant re-write of the TPA's record, all of which is known to the external auditor who has neglected to address these matters.

Yours truly,



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