



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

The Watson Report

made under the
CONFLICT OF INTEREST ACT



June 25, 2009

**Mary Dawson
Conflict of Interest and
Ethics Commissioner**

The Watson Report

in respect of the
CONFLICT OF INTEREST ACT

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PREFACE

The *Conflict of Interest Act (Act)* came into force on July 9, 2007 and replaced the *Conflict of Interest and Post Employment Code for Public Office Holders (2006 Code)*.

An examination under the *Act* may be initiated at the request of a member of the Senate or House of Commons pursuant to subsection 44(1) or on the initiative of the Conflict of Interest and Ethics Commissioner pursuant to subsection 45(1) of the *Act*.

Pursuant to subsection 45(2) of the *Act*, the Commissioner may, having regard to all the circumstances of a case, discontinue an examination. Unless an examination is discontinued, subsection 45(3) requires the Commissioner to provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination. Subsection 45(4) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the current or former public office holder who is the subject of the report, and made available to the public.

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THE ALLEGATION RELATING TO THE EXAMINATION

A member of the Toronto Port Authority (TPA) Board of Directors called my Office on the morning of January 21, 2009 seeking advice with respect to a possible conflict of interest involving Mr. Colin Watson, a fellow member of the TPA Board of Directors. Mr. Watson is a part-time Governor in Council appointee and a public office holder subject to the *Conflict of Interest Act* (Act). My Office informed the member who called in a general way about the requirements of the Act, but advised that detailed information would be required before any further action could be taken.

Between January 21, 2009 and February 2, 2009, my Office was in communication with the member who called to obtain further clarification regarding the concerns raised.

On February 2, 2009, my Office received a written statement from that member describing in further detail the concerns about the possible conflict of interest. The member alleged that, by participating in decisions of the TPA Board in relation to a proposal to acquire a new ferry on January 21, 2009, Mr. Watson may have been in a conflict of interest in that he had the opportunity to further the private interests of Mr. Robert Deluce, President and CEO of Porter Airlines Inc. (Porter or Porter Airlines) who was alleged to be a friend of Mr. Watson.

The statement alleged that, since June 2008, Mr. Deluce had been petitioning the TPA to build a second, larger ferry in light of his plans to expand the scope of Porter's operations out of the Toronto City Centre Airport (Airport), which can only be accessed by ferry. It was alleged that Mr. Watson had been a tireless advocate in favour of building the new ferry and spoke in favour of this proposal at meetings of both the TPA Board of Directors and the TPA Board's Audit and Finance Committee, the latter being chaired by Mr. Watson. According to the statement, Mr. Watson had made it clear on several occasions that he was a "good friend" of Mr. Deluce and that he had mentioned sharing various social occasions, including golf, with Mr. Deluce. The allegation was that this relationship placed Mr. Watson in a conflict of interest when he voted on two motions related to the new ferry at the TPA Board of Directors meeting on January 21, 2009.

My Office was given a copy of a legal opinion, dated January 21, 2009, which had been requested by Mr. Christopher Henley, the Chair of the TPA Board at that time. The opinion concluded that, in light of his friendship with Mr. Deluce, Mr. Watson was in a conflict of interest and should have recused himself from participating in any votes related to Porter Airlines.

On February 3, 2009, my Office called Mr. Watson about the allegations. Mr. Watson confirmed that he had participated in the decisions in question but asserted that he was not in a conflict of interest because he believed the decisions he made were in the best interest of the TPA. He further stated that he had not been consulted on the status of his relationship with Mr. Deluce by the lawyers who wrote the opinion.



On the same day, my Office was provided with a copy of a second legal opinion, dated February 2, 2009, that had been requested by Mr. Alan J. Paul, Acting President and Chief Executive Officer of the TPA. This opinion concluded that Mr. Watson was not in a conflict of interest. Although the opinion assumed that Mr. Watson and Mr. Deluce were friends, it concluded that, because the new ferry proposal was a matter of general application benefiting all tenants of the Airport and not only Porter, no private interests, as defined in subsection 2(1) of the Act, were at stake and, therefore, Mr. Watson could not be in a conflict of interest.

Although both of these legal opinions assumed that Mr. Watson and Mr. Deluce were friends, they differed as to whether there was a private interest at stake and hence whether Mr. Watson was in a conflict of interest.

On the basis of this information, I proceeded with an examination on my own initiative under subsection 45(1) of the Act in order to review the facts more closely to determine whether Mr. Watson and Mr. Deluce were friends as contemplated by the Act, whether there was a private interest at issue and whether Mr. Watson had, in the circumstances, contravened the Act.



THE PROCESS

On February 3, 2009, my Office advised Mr. Watson verbally that I had decided to proceed with an examination. I confirmed this in a letter, dated February 4, 2009, advising him that, based on the information provided, including the two conflicting legal opinions, I was initiating an examination under subsection 45(1) of the Act. I noted that we would need to gather the relevant facts in order to determine if the Act and, in particular, sections 6 and 21, which require that public office holders recuse themselves from decision making processes in the face of conflict of interest, had been contravened. I also confirmed that a phone interview had been scheduled with Mr. Watson for February 9, 2009.

Mr. Watson advised my Office that he would be prepared to participate in an interview after receiving advice from his lawyer and said that he would appreciate receiving questions in writing. By the time Mr. Watson had secured legal counsel on February 6, 2009, the time for the interview had become impracticable. In a letter to him sent by e-mail on February 6, 2009, I attached questions and sought his written reply by February 13, 2009. I advised him I would likely need to interview him at a later date and informed him that I would be approaching other individuals to obtain additional information in relation to this examination.

On February 10, 2009 I wrote to all other members of the TPA Board of Directors and to the Acting President and Chief Executive Officer of the TPA to inform them of my examination and to ask them to answer a number of questions.

On that same day, I also wrote to Mr. Deluce to convey the same information and to ask for a written reply to a number of questions. On February 12 and 18, I wrote to twelve commercial tenants of the Airport asking them for information relevant to the new ferry proposal. Between February 17 and March 6, 2009, my Office received a number of written submissions. A complete list of these submissions is attached in Schedule A.

I interviewed four witnesses between March 24 and April 2, 2009, starting with Mr. Watson on March 24. A complete list of witnesses is also included in Schedule A and a list of the documentary evidence is provided in Schedule B.

Mr. Watson was given an opportunity to comment on a partial draft of this report, not including the analysis and conclusions.



THE RELEVANT PROVISIONS OF THE ACT

The relevant provisions of the Act read as follows:

2. *“private interest” does not include an interest in a decision or matter*

- (a) that is of general application;*
- (b) that affects a public office holder as one of a broad class of persons;*
or
- (c) that concerns the remuneration or benefits received by virtue of being a public office holder.*

[...]

4. *For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person’s private interests.*

[...]

6. (1) *No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.*

[...]

21. *A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.*



THE FACTS

All of the witnesses, including Mr. Watson, were cooperative and credible. There were some minor differences in the recollection of witnesses on certain matters of fact but these did not have any substantive bearing on my findings. My findings of fact are set out below.

The Toronto Port Authority

The TPA is a corporation established by the federal government in 1999 by Letters Patent issued under the *Canada Marine Act* to replace the Toronto Harbour Commissioners. It is responsible for operating the Port of Toronto, including operating and maintaining the Airport in accordance with the Tripartite Agreement, dated June 30, 1983, between the Corporation of the City of Toronto, Her Majesty the Queen in Right of Canada and the Toronto Harbour Commissioners. The TPA is also responsible for operating the ferry service across the Western Gap of the Toronto harbour, which provides access to the Airport.

The Letters Patents were first published in the *Canada Gazette* on June 5, 1999 and originally set out the following procedure for appointing seven Directors of the TPA Board: the City of Toronto appoints one individual, the province of Ontario appoints one individual and the Governor in Council appoints one individual nominated by the Minister of Transport as well as the remaining four individuals nominated by the Minister of Transport in consultation with the classes of users of the TPA as listed in Schedule D of the Letters Patent. They include: Port Related Activities and Operators (Class 1), Airport (Class 2), Commercial Users (Class 3) and Recreational Businesses (Class 4).

Recent amendments to the Letters Patent came into effect on December 12, 2008. These amendments increased the number of Directors of the TPA Board by two, from seven to nine members.

On December 12, 2008, the TPA Board of Directors consisted of seven members: Ms. Michele McCarthy, who was appointed in 2004 by the Province of Ontario; Mr. Colin Watson, Mr. Douglas Reid, Mr. Christopher Henley and Mr. Mark McQueen, all of whom were appointed by the Governor in Council between August 2006 and August 2008 after consultation by the Minister of Transport with the four classes of user-representatives; Mr. Craig Rix, who was nominated by the Minister of Transport and appointed by the Governor in Council in February 2008; and Mr. David Gurin, who was appointed by the City of Toronto in early December, 2008.

Following the recent amendments to the Letters Patent in mid-December, 2008, two additional Directors were appointed to the TPA Board: Mr. Sean Morley was appointed on December 19, 2008 and Mr. Jeremy Adams on January 14, 2009.



Three of the Directors interviewed were appointed under the provisions requiring prior consultation with the user representatives of the TPA. Mr. Watson was appointed for the Class 3 commercial users, Mr. Reid the Class 2 airport users and Mr. Henley the Class 4 recreational users. However all of them stated that their role on the Board was to act in the best interests of the TPA and not of any particular user group. They did not consider their role to be advocates for these user groups and they had no interactions with the members of these groups. Any concerns from members of the groups would likely be in relation to general operational matters and would usually be dealt with by TPA management. From the perspective of a user, Mr. Deluce told me that he was generally aware of the user concepts but was not aware of which Board member had been appointed as the Class 2 user representative, the class consisting of airport users.

The Proposal to Construct a New Ferry

A number of events occurred between March 2008 and January 21, 2009 with respect to the proposal to construct a new ferry. A complete sequence of events is found in Schedule C. For the purposes of this report, I will limit myself to highlighting significant events leading up to the votes at the Board of Directors meeting held on January 21, 2009. They form the subject matter of this examination.

Porter Airlines Inc. started commercial airline operations in 2006 and, in 2008, had 6 aircraft serving Ottawa, Montreal, Halifax, New York, Mont Tremblant and Quebec City. Porter has been engaged in a significant expansion of its operations, including the purchase of up to 20 additional aircraft, additional routes, and the expansion of the Airport terminal facility. From the outset, Porter has taken the position that the acquisition of a new ferry is necessary to accommodate projected increases in passenger volumes attributable to the expanded scope of its operations. In its view, the existing ferry service is insufficient to meet projected increases in passenger traffic.

Between March and June 2008, Mr. Deluce, President and CEO of Porter Airlines, approached the senior management of the TPA and the members of the Board of Directors to brief them on the need for a new ferry to service the Airport. The TPA has a responsibility to provide adequate facilities to support the users of the port.

The management of the TPA subsequently engaged Jacobs Consultancy to forecast activity levels at the Airport and to assess whether the existing ferry service could meet anticipated demands. The Jacobs Report was completed in July 2008 and concluded that the projected growth of traffic at the Airport due to Porter's expansion plans meant that the existing ferry would reach its passenger capacity during peak hours by 2009 and that its capacity would be exceeded by March 2010. The Report recommended that solutions for the ferry capacity shortfall be developed, assessed and implemented quickly, failing which severe shortfalls could be expected to materialize by spring 2010.



Ms. Lisa Raitt, the President & CEO of the TPA at the time, sent a copy of the Jacobs Report to the Audit & Finance Committee with the recommendation that management be authorized to begin the process of designing and ordering a new ferry. Mr. Watson was the Chair of this three-member committee which included Mr. McQueen and Mr. Henley.

The Audit & Finance Committee and the Board of Directors approved a number of measures related to the acquisition of a new ferry. In particular, the Board waived the normal purchasing policy requirements in order to hire a naval architect to prepare detailed design drawings and specifications. In addition, during the month of December, the Audit & Finance Committee issued a Request for Proposal to obtain a builder for the construction and delivery of the new and larger ferry.

At a meeting of the Board on December 23, 2008, the Directors approved a motion to execute a financing proposal from the Bank of Montreal for a \$5 million loan to finance the purchase of the new ferry. This motion included a proviso that the loan be non-binding on the TPA in the event that an alternative financing strategy materialized. Six directors were present. The motion carried (five directors, including Mr. Watson, voted in favour of the motion; no directors voted against and one director abstained).

The Board then voted, with the same pattern as the first vote, in favour of a second motion stating that the TPA Board of Directors supported the concept of acquiring a new ferry.

The Meeting of the Board of Directors on January 21, 2009

On January 19, 2009, a meeting of the TPA Board of Directors was requested by Mr. Rix for January 21, 2009 to discuss the acquisition of the new ferry, the results of the Request for Proposal to find a builder for the ferry, borrowing money for the purchase of the new ferry and the election of a new Chairman of the Board of Directors. The request for a meeting was seconded by Mr. McQueen. Although the Chair of the Board usually calls a meeting of the TPA Board of Directors, another member may do so with two days notice to other members.

The first order of business of the Board on January 21, 2009 was a motion by Mr. McQueen, seconded by Mr. Watson, that the Board:

“[A]ffirm the motion passed by the Board of Directors on December 23, 2008 approving Management’s recommendation that TPA acquire a New Passenger / Vehicle Ferry as per the RFP that was undertaken in 2008 and also to direct the Acting President & CEO to enter into a binding contract with the successful bidder of the RFP, Hike Metal, for the new ferry provided that the price of construction and delivery of the new ferry not exceed the amount that was presented to the Board on December 23, 2008.”



The Board had agreed to limit the cost of the new ferry to \$4.85 M or less at its meeting of December 23, 2008.

After the motion was tabled, Mr. Henley, the Chair of the Board, stated that he had obtained a legal opinion on conflict of interest issues and distributed a copy to all directors present. Mr. Watson and Mr. Reid had joined the meeting by phone and did not receive copies at that time. Mr. Henley explained the legal opinion and its implications under both the Board's Code of Conduct and the *Conflict of Interest Act*. He related the conclusions of the legal opinion, namely that, because Mr. Watson was a friend of Mr. Deluce, he should recuse himself from any TPA discussions related to Porter Airlines, including the new ferry proposal.

Mr. Watson disputed that he was in a conflict of interest and noted that he had had no discussions with the author of the legal opinion about the nature of his relationship with Mr. Deluce. Mr. Watson refused to recuse himself from voting on the motion before the Board.

Although the author of the legal opinion was available by phone to discuss his advice, no one acted on Mr. Henley's offer to call him. Although some directors were pushing for a quick vote on the motion by Mr. McQueen for the ferry purchase, there was some discussion of the issues covered in the legal opinion, after which the vote proceeded and the motion carried (5 votes in favour to 4 votes against). The five directors who voted in favour included: Mr. Watson, Mr. McQueen, Mr. Rix, Mr. Morley and Mr. Adams. Those voting against the motion included Mr. Henley, Mr. Reid, Ms. McCarthy and Mr. Gurin.

Mr. McQueen then tabled a second motion, seconded by Mr. Rix that asked the Board to approve the Bank of Montreal loan related to the acquisition of a new ferry as presented by management.

Both Mr. Paul, the Acting President and Chief Executive Officer of the TPA, and Mr. Henley, the Chair of the Board at the time, reported on discussions held with Mr. Deluce on ways to finance the purchase of the ferry. Mr. Henley reported that it had been explained to Mr. Deluce that, although the Board supported the proposal to acquire a new ferry in principle, it had not agreed upon the appropriate financing arrangements. The discussions focused on: 1) the increased level of risk to which the TPA would be exposed if \$5 million were added to its existing debt of \$15 million (which had been incurred in relation to the ferry currently in operation); 2) the possibility that Porter might agree to guarantee this additional financing; and 3) a proposal to increase the Airport Improvement Fee (AIF) charged to individual passengers as part of the price of their airfare, from \$15 to \$20 (an increase that would bring the AIF charged at the Airport in line with that charged at Pearson International Airport). Mr. Henley's position was that this would significantly reduce the cost to the TPA of servicing an increased debt load and, thereby, quickly reduce the TPA's overall financial risk exposure.



Mr. Henley reported that Mr. Deluce was opposed to increasing the Airport Improvement Fee because passenger demand might be curtailed which could, in turn, serve to reduce the TPA's projected revenues, which are based on passenger volume through the Airport. Mr. Henley added that, in spite of Mr. Deluce's argument that demand to fly Porter might be reduced by increasing the cost of tickets, in his view increasing the AIF by \$5 represented the most financially sound approach to financing the acquisition of the new ferry as it exposed the TPA to the least amount of financial risk. There was some discussion on the issue but the Board then proceeded to vote. Mr. Henley asked Mr. Watson if he intended to recuse himself from this vote. Mr. Watson said he did not. The motion carried 5 votes in favour, 4 votes against with the same directors voting in the same fashion as for the previous motion.

The Board then approved a motion that was on the agenda to elect Mr. McQueen as the new Chairman of the Board, after which it voted on matters that had not been identified on the agenda, including changing the composition of the various sub-committees and terminating the contract with existing legal counsel to the Board, whose law firm had prepared the legal opinion about Mr. Watson being in a conflict of interest. These motions carried by the same vote split as the first two motions, 5 votes in favour, 4 votes against.

While the Directors unanimously voted in favour of the concept of the new ferry on December 23, 2008, some of them voted against the purchase of the new ferry on January 21, 2009. Mr. Henley, Mr. Reid, Ms. McCarthy and Mr. Gurin all explained to me in their written submissions that they voted against the motions on January 21 because they believed that it was not prudent to acquire a new ferry without the benefit of having further discussions about other financial alternatives.

During individual interviews, I asked Mr. Henley and Mr. Reid why they voted against the January 21 motions and in particular the first motion, which merely confirmed that the Board would proceed with the acquisition of the new ferry. Mr. Henley told me that, although he continued to support the concept of acquiring a new ferry, he did not feel it was in the best interests of the TPA to approve the proposed financing arrangements in the absence of a sound business case. Mr. Reid stated that he voted against this motion because it was clear that the project was going to proceed in the absence of appropriate due diligence with respect to examining other financing options.

Mr. Paul, Acting President and Chief Executive Officer of the Toronto Port Authority, along with the five Directors who voted in favour of the motions, said in their individual written submissions that, in light of concerns about the capacity of the existing ferry, they felt that it had become urgent to deal expeditiously with the acquisition of a new ferry because the normal process could take to up a year to complete. They stated that the financing arrangement was relatively low cost and that if it wasn't approved within a short timeframe the cost could increase. They also suggested that the projected



revenue based on the current Airport Improvement Fee would be sufficient, even with low passenger traffic, to cover this new capital expenditure and that the benefits of raising the AIF were not clearly demonstrated. They also noted that this possible means of increasing revenue could be pursued at any time.

The Relationship between Mr. Watson and Mr. Deluce

Central to the allegation that Mr. Watson may have been in a conflict of interest when he took part in decisions about the new ferry is the question of his relationship with Mr. Deluce and whether they were friends for the purposes of the Act.

According to the other Board members, Mr. Watson has on many occasions indicated to them that Mr. Deluce was a “friend” or a “pal”. Mr. Watson himself agreed that this was the case. One person interviewed stated that he overheard Mr. Watson suggest lunch to Mr. Deluce after the June 25, 2008 presentation by Mr. Deluce to the Board. He did not know, however, if in fact they actually had lunch together. Mr. Watson has responded to this allegation stating that he did not suggest lunch with Mr. Deluce or have lunch with him following the June 28, 2008 presentation.

Both Mr. Watson and Mr. Deluce indicated that they interact in the same social and business circles. Mr. Deluce described their relationship as one of professional acquaintances. They both stated that they see each other occasionally in their neighbourhood because they live on the same street and they bump into each other occasionally at social gatherings. However, they both said that they do not solicit each other’s company and their respective families do not socialize together. They belong to the same golf club but they rarely see each other there. Mr. Deluce stated he had no time to play golf and may have played four games in the last year. They both have residences in Florida that are about 30 miles (50 km) apart. They saw each other at a social event at another person’s home but they do not drive to visit each other while in Florida.

They both confirmed that their relationship relates to a business association going back to SPAR Aerospace in the late 1990’s and more recently to VECTOR Aerospace and the Toronto Port Authority.



MR. WATSON'S POSITION

In his written submissions and in an interview, Mr. Watson told me that he and Mr. Deluce know each other because they are part of the same business and social circles. He told me that he did call Mr. Deluce a friend but said that he calls everybody he knows a friend unless he has a reason to dislike someone. He and his wife may have a close circle of 10 to 15 friends that they see on a regular basis. Outside of that there are hundreds of people with whom they interact in a business context or in large social gatherings. He said that Mr. Deluce would be part of this outer group. They live in the same neighbourhood in Toronto and he runs into Mr. Deluce from time to time at restaurants, golf clubs and other social gatherings. On these occasions they exchange pleasantries. They both own residences 30 miles (50 km) from each other in Florida but do not see each other there.

Mr. Watson said that Mr. Deluce became a Director of SPAR Aerospace in 1998 when Mr. Watson was the Chief Executive Officer there between 1996 and 2002. Mr. Watson is currently on the Board of Directors of Vector Aerospace with Mr. Deluce. This is the full extent of their professional connection. The Board of Directors of Vector Aerospace meets four times a year and they sometimes see each other at these meetings, when they are both present. Mr. Watson said he likes Mr. Deluce and respects him.

Mr. Watson indicated that the complaint made to my Office is part of a larger struggle over the Airport. There has been a longstanding political dispute in Toronto over the Airport with the federal government supporting the Airport and the City of Toronto opposed to it. Mr. Watson said, however, that broadly speaking all the Directors act in the best interest of the Toronto Port Authority although he suggested that the Director appointed by the City of Toronto has a mandate to oppose the Airport.

The issue dividing the Directors is more one of governance; more specifically the directors are of different opinions as to what is in the best interest of the Toronto Port Authority. Five of the nine current Directors share one vision while the other four members share another. Mr. Watson also mentioned controversies dating back to the summer of 2007 between certain Directors with respect to their compensation.

With respect to the new ferry, Mr. Watson confirmed the facts as set out earlier in this Report, but reiterated that, after Porter Airlines announced its plans to expand its services and the conclusions of the Jacobs Report were released, the Directors held a number of meetings concerning the projected increase in passenger traffic and agreed to address the issue by purchasing a new larger ferry. In fact, on December 23, 2008, Mr. Watson stated, as set out above in the section on the Facts, that the Directors unanimously (with one person abstaining) voted in favour of the concept of a new ferry.



Mr. Watson confirmed that at the January 21, 2009 meeting the Chair, Mr. Henley, distributed a legal opinion to all in attendance. Mr. Watson was participating in the meeting by phone and was not given a copy. The Chair explained to Mr. Watson that he should not participate in discussions related to the contracts or other business dealings with Porter because he and Mr. Deluce were friends.

Mr. Watson told me that he refused to recuse himself from the votes because he disputed the allegation that he was in a conflict of interest. In fact, this was the first he had heard about these concerns. This issue had never been raised prior to the Board meeting. He also said that he had not been approached by the author of the legal opinion to discuss the nature of his relationship with Mr. Deluce.

Regardless of his relationship with Mr. Deluce and the legal opinion that suggested that he was in a conflict of interest, Mr. Watson stated that his participation in the Board's meetings and discussions and his votes on the motions relating to the new ferry were at all times motivated by the genuine conviction that the new ferry was in the TPA's best interest. His intent was at no time to further the private interests of Mr. Deluce.

Mr. Watson claimed that the decision taken by the Board of Directors on January 21, 2009 would benefit the ferry builder, the lending institution, and a wide range of individuals and businesses, namely the commercial tenants and the users (i.e., passengers) of the Airport. Mr. Watson confirmed that neither he nor any members of his family had any financial interests in Porter and that he would not benefit personally from the decision in any way.



ANALYSIS AND CONCLUSIONS

General Observations

It is public knowledge that there has been a longstanding political dispute as to whether there should be an airport in downtown Toronto and, if so, how big it should be allowed to grow. However, this issue did not seem to be the basis for the contention within the Board of Directors concerning the acquisition of a new ferry.

In their written submissions, no Directors indicated that they opposed the acquisition of a new ferry. However, they were split on whether the project, and more particularly the funding proposal, was supported by an adequate business plan.

The four Directors who voted against the proposals on January 21, 2009 suggested that, in the absence of a proper business plan and alternative funding options, it was imprudent and contrary to their fiduciary duty to support these motions. It was noted that only one bank had been canvassed for a \$5 million loan. The five Directors who voted in favour of the motions said that, given the pressing need to move the process along, they felt the business case was adequate.

I gather from a number of submissions and oral testimonies that the TPA Board has had governance issues going back to 2006. One Director also stated that there are personality conflicts within the Board and that there have been confrontations between Directors.

Mr. Watson stated that between the summer of 2006 and the fall of 2008, there were six Directors and that they were continuously deadlocked on all issues that required decisions. Mr. Watson claimed that the TPA could simply not function as there was a clear three to three split on issues. This was confirmed by written submissions from a number of Directors. During this period and thereafter, there were a number of chairs who appear to have been elected and removed without unanimous consent.

On December 3, 2008, the City of Toronto, which had never appointed a member to the TPA Board before, made an appointment. This gave one group a four to three majority. Then, two federal appointments were made, one in late December 2008 and one in mid-January 2009. This tipped the balance to the other group with a five to four split.

There is clearly a level of dysfunction as well as a power struggle within the TPA Board. This history and environment provided me with some context in looking into this matter.



Findings

It has been alleged that Mr. Watson was in a conflict of interest when he took part in decisions of the Board of Directors of the Toronto Port Authority in relation to the acquisition of a new ferry.

Subsection 6(1) and section 21 are the relevant substantive provisions of the Act. They have the effect of prohibiting a public office holder from taking part in activities related to their official powers, duties and functions that would place them in a conflict of interest.

Section 4 provides a description of conflict of interest for the purposes of the Act. It reads as follows:

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

There is no doubt that, by participating in the votes in question, Mr. Watson was exercising an official function. The issue in these circumstances is whether Mr. Watson's participation provided him with an opportunity to further his own private interests, or those of a relative or friend or to improperly further another person's private interests.

As for Mr. Watson's own private interest, both Mr. Watson and Mr. Deluce confirmed that neither Mr. Watson nor any of his relatives had any private interests in Porter Airlines Inc., and I accept that this is not an issue in this case.

The allegation raised against Mr. Watson is that he was in a conflict of interest when he voted on matters relating to the new ferry because he was furthering the private interests of a friend, Mr. Deluce. The two central questions are whether Mr. Deluce was indeed a friend of Mr. Watson for the purposes of the Act and whether Mr. Deluce's private interests would be furthered as a result of the vote.

Was Mr. Deluce a Friend?

The Act does not define the word "friend". It is a word that is used in different ways by different people and can be used to apply to a range of relationships from the closest of life-long companions to neighbours, colleagues, acquaintances or business associates that one sees only occasionally and where there is little emotional attachment.



Both Mr. Watson and Mr. Deluce indicated that they interact in the same social and business circles. Mr. Deluce described their relationship as one of professional acquaintances. They both stated that they see each other occasionally in their neighbourhood because they live on the same street and they bump into each other occasionally at social gatherings. Both Mr. Watson and Mr. Deluce said that they do not solicit each other's company and their families do not socialize together. They belong to the same golf club but they rarely see each other there. Mr. Deluce stated he had no time to play golf and may have played four games in the last year. They both have residences in Florida that are about 30 miles (50 km) apart. They saw each other there at a social event at another person's home but they do not visit each other while in Florida.

They both confirmed that their relationship stems from a business association going back to SPAR Aerospace in the late 1990's and more recently to VECTOR Aerospace and the Toronto Port Authority.

What has complicated this case is the fact that Mr. Watson has frequently referred to Mr. Deluce as his "friend" or his "pal". Indeed, it appears that he has gone out of his way to do so. It is not surprising that this raised questions, particularly in the circumstances of the expedited process to move ahead with the ferry. However, I believe that these statements of Mr. Watson likely resulted from a habit of Mr. Watson of claiming friendship with a broad range of people with whom he had no particularly close bond.

I accept the testimony of both Mr. Watson and Mr. Deluce with respect to their relationship. Both of them were credible and consistent in describing their interactions with each other. Except for the comments that were made by Mr. Watson at the Board meetings about Mr. Deluce being his friend, the witnesses and the written submissions did not provide any additional information sufficient to suggest to me that their relationship goes beyond what was explained to me by Mr. Watson and Mr. Deluce.

Subsection 6(1) and section 21 of the Act, combined with the description of conflict of interest in section 4, prohibit a public office holder from performing his or her role as a public office holder in any situation that would provide an opportunity to further the private interests of the public office holder himself or herself, or those of his or her relatives or friends. These three cases – oneself, one's relatives and one's friends are treated in the same way. The prohibition is a strong one; it extends not only to furthering the private interests of these individuals but also to having an opportunity to further the private interests of these individuals. I do not think that this prohibition was intended to relate to individuals other than those who have a close bond of friendship, a feeling of affection or a special kinship with the public office holder concerned. It does not include members of a broad social circle or business associates.



I do not believe that the relationship between Mr. Watson and Mr. Deluce is one that is meant to be captured by the term “friends” as it is used in the Act. In this regard, I do not agree with the legal opinion obtained by Mr. Henley, the first legal opinion requested. This office has interpreted friend, for the purposes of the Act, to mean a person with whom one has some history of mutual personal regard beyond simple association. While acquaintances can become friends, they do not do so simply because of frequent interaction.

I am satisfied that because Mr. Watson is not a friend of Mr. Deluce within the meaning of the Act, he has not contravened subsection 6(1) or section 21 of the Act. It is therefore not necessary to go further in this regard to consider whether there was an opportunity to further Mr. Deluce’s private interests in order to dispose of this allegation.

Did Mr. Watson Improperly Further the Private Interests of Mr. Deluce?

There is a second part to the definition of conflict of interest. Section 4 of the Act includes not only a prohibition against using one’s position to further one’s own private interest or that of one’s relatives or friends but also a prohibition against improperly furthering any other person’s private interest. This second prohibition was not raised with me as part of the original allegation against Mr. Watson, but I believe it is necessary for me to consider it as well.

I will look first at whether the private interests of Mr. Deluce would be furthered, and then at whether this would be improper.

Private Interests

Mr. Watson, the other four TPA Directors who voted in favour of the new ferry and financing formula on January 21, 2009 and Mr. Alan Paul, Acting President and Chief Executive Officer of the TPA, argued in their submissions that there were no private interests at issue because many would benefit from the new ferry, including all commercial tenants and the general public. The definition of private interest reads as follows:

2. “private interest” does not include an interest in a decision or matter
 - (a) that is of general application;
 - (b) that affects a public office holder as one of a broad class of persons;
 - or
 - (c) that concerns the remuneration or benefits received by virtue of being a public office holder.

Effectively, Mr. Watson and the other four voting with him, have suggested that their decision to support the new ferry and the financial formula was a decision of general



application. This was also the conclusion of the legal opinion obtained by Mr. Paul, the second legal opinion referred to earlier. I do not share this view. The interest in having the new ferry is not one of general application. Although anyone wanting access to the Airport will enjoy the benefit of a new ferry, Mr. Deluce has a particular private interest in having a new ferry to accommodate the expansion plans of Porter Airlines. There was no dispute on this issue. If it were not for these plans, there would be little need to construct a new ferry. Mr. Watson and others argued that a new back-up ferry would, in any event, still be necessary to accommodate passengers when the current ferry has mechanical issues. As Mr. Watson admitted, however, under those circumstances the requirements for a new ferry would be quite different as it would simply be a back-up ferry and not one to accommodate an increase in passenger levels.

In my opinion, Porter and Mr. Deluce, who is its President and CEO and who also has an important ownership interest in the company, have private interests at stake in the Toronto Port Authority's deliberations on whether to approve the proposal to acquire a new ferry. Mr. Deluce explained that, if a new ferry were not approved, his expansion plans would be in jeopardy. In fact, Mr. Deluce confirmed that construction of a new terminal facility, which had been approved by the Board, had already begun in order to accommodate the delivery of additional aircraft. According to Mr. Deluce, if the TPA Board had not approved the new ferry, that would have had a detrimental effect on the Airport, the TPA and the tenants but also particularly on Porter.

With respect to the financing of the new ferry, Mr. Deluce stated that Porter did not support a proposal to increase the Airport Improvement Fee because passenger demand might be curtailed and thereby risk reducing its own and the Toronto Port Authority's projected revenues. He also stated that because demand to fly Porter might be reduced by increasing the cost of tickets, this option also posed a risk to Porter. In my opinion, this clearly demonstrates that the private interests of both Porter and Mr. Deluce are engaged by the new ferry proposal.

Because I have concluded that there is a private interest at issue, it is necessary to examine whether Mr. Watson "improperly" furthered Mr. Deluce's private interests. Section 4 of the Act prohibits public office holders from improperly furthering the private interests of "any other person."

Were Mr. Watson's actions improper?

The evidence shows that the proposal for the new ferry was pushed through at a faster rate than usual for a project requiring a major capital expenditure. Certain rules were waived. For example, the normal process under the purchasing policy was set aside to expedite the hiring of a naval architect. All Directors of the Board consented to these actions so that any impropriety in this regard would go to the conduct of the Board as a whole and not to Mr. Watson alone. There is no evidence that Mr. Watson played a particularly influential role in moving this process along. Nor is there any evidence that suggests that other Board members were in a conflict of interest.



I have no reason to doubt that all Directors, including Mr. Watson, believed that they were acting in the interest of the Toronto Port Authority and that a new ferry would be a positive result for the TPA and the Airport as a whole. The dissension among the Directors arose when considering the best method for financing the new ferry. Some Directors felt that a proper business case had not been developed to support the new ferry proposal. All understood that bank financing would be necessary, but how and at what speed a loan would be reimbursed to lower the risk to the TPA was clearly at issue.

Although a proposal to increase the Airport Improvement Fee was under consideration, this was not pursued as an option by the majority of the Board who felt that the benefits of increasing the AIF had not been demonstrated and could at any time be re-examined. However, there were differing views. Increasing the AIF might have relieved the debt more quickly. This was the view of the four dissenting Directors.

Clearly alternative financing options were not thoroughly canvassed or considered. The lack of rigour was attributed to the urgency in pursuing this matter but there appears to have been a genuine belief on the part of at least the majority voters that in any event the option offered by the Bank of Montreal was in fact the best possible option that could be obtained. Whether there were any shortcomings with respect to the fiduciary duties of the Board as a whole is not for me to determine. It is inevitable that many decisions of boards will have an impact on the private interests of some people. This does not mean that those decisions are improper. For the purposes of the Act, I do not find that Mr. Watson or the other Board members who voted in favour of the motions acted improperly in doing so.

With respect to Mr. Watson, there was no evidence to suggest that he had a separate agenda or motivation from the four Board members who voted with him. I believe that Mr. Watson exercised his duties both as a Director of the Toronto Port Authority and as Chair of the Audit & Finance Committee with the genuine conviction that the new ferry was a good thing for the TPA as a whole and for the Airport's primary user, Porter Airlines. I do not believe that Mr. Watson was motivated by a desire to further the private interests of Mr. Deluce. I am therefore satisfied that Mr. Watson did not "improperly" further the private interests of Mr. Deluce.

Conclusions

This examination required that I look into the status of the relationship between Mr. Watson and Mr. Deluce, that I determine whether private interests of Mr. Deluce were at issue and, if so, whether Mr. Watson had improperly furthered those private interests.

To make these determinations, it was necessary to review the background that led to decisions by the Board of the Toronto Port Authority to acquire a new ferry, but not for the purposes of determining whether the appropriate procedures internal to the TPA had



been followed. My mandate is to determine whether the Act has been contravened, and more particularly whether Mr. Watson, because of his relationship with Mr. Deluce, should have refrained from participating and voting on issues related to Porter Airlines.

I found that Mr. Watson is not a friend of Mr. Deluce for the purposes of the Act. While I did find that Mr. Deluce's private interests were engaged, I concluded that Mr. Watson did not improperly further those private interests for the purposes of the Act.

For the reasons stated above, I have determined that Mr. Watson was not in a conflict of interest and did not contravene subsection 6(1) or section 21 of the Act.



SCHEDULE A:
LIST OF WITNESSES: INTERVIEWS AND WRITTEN SUBMISSIONS

INTERVIEWS

Toronto Port Authority Board Members

1. Mr. Christopher M. Henley
2. Dr. Douglas Reid
3. Mr. Colin D. Watson

Other Witnesses

4. Mr. Robert J. Deluce, President and CEO of Porter Airlines Inc.

WRITTEN SUBMISSIONS

Toronto Port Authority – Board Members

1. Mr. Jeremy Adams, written submission dated February 20, 2009
2. Mr. David Gurin, written submission dated February 17, 2009
3. Mr. Christopher M. Henley, written submission dated February 19, 2009
4. Ms. Michele D. McCarthy, written submission dated February 19, 2009
5. Mr. Mark R. McQueen, written submission dated February 17, 2009
6. Mr. Sean L. Morley, written submission dated February 18, 2009
7. Dr. Douglas Reid, written submission dated February 19, 2009
8. Mr. Craig Rix, written submission dated February 19, 2009
9. Mr. Colin D. Watson, written submission dated February 20, 2009



Toronto Port Authority – Management

10. Mr. Alan J. Paul, Acting President and Chief Executive Officer of the Toronto Port Authority, written submission dated February 19, 2009

Toronto Port Authority – Commercial Tenants

i. Airborne Sensing Corporation:

11. Mr. Alexander M. Giannelia, President, written submission dated March 6, 2009

ii. Island Airlink Corporation and Eagle Aircraft:

12. Mr. David McDevitt, President, oral submissions dated February 13, 2009

iii. J. A. Spears & Associates Ltd.:

13. Mr. James A. Spears, President, written submission dated February 23, 2009

iv. Porter Airlines Inc.:

14. Mr. Robert J. Deluce, President and CEO, written submission dated February 26, 2009



**SCHEDULE B:
DOCUMENTARY EVIDENCE**

AGENDA AND MEETINGS

1. Agenda of the January 21, 2009 meeting of the Toronto Port Authority Board of Directors

CHRONOLOGY

2. Toronto Port Authority Chronology from August 1, 2008 to January 21, 2009 - including text of motions and material provided to the Toronto Port Authority Board of Directors and Audit & Finance Committee regarding the acquisition of a new larger ferry

CONFIDENTIAL OPINIONS

3. Confidential consultant's report concerning ferry use that formed part of the "business case" for a new ferry dated July 2008
4. Confidential legal opinions to the Management of the Toronto Port Authority from a number of legal firms dated October 1, 2008, October 8, 2008, January 21, 2009, and February 2, 2009.

E-MAILS

5. E-mail from Mark McQueen to Robert Deluce dated July 2, 2008
6. E-mail from Robert Deluce to Mark McQueen dated August 15, 2008
7. E-mail from Alan J. Paul to Toronto Port Authority Board of Directors dated October 17, 2008
8. E-mail from Robert Deluce to Ken Lundy dated November 11, 2008
9. E-mail from Lorna Counsell to Ken Lundy, Pat Fagnano, Alan Paul and Angus Armstrong dated November 18, 2008
10. E-mail from Robert Deluce to Christopher Henley dated November 20, 2008



11. E-mail from Robert Deluce to the Toronto Port Authority Board of Directors dated December 19, 2008
12. E-mail from Alan J. Paul to the Toronto Port Authority Board of Directors dated December 30, 2008
13. E-mail from Robert Deluce to the Toronto Port Authority Board of Directors dated January 18, 2009
14. E-mail from a member of the Toronto Port Authority Board of Directors to the Office of the Conflict of Interest and Ethics Commissioner dated February 2, 2009

LETTERS

15. Letter and e-mail to the Toronto Port Authority Board of Directors from Robert Deluce dated June 27, 2008
16. Letter to the Toronto Port Authority Board of Directors from Robert Deluce dated November 11, 2008

LEASE AGREEMENTS

17. Lease Agreement of Hanger 3 & 4 with City Centre Aviation Ltd., renamed as Porter FBO Ltd, dated June 30, 1987; March 1, 1992; December 1, 1994; May 3, 2005; and September 30, 2005
18. Lease Agreement of Hanger 5 & 6 with City Centre Aviation Ltd., renamed as Porter FBO Ltd. dated February 1, 1999; May 3, 2005; and September 30, 2005
19. Lease Agreement with Stolport Corporation: (1) Lease of Hanger 1 dated October 3, 1987; February 19, 1999 and November 7, 2003
20. Lease with Ministry of Health dated February 25, 1992

LETTERS PATENT

25. Letters Patent Issued to the Toronto Port Authority, Supplement Canada Gazette, Part I, June 5, 1999
26. Amendment to the Letters Patent Issued to the Toronto Port Authority (2008), issued December 12, 2008 by the Minister of Transport, Infrastructure and Communities



MEMORANDA

27. Memorandum from Lisa Raitt to the Toronto Port Authority Audit and Finance Committee dated August 1, 2008
28. Memorandum from Lisa Raitt to the Toronto Port Authority Audit and Finance Committee dated August 8, 2008
29. Memorandum from Lisa Raitt and Alan J. Paul to the Toronto Port Authority Audit and Finance Committee dated September 6, 2008
30. Memorandum from Alan J. Paul to the Toronto Port Authority Audit & Finance Committee dated October 20, 2008
31. Memorandum from Alan J. Paul to the Toronto Port Authority Board of Directors dated October 30, 2008
32. Memorandum from Alan J. Paul to the Toronto Port Authority Board of Directors dated December 19, 2008
33. Memorandum from Alan J. Paul to the Toronto Port Authority Audit & Finance Committee dated December 19, 2008
34. Memorandum from Ken Lundy to Alan J. Paul dated December 22, 2008
35. Memorandum from Alan J. Paul to the Toronto Port Authority Board of Directors dated January 19, 2009

OTHER

36. Ownership structure of Porter Airlines Inc.
37. Globe and Mail advertisement; “Request for Expression of Interest 200 Passenger RO/PAX Ferry” dated November 26, 2008

PRESENTATIONS

36. Porter Airlines Inc. presentation to the Toronto Port Authority dated June 25, 2008
37. Porter Airlines Inc. presentation to the Toronto Port Authority dated December 22, 2008



SCHEDULE C:
SEQUENCE OF EVENTS LEADING TO JANUARY 21, 2009

March - June, 2008:

Mr. Deluce, President and CEO of Porter Airlines approaches the Senior Management of the TPA and the members of the Board of Directors to brief them on the need for a new ferry to service the Airport. Mr. Deluce met with four Directors in early June and then provided individual briefings to other Directors.

July, 2008:

Jacobs Report is completed and concludes that the rapid growth of traffic at the Airport (due to Porter's expansion plans) meant that the existing ferry would reach its passenger capacity during peak hours by 2009 and that its capacity would be exceeded by March 2010. The Report recommends that solutions for the ferry capacity shortfall be developed, assessed and implemented over a short time horizon, failing which severe shortfalls could be expected to materialize by spring 2010.

August 1, 2008:

President & CEO of the TPA, Lisa Raitt, sends a copy of the Jacobs Report to the three-member Audit & Finance Committee (A & F Committee) of the TPA Board with the recommendation that the A & F Committee authorize management to begin the process of designing and ordering a new ferry. Mr. Watson is the Chair of this committee with Mr. McQueen and Mr. Henley as members.

August 11, 2008:

Discussion at the A & F Committee on Management's recommendation as provided in the Report.

August 19, 2008:

A copy of the Jacobs Report and Management recommendations are sent to the remaining Directors of the Board who were not on the A & F Committee.

September 6, 2008:

A Report dated September 6, 2008, from President and CEO, Lisa Raitt, is sent to the A & F Committee recommending that a larger ferry be approved as recommended in the TCCA Access Enhancement Study Alternatives Report from Jacobs Consultancy dated September 2008.



September 10, 2008:

The A & F Committee approves a motion (moved by Mr. McQueen and seconded by Mr. Watson) to retain a naval architect to prepare detailed design drawings and specifications for a new and larger ferry.

September 11, 2008:

The Board unanimously approves the A & F Committee's recommendation to retain a naval architect to prepare detailed design drawings and specifications for a new and larger ferry.

October 17, 2008:

A written resolution is circulated for approval of waiver of the requirements of the Purchasing Policy and retaining Kam Technology as the Naval Architect to provide detailed design drawings and specifications for a new ferry. A legal opinion dated October 1, 2008 on sole sourcing the ferry build was also circulated.

October 20, 2008:

A legal opinion dated October 8, 2008 on TPA's obligation to provide enhanced access to the TCCA across the Western Gap and the Summary of Landing Fees Calculations are circulated to the A & F Committee.

October 24, 2008:

The legal opinion and the Summary of Landing Fees are received by the A & F Committee at its meeting.

October 30, 2008:

Written Resolution for approval of retaining Kam Technology as the naval architect along with the legal opinion dated October 1, 2008, provided on October 17, 2008 are circulated to the Board of Directors.

November 4, 2008:

The Board passes a motion (moved by Ms. McCarthy and seconded by Mr. McQueen) to retain Kam Technologies as the naval architect to prepare detailed design drawings and specifications for a new and larger ferry. This motion endorses the decision to waive the normal requirements of the TPA's Purchasing Policy to expedite the process of selecting a naval architect.

November 21, 2008:

The A & F Committee approves a motion (moved by Mr. Henley and seconded by Mr. McQueen) to undertake a Request for Proposal process to obtain a builder for the construction and delivery of a new and larger ferry. This process was carried out through the month of December, 2008.



November 26, 2008:

Advertisement in the Globe & Mail, L'Express and Merck for the Request for Expressions of Interest – 200 Passenger RO/Pax Ferry.

December 1, 2008:

Four expressions of interest received.

December 8, 2008:

Background information provided to the four proponents.

December 10, 2008:

Conference call between Management with the four proponents discussing the needs of the TPA and the capability of the proponents.

December 12, 2008:

Outline Specification, Preliminary General Arrangement and Basic Scope for supply of the Azimuth thrusters were provided to the four proponents.

December 17, 2008:

Proposal submissions received from three proponents.

December 22, 2008:

Mr. Alan Paul, Acting President & CEO of the TPA, circulates a report dated December 19, 2008, on the financing for the new ferry to both the A & F Committee and the TPA Board. Attached to this report are the Jacobs Report, the legal opinion dated October 8, 2008, the Access Enhancements Study Report dated July 2008 from Jacobs Consultancy, a Business Case/Financial Analysis Report dated December 19, 2008 and Financing Information Report dated December 19, 2008 which was the BMO Term Sheet to be valid until December 31, 2008.

December 23, 2008:

A Report dated December 22, 2009 from TCCA Director is circulated to the A & F Committee and the Board of Directors recommending that a contract for construction of the new ferry be entered into. The A & F approves a motion “to recommend to the Board of Directors construction of a New Ferry to TCCA and the project costs not to exceed \$4,850,000.00.” The motion carried 2 votes to 1, with Mr. Henley voting against. The A & F Committee also passed a second motion (moved by Mr. McQueen and seconded by Mr. Watson) “to approve the \$5 million Credit Facility made available by the Bank of Montreal for the purchase of a second Ferry to provide service to the TCCA.” The motion carried, 2 votes to 1, with Mr. Henley voting against.



December 23, 2008:

The Board approves a motion to “direct Management to go back to BMO to execute the term sheet as presented, with a proviso that the standby fee there be struck and replaced with a \$10,000 standby fee and that it be non-binding on the TPA should an alternative financing strategy come to pass”. The motion carried 5 votes for and no votes against, with one abstention. The Board then votes in favour of a second motion stipulating that the TPA Board of Directors “is in support of the concept of the new ferry as proposed in the management’s recommendation.” The motion carried 5 votes for and no votes against, with one abstention.

December 24, 2008:

Discussions between Mr. Paul, Mr. Henley, Mr. Deluce and representatives of Porter, on possible options to finance and fund the new ferry.

December 30, 2008:

Mr. Paul, Acting President & CEO, informed the Board of Directors that the Bank of Montreal agrees to extend its Term Sheet from December 31, 2008 to January 16, 2009. He also provides to the Board of Directors, as requested, the Sensitivity Analysis illustrating lost revenue from the Airport Improvement Fees.

January 19, 2009:

A meeting of the TPA Board of Directors is requested by Mr. Rix for January 21, 2009 to discuss the acquisition of a new ferry, the results of the RFP to find a builder for the ferry and borrowing money for the purchase of the new ferry as well as to elect a new Chairman of the Board of Directors. The request for a meeting is seconded by Mr. McQueen.

January 20, 2009:

Mr. Paul provides the TPA Board of Directors with a Report, dated January 19, 2009, indicating that the Bank of Montreal would extend the term sheet from January 16, 2009 until January 23, 2009.

January 21, 2009:

Mr. Paul circulates a Report, dated January 20, 2009, in which Senior Management recommends approving a contract with Hike Metals for the construction and delivery of the new ferry. Also enclosed is the report dated December 22, 2008 from the TCCA Director on the same matter.

The first order of business of the Board on January 21, 2009 is a motion by Mr. McQueen, seconded by Mr. Watson, that the Board “affirm the motion passed by the Board of Directors on December 23, 2008 approving Management’s recommendation



that TPA acquire a New Passenger / Vehicle Ferry as per the RFP that was undertaken in 2008 and also to direct the Acting President & CEO to enter into a binding contract with the successful bidder of the RFP, Hike Metal, for the new ferry provided that the price of construction and delivery of the new ferry not exceed the amount that was presented to the Board on December 23, 2008.” Five Directors voted in favour of the motion, four voted against. The motion carried.

Mr. McQueen then tables a second motion which is seconded by Mr. Rix, requesting the Board to “approve the BMO Term Sheet Summary of Terms and Conditions dated December 29, 2008 related to the acquisition of a new ferry as presented by management.” Five Directors voted in favour of the motion, four against. The motion carried.

The Board proceeded to approve motions to elect Mr. McQueen the new Chairman of the Board and to change the composition of the various sub-committees. These motions carried by the same vote split as the first two motion, five votes in favour and four votes against.

