

**THE TORONTO PORT AUTHORITY  
MINUTES OF THE  
BOARD OF DIRECTORS' MEETING**

**Held on: April 22, 2008**

**Mark McQueen, Chair  
Christopher Henley  
Michele McCarthy  
Douglas Reid  
Craig Rix  
Colin Watson**

The Board meeting commenced at 8:00 a.m., in the Board Room of the TPA Offices located at 60 Harbour Street, Toronto.

Also present were:

Lisa Raitt, President & CEO  
Alan Paul, Vice-President & CFO  
Mary Zamrij, Recording Secretary

**PRELIMINARY**

Ms Michele McCarthy asked for clarification as to whether Mr. Mark McQueen was Chairing the meeting. Mr. McQueen responded that he was Chairing the meeting.

Ms McCarthy asked by what authority Mr. McQueen was the Chair. Mr. McQueen replied that a vote was taken at the March 27<sup>th</sup> 2008 Board meeting during which he was elected the Chair.

Ms McCarthy indicated that there was a legal opinion done which had concluded that the vote taken at the Board Meeting of March 27<sup>th</sup> was illegal.

Mr. McQueen advised that he was not aware of any such legal opinion or of its findings.



Ms McCarthy noted that since Mr. McQueen was not the Chair of the Board he did not have the authority to call a meeting to order and Ms McCarthy questioned the authority by which Mr. McQueen had sent out the Board agenda.

Mr. Douglas Reid indicated that the Board was aware that there was a legal opinion prepared by the Board's legal counsel Davies Ward Phillips & Vineberg ("Davies Ward") and that at issue was the validity of the election which had taken place on March 27, 2008.

Mr. Christopher Henley noted that given the legal opinion that had been prepared by Davies Ward, Mr. McQueen should not sit as Chair for purposes of this meeting and the Board should agree to an interim Chair of the meeting as the election of the Chair on March 27, 2007 was unlawful and invalid. Mr. Henley indicated that he would be providing the legal opinion prepared by the Board's legal counsel, Davies Ward, and requested that it be appended to the Minutes of this Board meeting.

It was moved by Mr. Christopher Henley and seconded by Mr. Douglas Reid that Mr. Mark McQueen is not the Chair of the Board of Directors of the TPA and that the legal opinion that was delivered by the Board's legal counsel, Davies Ward Vineberg, be registered to these Minutes and appended.

The Chair called for a vote.

Ms Michele McCarthy, Mr. Christopher Henley and Mr. Douglas Reid voted in favour of the motion. Mr. Mark McQueen, Mr. Craig Rix and Mr. Colin Watson voted against the motion.

Three directors voted in favour of the motion; three against.  
The motion failed.

Mr. Mark McQueen clarified that under Robert's Rules of Order a tie vote is a failed vote.

Ms McCarthy indicated that the vote to remove her as Chair on March 27, 2008 would have failed based on dissents that were submitted to the President & CEO subsequent to the meeting. Ms McCarthy indicated that two votes of dissent were submitted but had gone unregistered and not appended to the Minutes of March 27, 2008 and based on these two dissents the Motion to remove the Chair on March 27, 2008 would have failed.

The President & CEO clarified with respect to the requirements for filing a dissent that Mr. Reid's dissent was submitted within seven days of the Board meeting and would be appended to the Minutes; and, advised that Mr. Henley's dissent had not been received within the specified time period and was not appended.

Mr. Watson requested that the Board proceed to conduct the business of the port and proceed with approvals that were required by Management.

The Chair noted that the Board would need to consider agenda items that required approval by the Board in preparation for the Annual Meeting that had been scheduled for May 27 including the appointment of auditors and the approval of the 2007 TPA financial statements as well as the financial statements of the Pension Plan.

Ms McCarthy stated that the Board needed to have a Chair of the meeting.

Mr. Watson suggested that the Board first proceed to take care of port business after which the Board could discuss the issue of the Chair.

Mr. Henley stated that if the business of the port was ground to a halt it was as a result of an issue that related to the financial statements and that given that the Board had a legal opinion which stated that the election of Chair was unlawful the question should be asked was whether the Board should proceed to have a discussion with the Deloitte & Touche ("D&T").

Mr. Watson referred to the Chair election that took place in 2007 when the former Chair was elected and concluded that the 2007 election was illegal because the Board was also not given notice of an election on the agenda.

Mr. Henley indicated that Davies Ward had been asked for their advice with regards to the Chair election of 2007 and that the Board had discussed the issue of the election of Chair multiple times over the months leading up to the 2007 election and the Board knew in June 2007 that there would be a vote at that meeting and all members of the Board of Directors were in attendance during the vote.

The Chair indicated that the Minutes of the June 2007 meeting wherein the election of Chair took place did not reflect Mr. Henley's statement.

Ms Michele McCarthy indicated that it was determined earlier in 2007 that the election of Chair would be taking place.

The Chair addressed the omission of notice with regards to the election of the Chair in 2007 vis-a-vis TPA bylaw requirements.

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

Mr. Watson asked whether the Board could figure out a way of getting to the port business at hand and proceed with the agenda.

#### Draft Audited 2007 TPA Financial Statements & Annual Meeting – May 27, 2008

The Board had before it the draft 2007 Audited TPA Financial Statements as well as a report from the Vice-President & CFO recommending that the Board of Directors approve the draft 2007 Audited TPA Financial Statements.

Mr. Reid noted that the Auditors were not present and indicated that there could be an issue related to the financial statements that could lead to a breakdown in the meeting. Mr. Reid thought that the Board should have a vote on who should Chair the meeting so that the meeting was not ground to a halt.

The Chair asked Mr. Reid to clarify his concern as to whether an issue that the auditors have not been aware of could be rectified.

Mr. Reid indicated that he wanted to have clarity and written acknowledgement from the Auditors that they were informed about the issues affecting the Board. Mr. Reid wanted to know what the Auditors had been told and advised that the Board could not approve the financial statements until there was confirmation from the Auditors.

Mr. Watson stated that he was not in agreement with Mr. Reid but as Chair of the Audit & Finance Committee he would undertake to get the issue resolved if, as indicated, Mr. Reid could not vote on the financial statements and needed comfort from the Auditors.

Ms Mc Carthy asked why the Auditors were not present today in view of the situation and Mr. Watson advised that the auditors were not usually required to be present for a review of the financial statements by the Board. Ms McCarthy indicated that this was not the practice and that in view of where the Board was today she would not be taking Mr. Watson's word on common practice.

The President & CEO reported that the auditors did not appear before the Board in 2007 and the Auditors were present in 2006 as the Audit & Finance Committee did not meet between June 2005 and October 2006 as there were not enough directors. The Auditors did not attend in 2004 or 2005.

The Vice-President & CFO proceeded to review the draft 2007 TPA financial statements and reported that the statements had been reviewed and approved by the Audit & Finance Committee on April 15 and that the Committee was recommending approval of the statements to the Board; the Auditors had addressed areas of audit focus; and, the legal letter had been received by the Auditors.

The Vice-President & CFO reviewed the Notes to the Financial Statements and answered questions.

Mr. Watson reported that management would be looking at rebalancing staff in the finance department. The Chair reported that as a result of a position

that had not been replaced within the department there had been pressure put on the department which created some challenges during the audit.

The Vice-President & CFO reviewed the Auditor's Report to the Audit & Finance Committee dated April 15, 2008; provided an overview of Audit Findings; reported on misstatements and corrected misstatements; identified issues that Management needed to correct; explained the Stolport Agreement; and, clarified observations on systems, controls and related matters.

The Vice-President & CFO reported that all items affecting the 2007 audited financial statements had been completed and that both he and the President & CEO would be signing the Management Representation Letter, once received, and forwarding it on to the Auditors.

It was moved by Mr. Colin Watson and seconded by Mr. Craig Rix that the Board accept the Audit & Finance Committee's recommendation to approve the 2007 audited financial statements of the TPA and the 2007 audited financial statements of the TPA Pension Plan.

Mr. Henley indicated that he needed to see the Auditors response before he could vote as he needed to be satisfied that there had been disclosure in the financial statements of what has occurred on the Board.

A vote was called.

Mr. Colin Watson, Mr. Craig Rix and Mr. Mark McQueen voted in favour of the motion.

Mr. Christopher Henley, Mr. Douglas Reid and Ms Michele McCarthy voted against the motion.

Three directors voted in favour of the motion; three against.  
The motion failed.

Mr. Colin Watson reported that he was prepared to get the Auditors on the telephone to deal with questions that Board Members had.

The Chair indicated that it may be useful if the information that was being sought by Board Members Ms McCarthy, Mr. Henley and Mr. Reid with regards to the financial statements be provided in writing and asked whether one of the three directors who voted against the motion would put forward what they were wanting to ask and the Board could attempt to telephone the Auditors or alternatively the Board could contact the Auditors electronically on the issues.

The Chair noted that the Board had a deadline for passing the financial statements in light of the May 27 annual meeting date that the Board had previously set.

Mr. Reid advised that the Board was not bound by the May 27 annual meeting date.

Mr. Watson asked whether the Board could attempt to call the Auditor and have a discussion on whether the financial statements can be approved.

The Chair indicated that he would be happy to do that if that was the will of the Board.

Ms McCarthy and Mr. Reid asked whether the Auditors could be asked to attend in person before the Board.

The Chair indicated that the TPA was continuing to incur more and more costs in its undertaking of something that was unnecessary when the issue could be dealt with today without deferment.

Ms McCarthy noted to the Chair that the situation was of his making and indicated that if the Chair knew what this meeting was going to look like the Chair would have given "us" the courtesy of having the Auditors present at the meeting.

The Chair indicated that he was not in agreement with Ms McCarthy's statement.

Mr. Reid indicated that he would summarize issues for the Auditors and would be prepared to email them.

The President & CEO indicated that she needed confirmation of the date and Board permission to place a Notice of Meeting in the appropriate newspaper 30 days prior to the date of the meeting and additionally indicated

that TPA had an obligation to have the financial statements available to the public 30 days prior.

The Chair asked for a vote on the annual meeting date.

It was moved by Mr. Colin Watson and seconded by Mr. Craig Rix that the Board proceed to hold its annual meeting on May 27, 2008, the date previously set by the Board.

The Chair asked for the Board's views on whether TPA could proceed with the May 27<sup>th</sup> meeting date as was set in the Board calendar.

The President & CEO indicated that under the CMA it was a legal requirement that an annual meeting be held within 15 months of the last annual meeting.

The President & CEO distributed the May 27, 2008 Annual Meeting Agenda; advised that TPA had a tentative newspaper ad placement reserved for Thursday, April 24 (this week) in the Toronto Star newspaper; a deposit had been made to the Royal York Hotel and the Upper Canada Room was being held; the deposit may be transferable but would need to be negotiated; and, that it may be difficult to get dates at this point in time.

Mr. Watson recommended that the Auditors be reached by telephone to speak about what had been communicated to them about the division on the Board in order that Mr. Reid's concerns are satisfied.

Mr. Henley suggested that written resolutions could be circulated and indicated that he did not want to approve the financial statements today but in two or three days and suggested that an adjournment of the meeting take place and that a teleconference meeting be arranged with D&T representatives for Thursday of this week.

Mr. Rix spoke on timelines that would be missed if the Board did not approve the financial statements today. Mr. Rix indicated that Board members could take some time to collect their thoughts and that D&T could be teleconferenced into the meeting today at which time Board Members would

have an opportunity to put forward their questions. Mr. Rix indicated that he would be concerned if an adjournment took place.

Mr. Henley indicated that he did not think it was practical to approve the financial statements now as he wanted to give the statements good consideration.

The Board discussed times at which the Board could re-convene to review the audited financial statements; dates and times of availability were put forward.

The Chair requested that in the event he wasn't able to attend the teleconference sessions whether in his absence Mr. Watson could Chair the sessions in his capacity as Chair of the Audit & Finance Committee.

Mr. Craig Rix spoke on the deadline for approval of the financial statements.

Ms McCarthy advised the Board that previously the annual meeting had been moved about; indicated that the hotel could be re-negotiated and the date moved; there was nothing critical to be done by the 27<sup>th</sup> of May; provided background as to why the annual meeting had been held at various times in previous years and indicated that it was to accommodate various issues that were going on at TPA; spoke on how during the preparation of the Tasse Report the annual meeting had been moved to November in order to accommodate the release of Mr. Tasse's report.

The President & CEO cited previous criticism that was received which was related to the publishing of the annual meeting notice.

Mr. Rix asked whether the Board could find time to meet on April 23, 2008.

Ms McCarthy indicated that she wanted to speak to the Auditors separately and advised that she would not be available for a meeting on April 23. Mr. Watson asked if a meeting was to take place on April 23, whether in Ms McCarthy's absence, she could pass on her questions and concerns to either Mr. Reid or Mr. Henley.

Ms McCarthy indicated that she would rather ask questions of the auditors herself and the Chair asked whether she would be comfortable if a second director was on the call.

Mr. Watson reported that it was acceptable to him if the Board met with the Auditors at 11:00 a.m. on April 23 and if Ms McCarthy subsequently spoke to the Auditors but noted that holding 2 separate sessions with the Auditors would increase costs.

Mr. Rix asked whether it was possible to meet on the morning of April 24. There was discussion.

The Chair confirmed that the two-meeting concept would take place April 23 at 11:00 a.m., and April 24 at 8:00 a.m.

Ms McCarthy indicated that she would be happy to attend at D&T offices.

Mr. Rix indicated that he would find it acceptable if Board Members wanted to participate in two telephone calls.

Ms McCarthy noted that Messrs Rix and Watson were consistently referring to Mr. McQueen as the Chair of the meeting and noted that not all members of the Board agreed with that point of view.

Received.

#### Appointment of External Auditors

The Vice-President & CFO reported that a Special Examination would need to be carried out in 2009 as specified in Section 41 of the Canada Marine Act and that previously such an exam was carried out in 2004; and that the total cost of the Audit would be in the order of \$35,000 plus a 6% administration charge.

It was moved by Mr. Colin Watson and seconded by Mr. Craig Rix that Deloitte & Touche LLP be re-appointed Auditor for the 2008 TPA audit. Motion carried. The vote was unanimous.

Approved.

The meeting adjourned at 9:00 a.m. and resumed at 9:05 a.m.

Approval of draft Board Minutes of meeting held January 25, 2008

The Board had before it the draft Minutes of Board meeting held January 25, 2008. Mr. Henley indicated that he had substantial changes to the Minutes and Mr. Reid indicated that he too had changes. The Chair indicated that the material changes needed to be consolidated and brought back to the next meeting of the Board. The Chair indicated that he was prepared to work with Directors on the wording.

It was moved by Ms Michele McCarthy and seconded by Mr. Christopher Henley that the draft Minutes of January 25, 2008 be deferred. Motion carried.

Deferred.

Approval of draft Board Minutes of meeting held March 27, 2008

The Board had before it the draft Minutes of the Board meeting held March 27, 2008. Mr. Douglas Reid indicated that the dissent he had forwarded on to the President & CEO had not been registered to the Minutes and that his dissent would need to be appended.

Ms Michele McCarthy advised that in view of the nature of the Minutes she had a number of notes; that she had taken issue with what was said and how it was said; requested that an electronic copy of the Minutes of March 27, 2008 be circulated to Board members so that the Board could look at their respective views and pare down the Minutes.

It was moved by Mr. Mark McQueen and seconded by Mr. Christopher Henley that the draft Minutes of March 27, 2008 be

deferred and an electronic copy be circulated to Board Members.  
Motion carried.

Deferred.

Approved Minutes of Board Meetings (2007) for signature

The Board had before it approved Minutes of Board meetings held in 2007 that had been previously approved by the Board and were in signature format with the President & CEO's signature affixed to them. They were as follows:

July 17, 2007  
August 29, 2007  
September 26, 2007  
October 9, 2007  
October 23, 2007  
November 14, 2007  
December 10, 2007

The President & CEO explained that the Minutes before the Board (as noted above) had been previously approved by the Board; had been put into archival format for signature by the Chair and Corporate Secretary; had been signed by the Corporate Secretary and given to Ms Michele McCarthy as the former Chair of TPA, for second signature following which they were be sent to TPA Archives; outlined the Minuting process; indicated that Ms McCarthy had made changes and inserted new resolutions to the Minutes; and, as such, was bringing these amended Minutes back to the Board.

The President & CEO was asked for clarification on the handwriting that appeared on the Minutes and clarified that the handwritten notes were changes and additions that were added in by Ms McCarthy subsequent to the Minutes having obtained Board approval.

The President & CEO indicated that the changes to the Minutes were regarding former Director Ms Krista Scaldwell. It was noted that TPA had continued to pay Ms Scaldwell as a Director and the additions to the Minutes resulted in giving a directive after the fact. The President & CEO indicated that Management needed clarity and clarification

The President & CEO noted that the Board approved Minutes were provided to the Auditors for review in early February during the Audit at the direction of Ms McCarthy. The proposed changes to the Minutes were received by the Recording Secretary in early March.

Ms McCarthy stated that the Minutes in question were given to the Recording Secretary with changes as she had noticed a number of errors in the Minutes.

Mr. Henley referred to the director fees that were paid out to Ms Scaldwell and advised that a legal opinion had been circulated on Ms Scaldwell's status as a Director.

Mr. Watson reported that the Transport Minister's office had emailed Ms McCarthy and indicated that Ms Scaldwell was to continue on the Board as the Minister's representative and in that regard when asked by the President & CEO for clarification as Chair of the Audit & Finance Committee he indicated he felt it was appropriate to pay Ms Scaldwell as a Director because there was no Board motion in the Minutes to the contrary.

Ms McCarthy reported that she was not aware of any such opinion from the Minister's office.

The Chair summarized that the 2007 Board Minutes being discussed had previously been approved by the Board and that these Minutes did not contain a Board motion or directive that would direct Management to discontinue Director payments to Ms Scaldwell.

Ms McCarthy indicated that she recalled that in September of 2007 Ms Scaldwell stated in a teleconference that she was not accepting Director fees and that the President & CEO knew that Ms Scaldwell was receiving Director fees. The Chair indicated that he had reviewed the Minutes from September 2007 in

search for such a reference and there was nothing noted to that effect in the Minutes.

Mr. Henley indicated that Ms Scaldwell was aware that she was attending meetings of the Board by invitation and was not being paid for her attendance.

The President & CEO reported that quarterly statements were being sent to Ms Scaldwell as a director and that Ms Scaldwell had continued to sign and return the statements to TPA.

Ms McCarthy indicated that she had informed the President & CEO of Ms Scaldwell's status; that the President & CEO was aware of the Davies Ward opinion; Mr. Watson provided instructions with respect to the payments; Ms Scaldwell was ineligible to receive the payments; and, explained why Ms Scaldwell held the status of an 'invitee'.

The Chair asked for a motion to either defer or accept the Board Minutes for signature.

Ms McCarthy indicated that Mr. Watson gave direction to the President & CEO to pay Ms Scaldwell which was outside of the President & CEO's authority.

The Chair stated that it was clear to him that the Board approved the 2007 Minutes without directing Management to not pay Ms Scaldwell as a Director and in the absence of a clear directive Ms Scaldwell was continued to be paid; accepted payments; and, had thought that the payments were legitimate.

The Board asked that the President & CEO circulate emails that were received on the issue.

Received.

#### Review of Business Arising List

The Board reviewed the business arising list.

The Board had before it a letter dated April 15, 2008 written by the President & CEO to Mr. Jeffrey Steiner of TEDCO re 2003 Settlement Agreement on the issue of seeking assurances on securing TPA's interest. The President &

CEO reported that she had spoken to Mr. Steiner on the issue and expected to hear from TEDCO later today.

Received.

## **REPORTS**

### Communications & Outreach

The Board agreed to defer any discussion on the status of the Communications & Outreach Committee until the next Board meeting.

Deferred.

### Draft and Approved Committee Minutes

The Board had before it, for information, the Audit & Finance Committee Minutes of January 17, 2008.

Received.

## **OTHER BUSINESS**

### *Annual Meeting*

Mr. Colin Watson confirmed teleconference meetings were scheduled for April 23 and 24, 2008 and noted that if Director concerns with regards to the divisions on the Board were dealt with satisfactorily at those meetings then Management would continue with newspaper postings so that the annual meeting could proceed as scheduled on May 27, 2008.

Ms McCarthy asked who would be chairing the Annual Meeting. The question was deferred.

The President & CEO reported that according to the Canada Marine Act the function of the Chair of the annual meeting was open and cited from that Act that any Director could be appointed to Chair the annual meeting.

Received.

### President & CEO's Report

The President & CEO updated on the Rochester Ferry; advised that one submission had been received in response to the Request for Proposal; that it involved a hovercraft; no government funding was available for the project; and, that the IMPT was continuing to be utilized for filming.

The President & CEO reported on the final submissions to the PILTS panel and advised that a decision would be made within 60 to 90 days.

The President & CEO reported that she would be cross-examined by legal counsel for the City on the Bathurst Street issue in the coming week; outlined strategy; indicated that City had an unreasonable approach with regards to the Bathurst Street finger lots; and, updated on support at the City.

The Vice-President & CFO reported that outstanding invoices had been sent to the City; the City had advised that the issue was sent to the Waterfront Secretariat; and, he would continue to monitor the issue.

At 9:45 a.m., the meeting adjourned and re-convened at 9:50 a.m.

The President & CEO updated on TCCA issues; on the status of Newark slots; impact of increased air traffic on the TCCA facility and its infrastructure; provided statistics for April 2008; reported on the planning process with respect to the new terminal; on mode-split and solutions proposed by Porter Airlines ("PA"); the use of shuttle buses; legal requirements in terms of dry dock and the use of the Maple City as backup; on budgeted amounts for the Maple City; timeline for new ferry construction; on benefits of a larger ferry able to carry larger passenger levels; on discussions that were taking place with PA; advised that the issue of the ferry had been previously discussed with PA; reviewed ferry turns; and, spoke on PA's view that a new terminal was needed to permit PA to purchase additional aircraft.

The President & CEO reported on permission that the City of Toronto would be seeking of the federal government to build a tunnel in the Western Gap which would transport water to residents of the Toronto Islands and indicated that this could lead to the notion of exploring a passenger tunnel to the TCCA; on a

meeting that had taken place with the City of Toronto on the issue; updated on the presence of a utilities tunnel; on utilities that were now being delivered through the conduit; on TPA ownership of the tunnel with easements granted to Bell and Enbridge; on the City bringing the issue to community consultation; spoke on costing to build a new tunnel; advised that on May 1 the City would be going out to public consultation on the tunnel; provided details on the consultations; reviewed wording in the regulations with regards to a fixed link to the Toronto Islands; and, advised that there would be a dilemma with regards to Bathurst Street.

The President & CEO reported that the City was obligated by the provincial government to ensure that Toronto Island residents have year round access to the islands; advised that the tunnel issue had come up in 2005; and, spoke on the security aspects of a tunnel.

The Vice-President & CFO reported on how the issue could be financed through increases in the AIF.

Received.

#### **IN CAMERA MEETING**

At 10:35 a.m., the President & CEO, Vice-President & CFO and Recording Secretary left the meeting room and the Board commenced an in-camera meeting.

At (estimated) 11:10 a.m. the in-camera meeting terminated and the meeting adjourned.