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April 7, 2008

File No. 214281

By EMAIL

Mr. Christopher M. Henley
Chair, Corporate Governance and Nominating Committee
Toronto Port Authority
60 Harbour Street
Toronto, ON M5J 1B7

Dear Mr. Henley:

Corporate Governance Advice

We understand that, at a meeting (the "Meeting") of the board of directors (the "Board") of the Toronto Port Authority (the "TPA") held on March 27, 2008, resolutions were passed removing Ms McCarthy from the office of chairperson and then filling the vacancy in that office by appointing Mr. McQueen as chairperson. You have asked us whether those resolutions are effective.

1. Facts and Assumptions

We have reviewed the *Canada Marine Act* (the "Act"), the *Port Authorities Management Regulations* to the Act (the "Regulations"), the letters patent of the TPA dated June 5, 1999 (the "Letters Patent") and the consolidation of provisions in the Act, the Regulations, Letters Patent and by-laws (indicating receipt by the Board on June 13, 2000) provided to us on April 1, 2008 by the office of the Chief Executive Officer of the TPA (the "Consolidated By-laws").

We understand that you have not yet received minutes (or a draft of the minutes) of the Meeting and so are not able to provide them to us. Accordingly, this letter is based on your description to us of the events as they transpired at that Meeting. The facts and assumptions that are relevant to our advice in this letter (in addition to the facts set out in the first paragraph of this letter) are the following:

- except as noted below, notice of the Meeting (the "Notice") was duly given
- the Notice did not specify that the business of the meeting would include consideration of the removal of the chairperson and, if such removal was approved, filling a vacancy in the office of the chairperson
- one of the directors was not present at the Meeting

TWP:2109770.1

2. Deficiencies in Notice and Effect of Those Deficiencies

The Regulations provide as follows:

14 (2) The notice of a meeting of directors shall specify any of the following matters that are to be dealt with at the meeting, but, unless the by-laws provide otherwise, need not specify any other business to be transacted at the meeting:

(e) filling a vacancy in the office of chairperson or auditor;

The Regulations do not require such notice of the proposed removal of the chairperson currently in office. The Consolidated By-Laws contain the same requirement (Section 6.2), but impose no other requirements on the giving of notice of a meeting of the Board.

As is common with many boards, we understand that it has been the practice at the TPA to circulate agendas (together with materials) for Board meetings in advance of the meeting in order to allow directors to prepare for the meeting. While this is a common practice, there is no requirement that directors of the TPA have advance notice of the business to come before the Board, unless it is on the list of matters set out in Section 14(2) of the Regulations. The removal of the chairperson is in not on that list. Accordingly, in our view the removal of Ms McCarthy from the office of chairperson was a valid action of the Board.

However, the Regulations do provide that the notice of a meeting of directors shall so specify if filling a vacancy in the office of chairperson is to be dealt with at the meeting. The purpose of a provision of this nature is to allow all directors to prepare for the meeting and to arrange their affairs so that they are able to attend the meeting at which business identified in the Regulations as being particularly significant will be transacted. Accordingly, the appointment of Mr. McQueen without the required notice was unlawful because it breached the Regulations and is therefore invalid. In our view, the office of chairperson of the TPA is currently vacant.

In order to fill the vacancy, a meeting of the Board must be held (with the notice specifying that this matter is to be addressed). A new chairperson could be appointed at that meeting by a resolution approved by a majority of the directors.

Any two directors (or the chairperson) may call a meeting of directors by directing or authorizing the Corporate Secretary to convene the meeting, under Section 6.6 of the Consolidated By-Laws. Notice of the meeting must be given in accordance with Section 6.2 of the Consolidated By-Laws not less than 2 days (exclusive of the day on which the notice is delivered or sent, but inclusive of the day for which notice is given) before the meeting is to take place. All directors (including Ms McCarthy and Mr. McQueen) must

receive notice of the meeting, unless they are present at the Meeting or waive notice (Section 6.4).

Davies Ward Phillips & Vineberg LLP

A handwritten signature in cursive script, appearing to read "Davies Ward Phillips & Vineberg LLP", written over the printed name of the firm.

CH/MJD