



CommunityAIR - devoted to restoring the lands and harbour now occupied by the Toronto Island airport to park, recreation, and cultural uses.

July 22, 2009.

Stephen Harper
Prime Minister of Canada

Dear Prime Minister:

We write to you to seek your government's assistance in addressing a long-standing and pernicious problem affecting Toronto's waterfront – the Toronto Port Authority.

The most recent instance of this Agency's rogue behaviour is set out in the "Watson Report", issued by Mary Dawson, the Federal Conflict of Interest and Ethics Commissioner, on June 25, 2009, As she stated, at page 13.

"There is clearly a level of dysfunction as well as a power struggle within the TPA Board."

The Watson Report reviews the circumstances surrounding Toronto Port Authority Director Colin Watson's participation in a TPA Board decision to purchase a new ferry to serve the Toronto Island Airport, for the benefit of Porter Air.

You will recall that your government last December was so distressed by the prospect of a board that would take a more critical look at Island Airport operations and expansion that it took the extraordinary step of gerrymandering the TPA board to ensure there was a 5-4 majority in favour of a more pro-expansion view. This is outlined at page 13 of the Watson report.

The impugned decision is a direct result of your government's action: the decision to devote \$4.85 million of taxpayers' assets for a new ferry for the benefit of Porter Air, which clearly is not in need of such assistance, was 5-4, with Mr. Watson the deciding vote.

The Commissioner's report contains some remarkable statements and conclusions:

The Conflict of Interest Complaint

The original complaint to the Commissioner, she states, came from another TPA director, who expressed concerns that:

"Since June 2008, Mr. Deluce [CEO of Porter AIR] 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 [director's] 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." [Watson report page 6]

Shopping for Legal Opinions

There was a second legal opinion obtained by the TPA, clearly because the conclusions of the first were not to the majority's liking. In what can only be described as a huge stretch, it concluded that:

"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." [Watson report page 6]

The TPA itself, in its Press release of January 21, 2009, clearly states that the new ferry is primarily for the benefit of Porter:

"It is the TPA's responsibility to deliver passengers to the TCCA efficiently and safely, and in anticipation of the expanding Porter services over the next two years, adequate and reliable ferry service is crucial," said Alan Paul, Acting Chief Executive Officer of the TPA. "According to a report prepared by an expert industry consultant, our existing ferry service will become a 'critical issue' in 2009 given the increased Porter flight routes and the impact this will have on peak ferry service."

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Only Porter provides commercial passenger service from the Island Airport – in fact it has excluded Air Canada from operating from that airport. Even the Commissioner concludes that the new ferry is for Porter’s private benefit. As she states, at page 17:

“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.”

...

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.”

The majority of this board, faced with a clear legal opinion that Mr. Watson was in a conflict of interest, shopped around to find another that agreed with the majority – an opinion that the Commissioner has now found to be, on the facts, quite wrong.

All in a determined effort to ram through this ferry decision. We suggest to you, Mr. Prime Minister, that such conduct is unbecoming of a board of directors of a government agency, and worthy of your attention and action.

When is a Friend a “Friend”?

The *Conflict of Interest Act* (Canada) states:

“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** [our emphasis]”

The Report states, on page 10:

“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.” And it is public information that Robert Deluce was a director of Spar Aerospace when Colin Watson was its CEO, and that both sit on the board of directors of Vector Aerospace.

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The overall objective of the *Conflict of Interest Act*, as stated by the Commissioner in her 2008-9 Annual Report, is to enhance confidence and trust in government by establishing clear conflict of interest and post-employment rules for public office holders.

Given the facts above, that objective is satisfied only by a finding that there was a conflict of interest present, and Mr. Watson ought not to have voted on the new ferry.

One would have thought repeated assertions of friendship would be more than sufficient to bring Mr. Watson inside the prohibition. Surprisingly, the Commissioner finds there are friends, and there are friends. Without in any way considering the objective of the *Act*, as stated above, she simply states (at page 15):

“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.”

A bald statement of opinion that does not serve to enhance confidence and trust in the decision-making of the TPA.

The TPA's Own Code of Conduct

But it is worse than that – as the Commissioner's office has recently noted¹, she does not have authority to consider the Code of Conduct under the TPA's *Letters Patent* Schedule E.

It reads in part:

1.2 Principles.

(c) public confidence and trust in the integrity and impartiality of the Authority may be as equally compromised by the appearance of a conflict as by the existence of an actual conflict.

Again, on the facts above, there is most definitely, and at a minimum, the appearance of a conflict, and therefore a breach by Mr. Watson of the TPA's own Code of Conduct.

Who is to enforce that Code of Conduct if the Commissioner cannot?

¹ In a letter to CommunityAIR researcher Bob Kotyk, it states:

While the TPA's Letters Patent were reviewed in order to better understand the context in which the board operated, she does not have the mandate to determine whether Mr. Watson contravened the board's own Code of Conduct.

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Who will take the necessary step to address this breach, if Mr. Watson, and your majority on the board of the TPA, will not?

Remedy

As you know, there is a long and sad history of this Port Authority ignoring the wishes of the people of Toronto as to what they wish to be done with their waterfront. Your government has made a bad situation worse by ignoring the requirements of the *Canada Marine Act* and appointing directors who have no roots in any of the waterfront's user classes, and who, for the most part have, in common, a close affiliation to the Mike Harris/Jim Flaherty wing of your party.

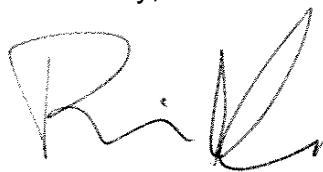
What this all does is once again shake Torontonians' confidence in the ability of the Toronto Port Authority to act in any way that is accountable to the people of Toronto who value their waterfront, and who savour the potential it has to be Toronto's recreational jewel.

By encouraging the vast expansion of the Island airport, your directors are destroying that potential, as the airport's noise and pollution make any other uses increasingly unviable.

There are constraints on this airport, put in place years ago to protect the waterfront but they are being ignored by this board, just as the majority has ignored the rules against conflict of interest – real or apparent – in the case of Mr. Watson. The only real remedy here is devolution – the transfer of authority over Toronto's waterfront from the TPA to the City of Toronto. Even with its faults, the City has demonstrated time and again, that it is responsive, and accountable, to the people of Toronto.

Let this latest instance of apparent breach of the rules be your impetus for, at last, devolving the TPA's assets to the City, and redressing the error made by the federal government back in 1999, when it created the TPA.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. Iler', with a stylized flourish at the end.

Brian Iler, Chair
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