

For Immediate Release  
June 8, 2009

## **Toronto Port Authority responds to Olivia Chow**

TORONTO - Ms Olivia Chow, MP Trinity-Spadina, is holding a press conference this morning to publicize a purportedly confidential letter written by four directors to Transport, Infrastructure and Communities Minister John Baird on March 30, 2009. The letter followed a decision taken by the board of the TPA on January 21, 2009, to acquire a new, larger passenger ferry to support the continued success of the Toronto City Centre Airport.

Ms. Chow's press conference and the letter are part of an ongoing effort to attack the good reputation of the five TPA Board members who are committed to fulfilling their fiduciary duty of enhancing the future business prospects of TPA assets, including the Toronto City Centre Airport.

Many of the items referred to in the letter have already been widely reported in the media, and often undermined, in earlier coverage. The letter gives no consideration to the fine work and effort of the TPA staff and board to oversee an effective port and thriving airport. TPA Chairman Mark McQueen has written a response to Ms. Chow advising that allegations made against the TPA in the March 30th letter are incomplete, unsupported, untrue and, in some cases, defamatory.

A copy of the letter to Ms. Chow has been released and is attached.

The Toronto Port Authority was incorporated on June 8, 1999, as a government business enterprise under the Canada Marine Act as the successor to the Toronto Harbour Commissioners. It is a federal public authority providing transportation, distribution, storage and container services to businesses. The TPA owns and operates the Toronto City Centre Airport, Marine Terminals 51 and 52, and the Outer Harbour Marina. The TPA also provides regulatory controls and public works services to enhance the safety and efficiency of marine navigation and aviation in the port and harbour of Toronto.

Further information about the TPA is available at [www.torontoport.com](http://www.torontoport.com).

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June 8, 2009

Ms. Olivia Chow, M.P.  
Trinity - Spadina  
House of Commons  
Ottawa, Ontario  
K1A 0A6

**Toronto  
Port  
Authority**



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June 8, 2009

Ms. Olivia Chow, M.P.  
Trinity - Spadina  
House of Commons  
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Dear Ms. Chow:

Re: Toronto Port Authority

I understand that you have called a press conference for this morning in reference to a letter signed by certain disgruntled members (Mr. David Gurin, Mr. Chris Henley, Ms. Michele McCarthy and Mr. Doug Reid) of the Board of Directors ("Board") of the Toronto Port Authority ("TPA"). The letter in question was sent to the Honourable John Baird, M.P., Minister of Transport, Infrastructure and Communities on March 30, 2009 (the "Letter").

At the outset, let me assure you that the Letter is nothing more than an effort by a disgruntled minority of our Board to smear the reputation of those members of the Board who support the existence of the Toronto City Centre Airport ("TCCA") and who voted in favour of a new, larger passenger ferry in January 2009. Having lost that battle, their smear campaign appears to have become only more outlandish.

I note that the leak of the Letter to you directly followed last week's positive media coverage and public response regarding the concept of the construction of a pedestrian tunnel between the mainland and the TCCA.

Many of the items referred to in the Letter are both picayune and stale, having been already widely reported in the Toronto and Ottawa media and often undermined in this earlier coverage. Once you discard the half-truths and defamation in their Letter, one is left with little more than a transparent attack by a subset of the Board, two of whom are seeing their terms expire in ten weeks' time. Their retirement present to the rest of us is to "burn down the house" on their way out the door, as they now recognize that they will not be reappointed to the Board for a second term.

**Canada**

Their Letter gives no consideration to the fine work and effort of the TPA Staff and Board to oversee an effective entity and a thriving airport. The success of the TCCA was highlighted by positive editorial comment from three different major Toronto-based newspapers following the April 29, 2009 announcement of the \$45 million private sector-financed expansion of the TCCA terminal. In addition, the Toronto Star published an editorial this morning supporting the construction of a pedestrian tunnel to the TCCA, a concept raised by the TPA in May 2009.

Nor does the Letter acknowledge the fact that the TPA is now profitable for the first time since its inception in 1999, and that we've reduced the overall cost of the Board of Directors by one third since the days when Michele McCarthy was Board Chair and Chris Henley chaired the Governance, Nominating and Human Resources Committee. These two individuals are key members of the disgruntled Board group who penned the Letter.

As you will come to understand, this is a 'pocketbook issue' of the worst kind. As many in the media are aware, a subset of the disgruntled group who authored the Letter attempted to raise their own board compensation following their appointment to the Board.

At the March 22, 2007 meeting of the TPA's Governance, Nominating and Human Resources Board Committee, Mr. Henley recommended a 66% increase to the Board's annual retainer and a 40% increase to the Board's meeting attendance fee. Ms. McCarthy and Doug Reid, who were also members of the Committee, concurred with Mr. Henley's recommendation, according to the official Committee minutes of the session. Although a director at the time, Colin Watson was not a member of the Committee and was not present. None of Jeremy Adams, Mark McQueen, Sean Morley or Craig Rix were members of the TPA Board at the time of this meeting.

In March 2008, Mr. Rix, Mr. Watson and myself successfully blocked the three disgruntled Directors' effort to increase their Board compensation. Also in March 2008 – the earliest opportunity – the majority of the Board, made up of those members who did not sign the March 2009 letter to Minister Baird, took away Ms. McCarthy's excessive \$50,000 annual salary; a salary she received despite serving only a few hours a month as a part time Board Chair. Ms. McCarthy was also dismissed from her role as Chair given her belief that her steep compensation was warranted.

As can be seen in the timeline of their Letter to Minister Baird, the complaints by these three disgruntled Directors began immediately after Ms McCarthy's salary was removed and the original disgruntled Director's fee grab was stopped.

Although Ms. McCarthy, Mr. Henley and Mr. Reid made up the majority of the Board in 2007, they inexplicably found no reason to complain about expenses or management spending patterns at the time; they, in fact, approved the expenses in question via the TPA's annual budget process.

In my view, I and the majority of the Board have never been forgiven for stopping their fee grab, and sadly it appears that some of the disgruntled Directors will throw whatever mud they can dream up to settle the score in their waning days as TPA Directors.

In the case of the TPA's new City of Toronto-appointed Director David Gurin, his bias that the TPA and TCCA should be removed from federal control is clear, according to an interview published in the December 5, 2008 edition of The Globe & Mail (the day following his appointment to the TPA Board). During that interview, Mr. Gurin was quoted as saying "I believe this is a municipal function," although he "[conceded that] his view does not square with the reality that the [TPA] is in federal hands".

I understand that you have stated publicly, on many occasions, that you share Mr. Gurin's view that the City of Toronto should gain "control, oversight and ownership" of the TPA and TCCA; which would ultimately achieve your goal of closing the TCCA to commercial airline traffic. It must be pointed out that even before Mr. Gurin joined the Board, he held the view that the TPA and TCCA should not exist in their current form. As such, it should come as no surprise that he has joined the original three disgruntled Directors in their year-long campaign to undermine the entity.

In February 2009, the disgruntled Directors were complaining to the Conflict of Interest Commissioner about the pending expansion of the TCCA (as has already been reported in the media). In March 2009, they are telling Minister Baird (via the Letter) that accounting firm Deloitte LLP isn't qualified to conduct the Special Audit Examination that is undertaken every five years.

In April and May 2009 they leaked their Letter to media outlets all over the Province in a failed attempt to embarrass the federal government and those at the TPA who are supporting the TCCA and who took away their "cookie jar". With no where else to turn, they appear to have now landed at your doorstep in June 2009.

I trust you will see their Letter for what it truly is.

To assist you with your analysis, I have attached the following as schedules to this Letter. It is necessarily brief given the short amount of time between your June 5, 2009 press advisory and your June 8, 2009 press conference:

- Response to the points in the March 30, 2009 letter to Minister Baird
- Response to the additional accusations made in your June 5, 2009 press advisory
- Terms of current TPA Directors
- Copy of June 20, 2007 letter from Minister Lawrence Cannon to then Board Chair Michele McCarthy regarding Mr. Henley's attempt to increase Board fees and compensation

I respectfully ask that you not make or repeat any untrue, unsupported or defamatory statements during your press conference at 11:00 am today. If you have not independently confirmed any or all of the information in the March 30, 2009 letter to Minister Baird, I caution you from relying on any portion of it.

Respectfully,

TORONTO PORT AUTHORITY



Mark McQueen  
Chairman

**Responding to the points in the Appendix of the March 30, 2009 letter to Minister Baird:**

***Conflict of Interest*** – as the authors of the Letter well know, the TPA received two additional legal opinions (on January 30, 2009 and February 2, 2009) that advised their two-pronged complaint was without foundation; in essence, the original legal opinion could not be relied upon. I note this information was withheld from both you and the Minister in the Letter.

In any event, the January 2009 legal opinion cited by the disgruntled Directors referred to votes specifically involving Porter Airlines, and not the construction of a new passenger ferry as they now would have you believe.

In addition, the Board passed the motion to acquire the new, larger passenger ferry a second time at its April 21, 2009 board meeting, with one Board member abstaining. This information, too, has been withheld from you by the disgruntled Directors.

***Expenses*** – This refers to the 2007 & 2008 Harbour 60 hospitality expenses that has already received coverage in the media. The record shows that the then Board (which included Ms. McCarthy, and Messers Henley and Reid) approved the line item in the annual budget. For them to now claim it was unauthorized is just untrue. As the media were advised by the TPA in January 2009, the Board approved the budget, thereby authorizing the specific expense line item.

As per the TPA press release of January 21, 2009, the TPA has clarified the expense policy so that all individual hospitality expenses require the approval of the immediate supervisor. The TPA has also asked its auditor, Deloitte, to provide any further guidance or advice they feel is warranted as per their Special Examination financial audit (which is held every 5 years by law).

***Procurement policy*** – I ask that the disgruntled Directors provide you with the excerpts of the specific sections of the Procurement Policy that were allegedly breached, as it appears to me that this accusation is without foundation.

***Information Flow*** – there is nothing unusual about Board Committee material being shared solely with members of the Board Committee in question.

***Board Minutes*** – the outstanding 2008 Board Minutes were passed by the TPA Board in June 2009. The Board minutes reflect the material decisions taken at the meetings.

***Information selectively disclosed*** – this is a non-specific complaint.

***Audit Committee access*** – our auditors have taken many private telephone calls from Directors (regardless of who from the Board calls) and are always available to meet with the Audit Committee without management present; Mr. Henley had such a meeting in

December 2008, for example, when he was a member of said Committee. Of interest, Mr. Henley was scheduling another telephone call with the Auditor as recently as June 4, 2009, for example.

***Board counsel termination*** – based upon legacy legal files, the TPA has a large retinue of outside legal counsel; in an effort to control costs, the TPA is moving to an RFP process for the TPA’s legal work. The January 2009 vote to terminate Carol Hansell and her team at Davies Ward Phillips and Vineberg LLP was connected to that effort and also reflected the fact that in a space of two years, Mr. Henley remarkably ordered up over \$225,000 of corporate governance legal work from Ms. Hansell. As the TPA and its successor entities have been in existence since 1911, it is foolish to suggest that Davies’ termination, after just two years of involvement with the TPA on governance matters, represents a “loss” of “corporate memory”.

***Illegal chair election*** – several print media outlets have reported on this story to death, accurately or otherwise; the Davies legal opinion was narrow in its review and for that, among other reasons, it was not relied upon.

***Responding to the additional points in Ms. Chow’s June 5, 2009 Press Advisory:***

***Interference from the previous Minister’s Office*** – during the summer of 2007, the office of then Transport Minister Lawrence Cannon learned of the attempt, led by Mr. Henley on behalf of the disgruntled Directors, to raise their board compensation. Minister Cannon wrote to the Board on June 20, 2007 (before I, Mr. Adams, Mr. Morley, and Mr. Rix joined the Board), then Chaired by Ms. McCarthy, and cautioned against this action. Mr. Henley advised staff that “it was within their power” to raise their own compensation, and initiated a \$50,000 investigation by Carol Hansell of Davies, Ward, Phillips and Vineberg LLP to attempt to learn the identity of the individual who advised Transport Canada of Mr. Henley, Ms. McCarthy and Mr. Reid’s attempt to increase their board compensation (this \$50,000 expense is a subset of Mr. Henley’s \$225,000 corporate governance legal invoice tally with Ms. Hansell’s law firm over a two year period). In March 2008, Mr. Henley advised one director that the fee increase “was a done deal”. Directors McQueen, Rix and Watson did not support the effort to increase Board compensation, and Mr. Henley’s effort ultimately failed.

***Legal Counsel retention*** – the law firm in question was retained by TPA management, and not “a few board members”. This engagement was completely within the framework and authority of the TPA Purchasing Policy. No “standing policy” was ignored.

***Travel expenses*** – the aggregate amount of the former TPA CEO’s 2007 and 2008 travel expenses were \$51,000, and not \$80,000 as per your Press Advisory of June 5, 2009. These expenses were normal for a business of this size.

**Current Director Appointment Tenure**

Mr. Jeremy Adams: 1/14/09 – 1/14/12

Mr. Chris Henley: 8/23/06 – 8/22/09

Mr. David Gurin: 12/4/08 – 12/4/11

Ms. Michele McCarthy: 7/14/04 – 7/13/10 (two terms)

Mr. Mark McQueen: 8/23/07 – 8/22/10

Mr. Sean Morley: 12/19/08 – 12/18/10

Mr. Douglas Reid: 8/23/06 – 8/22/09

Mr. Craig Rix: 2/2/08 – 2/1/11

Mr. Colin Watson: 8/23/06 – 8/23/11 (two terms)

Minister of Transport,  
Infrastructure and Communities



Ministre des Transports,  
de l'Infrastructure et des Collectivités

Ottawa, Canada K1A 0N5

JUN 20 2007

Ms. Michèle D. McCarthy  
Chair  
Toronto Port Authority  
60 Harbour Street  
Toronto ON M5J 1B7



Dear Ms. McCarthy:

I am writing at this time regarding remuneration for directors of Canada Port Authorities (CPAs).

As you know, the *Canada Marine Act* (CMA) allows for the board of directors to set the remuneration of the directors and chairpersons. Generally, the board should determine a rate of remuneration that is fair and equitable for services rendered to the authority.

As you know, the remuneration for directors is a matter of public record, and is subject to public scrutiny. It is, therefore, critical to ensure that any increases to the rate be well justified.

I am confident that any decisions taken by the board regarding rate of remuneration will be guided by these overarching principles of good governance.

Yours truly,

The Honourable Lawrence Cannon, P.C., M.P.