



# **Reforming the Toronto Port Authority/Ports Toronto**

**Submitted to Transport Canada by  
CommunityAIR**

**November 2018**

“... The Toronto Port Authority (TPA) needs to start acting as an agency of the federal government, and by extension, concerned about the public interest. It needs to deal fairly and openly with the City of Toronto and all Torontonians and stop acting as a business agent for a private, for-profit company.”

- *The late City Councillor Pam McConnell, in a Media Statement April 10, 2013*

“The Toronto Port Authority is the single greatest impediment to a rejuvenated waterfront.”

- *Jane Jacobs, internationally acclaimed urban planning sage, The Globe and Mail, June 5, 2004*

## **1. Summary**

Owing to both the its unfortunate governance structure, and a history of Board appointments that were insensitive to both the communities the Toronto Port Authority (**TPA**), recently rebranded as Ports Toronto, has generated controversy and despair throughout its two decades of existence.

After outlining numerous examples of the TPA's outrageous and unacceptable conduct, this submission argues that, given that history, significant reform is necessary.

Recognizing that that outrageous and unacceptable conduct must stop, candidates in the last federal election for both of the contending parties promised TPA reform and committed their parties to that reform.

This submission simply seeks that the promise made by your government be kept.

We recommend that:

1. For Toronto, as its port is not, and never has been, a port of national significance, the Port Authority structure is inappropriate and should be replaced by a governance structure that ensures that the changing nature of the waterfront is respected, and all of the waterfront's users are engaged in the decisions that affect it.
2. The TPA be required to hold its Board of Directors meetings in public and distribute its agendas and supporting documents and reports to the public, save where confidential employment or business transactions warrant secrecy. The model for such transparency and accountability should be the approach taken by the City of Toronto.
3. Directors appointed to the Board of the Port Authority should be selected through an open and transparent process that adopts the public interest as the dominant criterion for selection, eliminates political considerations, and ensures effective participation by all those communities and interests affected by Port Authority decisions.
4. The Canada Marine Act be amended to require that the pursuit of the public interest be the prime objective of all Port Authorities established under that Act.
5. The TPA be directed to resort to the Federal Government's exclusive jurisdiction only where it can reasonably demonstrate that a strategic national interest is so important that the normal provincial and municipal requirements should be ignored.

## 2. **Our Experience with the TPA**

The recommendations below are informed by the reality of our communities' past experience with the TPA.

The TPA has consistently failed our waterfront and its communities, and acted contrary to the public interest, often for the benefit of one private business, Porter Airlines.

It has done so by:

- Ignoring the protections put in place by the City<sup>1</sup> to ensure the TPA's Island Airport "can be used only as a .. permanent public airport for general aviation and ... limited commercial STOL service operations – it is clear that the aircraft using the Island Airport for commercial passenger service are not 'STOL'."
- Inflicting excessive noise on the residential communities and recreational uses abutting the Airport, contrary to its obligations under its Tripartite Agreement with the City of Toronto<sup>2</sup>
- Ignoring the very real risk of a tragic accident resulting from a crash on its Airport lands or into deep water off the ends of the Airport's runway.

In the absence of a bridge, stated then TPA CEO Lisa Raitt said<sup>3</sup> in a press release on October 16, 2003:

"The fixed link (bridge) is a public safety issue. In the event of an emergency, it could take up to two hours to get the appropriate equipment over to the island and that's not acceptable."

A 1993 report on emergency access to the Island Airport, prepared by an intergovernmental panel of experts (obtained by CommunityAIR, through FOI, and available [here](#)), calls for a bridge as the only way to get the required...

"64 emergency vehicles and 201 personnel to access an aircraft crash within 20 minutes. In addition, ambulances with the critically injured must be capable of returning to the mainland within a 30 minute period of time."

Those requirements were based on an assumed 50-passenger aircraft crashing on Airport land.

No bridge was built. But the TPA allowed Porter to commence operations anyway, using a substantially larger aircraft.

Our Freedom-of-Information request to the TPA establish that no subsequent study was carried out to confirm that that required access can be provided in the absence of a bridge.

That Freedom-of-Information request also confirmed that when the ferry service, which provides limited emergency vehicle access, is disrupted, Airport operations continue unabated.

As the recently-opened tunnel can be used only by pedestrians, it cannot be used to justify the absence of effective emergency access.

Emergency access concerns should not await a disaster to be acted upon.

- Ignoring the contribution of aviation to climate change – it is one of the fastest-growing contributors to world-wide emissions<sup>4</sup>.

Unchecked it can grow to a substantial proportion of global emissions, making a climate-safe future difficult or impossible - and undermining reductions achieved in other sectors.

Imposing constraints on the growth of the aviation industry is indicated, for climate action to be effective.

The TPA is particularly well-positioned to take leadership in this difficult but necessary task – flights using its Airport are primarily short-haul, for which climate-friendly alternatives are readily found.

- Handing 215 acres of immensely valuable public land – the Island airport - over to Porter Airlines for its virtually-exclusive use for free, aside from its contribution to operating costs of the airport<sup>5</sup>

Public assets, such as the Island Airport, should be made available for the benefit of the public, not devoted, virtually exclusively, to one private business.

Part of those 215 acres is directly owned by the TPA, having received it free when the City-controlled Toronto Harbour Commission's ownership was converted by the federal government to the federally-controlled TPA.

A substantial portion of those 215 acres is owned by the City, but leased rent-free to the TPA until 2033<sup>6</sup>.

Having received ownership of much of the Island Airport land without any payment, and the balance rent-free from the City, the TPA has chosen to pass on to Porter the benefit of the public assets it obtained for free (save a portion of operating costs)<sup>7</sup>.

Worse, it has agreed that any capital costs incurred by the TPA in relation to the Airport may only be charged to Porter's customers (as Airport Improvement Fees) if Porter has previously consented to that charge – or a tortuous consultation has been completed.

In essence, the TPA operates the Airport as Porter's subsidiary, with all profit generated from Island Airport lands belonging to Porter, and not the TPA.

- Failing to enforce the limit of 120 slots (daily landings and takeoffs) imposed in return for the \$20M settlement (using federal government funds) of Porter's damage claim arising from the cancellation of the bridge to the Island Airport<sup>8</sup> Porter has been allowed to use 172 slots, and Air Canada 30 (restricted to Montreal flights)<sup>9</sup>.
- Facilitating Porter's permission to fly to the US by telling US authorities that Porter's use of the Island airport was not exclusive, when, in fact, it was.

To get that permission, Porter needed to satisfy the US Department of Transport that American airlines had the right to fly to the Island Airport. In response to filings by several airlines about equitable access to the Island Airport, the Department cited a single letter from Lisa Raitt, then CEO of the TPA, as a refutation of the airlines' claims.

Ms Raitt's letter suggested it was open to US Airways providing service. That didn't happen, and a report subsequently surfaced that

Porter's agreement with the authority barred regional carriers, ... from flying between the airport and New York, Chicago, Boston, Washington, Philadelphia, Cincinnati, Detroit and Cleveland ...<sup>10</sup>

- Giving Porter exclusive rights to operate the Airport terminal, which it erected for ~\$50M, and subsequently sold for a reported \$750M<sup>11</sup>.

The TPA readily agreed to extend the lease of the Terminal lands for 35 years following the expiry of the Tripartite Agreement on June 30, 2033 without any apparent public benefit in return, and without any public consultation, solely to facilitate Porter's sale of its terminal.

Such windfall profits should have been tempered by the TPA's insistence on terms for its approval that included significant public benefit.

- Ignoring the TPA's 2012 Airport Master Plan, revealed only at the insistence of the City in 2014, [detailing the many shortcomings](#) of existing operations (parking, landmass, facilities, access) that can't be resolved, given the Airport's tight physical constraints.

Shoehorning a large commercial airport operation into the midst of a residential community and Toronto's prime recreational resource isn't workable and will only get worse if the Airport is allowed to continue to expand its operations.

- Bullying the City to settle a dubious lawsuit.

The TPA, shortly after its creation, sued the City for millions. Here's the Globe and Mail in November 2002, describing the lawsuit<sup>12</sup>:

The suit itself is weak to the point of being hopeless. It's an old dispute the former harbour commission already lost -- clearly and definitively -- a decade ago.

Essentially the TPA is claiming the city acted improperly when it "stripped" 600 acres from the old harbour commission and put them under the Toronto Economic Development Corp.

That work was done by former Mayor June Rowlands after a series of intolerable real-estate deals conducted by the old commission. The federal Liberal government, which established the old commission and supervises its successor, the TPA, endorsed the transfer and signed off gladly.

When three harbour commissioners complained that the mayor and council had no legal authority to dump them and appoint her own people -- a claim that survives as the central allegation in the current lawsuit -- an Ontario judge ruled that the process was perfectly proper.

End of story? Of course not. Almost 10 years later, the TPA launched its suit, vainly attempting to overthrow a much-needed reform that was strongly supported and endorsed by all three governments and the courts

While some Councillors argued the lawsuit was without merit, and should be vigorously defended, a majority of Councillors, in June 2003,

opted to both approve a bridge to the Island Airport (essential for emergency access for those expanded commercial airport operations, they said) and enter into an expensive settlement with the TPA<sup>13</sup>.

That settlement allowed the City to keep the land, but lease some of it back to the TPA, and required the City pay cash to the Port Authority over a 10-year period, totalling \$60.257M.<sup>14</sup>

The TPA has nothing to show for that considerable sum. It took that money into its revenues and spent it in operations.

- Bullying the City of Toronto to avoid property tax. For many years the TPA resisted paying its fair share of property taxes to the City of Toronto for the extremely valuable 215 acres of the Island Airport. The arrears, based upon the normal regime, exceed \$50M<sup>15</sup>.

The TPA's failure to pay amounts to a massive subsidy of the Island Airport operations by the taxpayers of the City of Toronto.

While the City of Toronto had vigorously pursued these arrears, with several favourable judgments in the Courts<sup>16</sup>, Toronto City Council recently inexplicably capitulated, agreeing to a modest per passenger fee.

The Federal Court of Canada, on this precise issue, in [\*City of Toronto v. Toronto Port Authority\*](#) considered the TPA's preference for such a "per passenger" fee and stated:

"The TPA attempted to enjoy the benefits of [ a per-passenger fee]. ...The ... legal error is compounded by the absence of any explanation as to the merits of the quantum of the per passenger amount.

"Therefore, the [per-passenger fee] ... is not sustainable as a matter of jurisdiction nor as a matter of reasonableness."

In effect, this failure to insist that the users of the Island Airport pay their fair share of property taxes to the City, through the TPA, creates a significant subsidy, by City taxpayers, of the operations of the Island Airport.

### **3. Promise Made**

It wasn't just the jets.

The TPA, has been the major impediment to the development of Toronto's waterfront in the public interest since it was created in controversy in 1999.

It operates in secret, has no accountability to the residents and users of the waterfront, or to the City, and has consistently pursued an agenda that focusses on the best interests of its primary tenant, Porter Airlines.

It treats Toronto's waterfront as an "airport sacrificial area<sup>17</sup>", inflicting noise, pollution, and traffic congestion on its neighbours.

For all those reasons, community leaders pressured both the NDP and the Liberals in the 2015 federal election for TPA reform.

Both delivered a rock-solid promise to do so, as well as promises to stop the threatened introduction of Porter jets.

Here's Adam Vaughan, on September 16, 2015 (his full letter appears as an Appendix to this Brief):

The Liberal Party has also promised to reform the Port Authority and amend the letters patent to reform the federal agency. We are committed to making sure that the Port Authority holds its meeting in public and publishes its agendas and minutes as part of each meeting. The Liberal Party will ensure that the new Port Authority will be comprised of actual waterfront stakeholders with residents, waterfront businesses, port users and recreational and cultural organizations all represented.

Vaughan repeated the promise, as reported in the Toronto Star on November 17, 2015:

With a Liberal majority government, change is coming, said Vaughan (Spadina-Fort York).

"Our goal is not to appoint campaign managers and fundraisers (to the board) but people who need the port, the waterfront and the lake for daily life, and want it to be available to all those who need to use it," he said.

Vaughan offered no details, but noted long-time chair Mark McQueen resigned in August and said: "I believe there are some vacancies coming up."

Almost three years have elapsed.

The only action taken by the Liberal government to date has been to appoint three TPA directors with no discernable relationship to Toronto's waterfront, but with a strong commitment to the status quo.

That's not what was promised.

#### **4. Vision for Toronto's Waterfront**

Five of Toronto's most influential community leaders<sup>18</sup> have suggested this vision for our waterfront:

It is our waterfront. From south Etobicoke to the Scarborough Bluffs and beyond, what is emerging all along the Toronto waterfront is one of the most remarkable transformations of its kind anywhere. The revitalization of these strategically located, obsolescent lands is providing new and improved places for the public to enjoy: parks and trails, a linked series of neighborhoods, places to live and work, and places of recreation, repose and natural beauty.

We agree.

Toronto's waterfront has mostly transformed from a bleak, industrial wasteland to one devoted to recreation and residential uses. And that makes sense: the waterfront is a tremendous natural asset that deserves nurture and protection for the benefit of all.

As well, Toronto's Downtown and Central Waterfront also has the strongest economic and residential growth in Ontario and possibly all of Canada. From a recent City of Toronto publication<sup>19</sup>:

Between 2012 and 2016, 38.8% of all proposed residential units in the City of Toronto were built or proposed in the Downtown and Central Waterfront, and 41.3% of all non-residential units.

"The Downtown, which includes the Central Waterfront area is the most prominent location for development and activity."

The Downtown and Central Waterfront has 85% of office space currently under construction in the GTA.

The vision of a Waterfront with strong economic activity, vibrant and growing residential neighbourhoods that still preserves and protects the natural environment, That vision can only be realized if the TPA is prepared to play a productive and positive role.

The history of the Toronto Port Authority is, sadly, one of intransigence, bullying, and single-minded pursuit of the best interests of its dominant income-producer, Porter Airlines, while ignoring and undermining the vision set out above.

It is that history of studied refusal to seriously consider the interests of our waterfront's recreational and residential users, who comprise the vast majority of its users, that has energized the waterfront community, and led to the promise for reform.

Reform means a fundamental change in approach – where all waterfront users have effective participation in Port Authority decisions.

## **5. The Case for Reform**

The TPA has the wrong governance structure, and the wrong Board of Directors. As the owner of very significant public assets, it has failed to ensure that the public interest dominates its pursuits.

### **5.1 The Wrong Governance Structure**

Canada's major ports (and Toronto's) have been governed since 1999 by a Port Authority structure, mandated by the Canada Marine Act, that replaced the earlier Harbour Commission structure.

For ports of "national significance", like Halifax, Montreal and Vancouver, that may have been appropriate. It was for those ports that the Port Authority model was designed.

Prior to 1999, the Toronto Harbour Commission, controlled by a majority of City appointees, operated the port. Despite the City's opposition and contrary to the advice of Transport Canada's own advisor, Nesbitt Burns, the federal government unilaterally imposed the Port Authority structure.

The Canada Marine Act was intended to confer federal port authority status on ports with "strategic national significance". The Port of Toronto, at 38th in total shipping volume in Canada<sup>20</sup>, did not meet, and has never met, that criterion.

For Toronto, there was, and is, no nationally significant port activity – all shipping is local, supplying salt, aggregates, cement and sugar directly to private docks.

The change was significant – instead of majority control by appointees of the local municipality, who were directly accountable to that municipality, aside from one municipal appointee, and one provincial appointee, the federal government appoints all remaining Port Authority members.

The indignity of giving the TPA the power to put the interests of that narrow group over the interests of the City and the millions of waterfront users was then, and continues to be, magnified by the fact that the commercial port does not count for much within the local or national economies.

The Island Airport is by far the TPA's dominant activity. Unlike Pearson International Airport, which is of strategic national importance, the Island Airport services a regional market that, particularly with the introduction of Union-Pearson Express train, is well served by Pearson.

At a cost of \$456 million dollars, the Ontario Provincial government built the Union-Pearson Express, a rail link between Union Station, in the heart of the city's business district and close to the Waterfront, to Pearson International Airport. This new service gives excellent public transit from the city's business and residential core to the region's most sophisticated, modern airport with services not only to cities across North America but around the globe.

Airports require a lot of land which normally leads them to locate in a rural areas. It is only the enormous public subsidies<sup>21</sup> that the TPA provides to the Island Airport users that leads to their having any financial viability.

**Recommendation: For Toronto, as its port is not, and never has been, a port of national significance, the Port Authority structure is inappropriate and should be replaced by a governance structure that ensures that the changing nature of the waterfront is respected, and all of the waterfront's users are engaged in the decisions that affect it.**

## **5.2 Lack of Democratic Control**

Currently, the TPA operates in secret, with no obligation to provide transparency or accountability to the community.

Its bylaw includes this:

### 7.1 Confidential Information Not Available to Public

Meetings of the Board are private and except as expressly provided for in the Act or the Access to Information Act (Canada), and subject to the requirements of the Privacy Act (Canada), no member of the public shall be entitled to any information respecting any details or conduct of the Authority's business which, in the opinion of the Board, it would not be in the best interests of the Authority to communicate to the public.

As a steward of significant public assets, and the ability to severely impact the development and use of Toronto's waterfront for the benefit of all Torontonians and visitors, it must be much more transparent and accountable for its activities.

**Recommendation: The TPA be required to hold its Board of Directors meetings in public and distribute its agendas and supporting documents and reports to the public, save where confidential employment or business transactions warrant secrecy. The model for such transparency and accountability should be the approach taken by the City of Toronto.**

### **5.3 The Wrong Board of Directors**

After its initial appointments in 1999, the federal government failed to make any further appointments as directors' terms expired, causing the number of directors to dwindle down to three, then two - one of whom had a conflict on Island Airport matters.

This, at the time all of its deals were being made with Porter Airline's founder, Robert Deluce.

While the original design was to place the Port Authorities under the control of specified classes of port users, by mandating that all of the federal appointees, save one, are representative of those users<sup>22</sup>, in practice, in Toronto, none those federal appointees have had any relationship with any port users<sup>23</sup> save one<sup>24</sup>, who was considered to be Porter's voice on the TPA board.

All but one of the appointees during the Stephen Harper years have one common characteristic: close ties to the Conservative Party of Canada<sup>25</sup>.

The Trudeau Government's recent appointments are no better - none have any demonstrated relationship with Toronto's waterfront, and two of the three turn out to be donors to the Liberal Party of Canada<sup>26</sup>.

All appointees to date have had narrow experience in business and finance, and none have had any relationships with, or commitment to, community-based organizations.

At a minimum, then, any new appointments to the TPA Board should demonstrate a past commitment to pursuit of the public interest, as well as strong roots in waterfront communities.

**Recommendation: Directors appointed to the Board of the Port Authority should be selected through an open and transparent process that adopts the public interest as the dominant criterion for**

**selection, eliminates political considerations, and ensures effective participation by all those communities and interests affected by Port Authority decisions.**

#### **5.4 The Public Interest Should be Dominant**

The Canada Marine Act requires only that a port be financially self-sufficient. It does not impose any duty on the TPA Board of Directors to act in, or even consider, the public interest.

In the absence of a public interest mandate, the TPA has demonstrated, in its actions, time and time again, a singular focus on protecting and delivering financial benefit to its prime tenant, Porter Airlines.

One might assume that an agency created by government, to operate and manage public assets, would assume the public interest as its dominant objective in its decisions and activities.

Our experience has been the opposite: the public interest is entirely absent from its decisions and activities.

In our view, the public interest should be the dominant criterion for all TPA Board decisions and activities.

**Recommendation: The Canada Marine Act be amended to require that the pursuit of the public interest be the prime objective of all Port Authorities established under that Act.**

#### **5.5 Abusing Exclusive Federal Jurisdiction**

Aviation, under Canada's Constitution, is within the Federal Government's exclusive jurisdiction. The TPA has consistently relied upon that exclusive jurisdiction to refuse to abide by municipal and provincial laws.

While that refusal may be justified by an aviation activity that is of strategic national interest, like Pearson International Airport, it is much harder to justify for the Island Airport, which services a regional market that can readily be accommodated by Pearson.

A great deal of the conflict between the TPA and the City, and with other users of the waterfront, would be eliminated if the TPA resorted to that exclusive jurisdiction only where a strategic national interest can be demonstrated.

**Recommendation: The TPA be directed to resort to the Federal Government's exclusive jurisdiction only where it can reasonably demonstrate that a strategic national interest is so important that the normal provincial and municipal requirements should be ignored.**

## **6. Conclusion**

The TPA was created in controversy, operates in secret, and its airport inflicts noise, pollution and congestion on its neighbours with no regard for its impact upon them.

Despite the Canada Marine Act requirement that the board be made up of community members, airport, and harbour users, it has been loaded with Conservative and Liberal political appointments who have worked to provide Porter Airlines with a near monopoly of the Billy Bishop Airport.

That needs to change. Our recommendations are the minimum necessary to bring the TPA under control.

## **7. Who is CommunityAIR?**

CommunityAIR is a not-for-profit community organization of volunteers focused on the Toronto Island Airport and the Toronto Port Authority.

It led the successful fight to prevent a bridge being built to the Island Airport in 2003, on the grounds that an expanding commercial operation at that Airport would be incompatible with the massive and highly successful redevelopment of Toronto's waterfront for recreational and residential purposes.

It was a founder of, and active participant in, the NoJetsTO campaign that successfully prevented the introduction of jets to that Airport in 2015.

Appendix

Letter from Adam Vaughan

# Adam Vaughan

Spadina - Fort York

September 16, 2015  
Mr. Brian Iler, Chair  
Community Air  
7th Floor, 150 John Street  
Toronto, ON M5V 3E3

Dear Brian:

Thank you for your letter dated September 11th and your acknowledgement of my support for your work on Island Airport issues.

The Liberal position hasn't changed since the by-election. The Liberal Party will not re-open the tripartite agreement. No Jets. No Expansion. Period. This position was confirmed in a letter sent by the Liberal GTA Caucus, chaired by myself, to Mayor John Tory and City Councillors on June 4th. I have attached a copy for your reference.

The Liberal Party has also promised to reform the Port Authority and amend the letters patent to reform the federal agency. We are committed to making sure that the Port Authority holds its meeting in public and publishes its agendas and minutes as part of each meeting. The Liberal Party will ensure that the new Port Authority will be comprised of actual waterfront stakeholders with residents, waterfront businesses, port users and recreational and cultural organizations all represented.

The same letter also commits to funding for Waterfront Toronto's next phase and supports removing the Gardiner.

Thank you so much for your years of consistent leadership on the waterfront, I look forward to building on our shared vision of a clean, green waterfront: a vision that defends the residential communities who live along the lake and the thousands of Toronto residents who visit the harbour and the island every year.

Yours truly,



Adam Vaughan  
Liberal Candidate Spadina-Fort York

<sup>1</sup> See the [1983 report](#) to City Council on the lease of Island airport lands to the TPA.

<sup>2</sup> A February 2009 PowerPoint presentation by the TPA admits that even the Q400 (technically the Q402, flown by Porter and Air Canada) offends the Tripartite Agreement's definition of aircraft generating excessive noise on two of the three limits. Breach of any one prohibits the aircraft.

Here's page 26 from that PowerPoint:

	<u>Q402</u>	<u>Tripartite</u>
Flyover	<b>78</b>	<b>84</b>
Lateral	<b>84</b>	<b>83.5</b>
Approach	<b>93.1</b>	<b>92</b>

Comparison of Q400 to Limits in Tripartite

TCCA Noise Management Study  
Advisory Committee Meeting

26

JACOBS Consultancy

<sup>3</sup> In a press release on October 16, 2003

<sup>4</sup> "In the end, the only practical way to reduce our society's emissions from long-distance air transport (while admittedly giving rise to social costs elsewhere) is to restrict the growth in demand for air transport. It's going to take some political guts to try to shape or nudge the demand for passenger and cargo air transport, and there are a number of mechanisms through which that could be done, ranging from the unpopular levying of flight taxes, to the political suicide of imposing hard-cap restrictions on flight growth.

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Needless to say, neither of these policy options is likely to be attempted. Either way, the jumbo plane needs to be let out of the room: Relying on technological innovation, other market forces, and a global system of carbon offsets will not solve the serious problem of growing GHG emissions from aviation.” From [Policy Options](#)

<sup>5</sup> A full copy of an April 9, 2010 Commercial Carrier Operating Agreement between the TPA and Porter was posted by Porter, along with its prospectus, on the [www.sedar.com](http://www.sedar.com) website. It replaced an earlier May 3, 2005 version that is not publicly available.

The Agreement is a long (88 pages) and technical document that sets out the terms on which Porter uses the Island Airport. The relevant provisions, however, can be readily extracted.

They provide that Porter is obliged to pay 85% of the amount remaining after all other Airport revenue has been deducted from the Airport’s operating costs – and cannot be forced to pay anything in excess of that amount.

Operating costs do not include any component reflecting the underlying value of the 215 acres comprising the Island Airport lands.

<sup>6</sup> The lease of the City lands is known as the Tripartite Agreement and contains a number of provisions intended to constrain the Airport’s impact on the other uses on Toronto’s waterfront – constraints that, for the most part, are ignored by the TPA and unenforced by the City.

<sup>7</sup> It may be that Air Canada has a similar arrangement with the TPA for its 15% share of the use of the Airport. And it maybe that this huge level of government subsidy is common in the airline industry. What makes it so glaring here is the Island Airport’s location – on some of the most valuable land in the City. There’s a reason airports are usually located well outside of urban areas, where land is far cheaper, and there aren’t alternative uses that are far more economically productive

<sup>9</sup> According to a [leaked Transport Canada document](#), the compensation was based on an assumption that without the bridge only 120 slots would be available, compared to 167 with the bridge. Porter currently has 172 slots There is no bridge.

The Tassé Report released in October, 2006 (formally, “[Review Of Toronto Port Authority Report](#)”, found at

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<http://www.tc.gc.ca/media/documents/policy/tpa.pdf>) contains this (our emphasis):

[at page 54] RegCo's [now Porter] initial position was that any settlement would have to encompass compensation for the sunk costs that were expended in pursuit of an operation with a fixed link. In addition, RegCo obtained estimates of the profit differential between its original business plan and the somewhat smaller operation that would result from the cancellation of the fixed link, and took the position that all of these foregone profits should also form part of the settlement.

[at page 57] ...As stated above, the mitigation which was possible with RegCo also permitted the TPA to ensure the viability of the Island airport and to mitigate its own losses, although it is clear that one effect of the cancellation of the fixed link was to limit the number of flights and passengers to a level beyond that required by the NEF- 25 limits in the Tripartite Agreement.

[at page 60] In June 2003, RegCo would have understood that the total ceiling for large turboprop movements (number of departures and landings) would be 167 in and out of the airport each day. Under the 2006 CCOA with RegCo, the number of movements is far lower than the number contemplated in 2003, as the ceiling for total flights is now 120 movements. Within this 120-slot ceiling, some movements are reserved by the TPA for domestic and cross-border carriers.

<sup>10</sup> According to a [report](#) published by Bloomberg

<sup>11</sup> See <https://business.financialpost.com/news/porter-sells-toronto-billy-bishop-island-airport-terminal-to-investment-group>

<sup>12</sup> (November 7, 2002). "Taxpayers hit both ways in TPA lawsuit". *The Globe and Mail*. p. A26

<sup>13</sup> Adoption of Clauses Nos. 1 and 2 of Report No. 6 of The Policy and Finance Committee, as amended:

In Favour: 28: Lastman, Ashton, Augimeri, Balkissoon, Berardinetti, Cho, Di Giorgio, Dominelli, Duguid, Feldman, Flint, Ford, Hall, Holyday, Kelly, Korwin-Kuczynski, Li Preti, Lindsay Luby, Milczyn, Minnan-Wong, Moscoe, Nunziata, Ootes, Shaw, Shiner, Silva, Soknacki,  
Sutherland  
Opposed: 12: Councillors: Altobello, Bussin, Chow,

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Johnston, I. Jones, L. Jones, McConnell, Mihevc, Miller, Pantalone, Pitfield, Rae

<http://www.toronto.ca/legdocs/2003/minutes/council/cc030624.pdf>

<sup>14</sup> In addition, the settlement required that the City give:

- Lease concessions to the Port Authority for 49 years on about 25-acres of city land, with a net present value of \$5.8-million. The payment of rent on the “Leased Lands” by the TPA to TEDCO will be phased in it at 50 percent of fair market value (FMV) for the first 15 years of lease extensions, beyond the initial 20-years where these lands are provided at \$1/year, and at 75 percent of FMV for all subsequent years to a maximum of 49 years.
- Access to another 26.8 acres of City land for 20 years for \$1 per year

<sup>15</sup> At a meeting of Toronto and East York Community Council on March 20, 2012, a City Finance official stated that the City had billed \$58M in property taxes on the Island Airport lands for the period to the end of 2010, while the TPA had paid only \$9M

<sup>16</sup> The City of Toronto successfully intervened in two cases in the Supreme Court of Canada:

In the first case, decided in 2010, [\*Montréal \(City\) v. Montreal Port Authority\*](#), the Court stated:

“Parliament intended Crown corporations and managers of federal property to make payments in lieu on the basis of the existing tax system in each municipality, to the extent possible as if they were required to pay tax as owners or occupants.[para. 42]

“Thus, the purpose of the *PILT Act* is to establish a system of payments in lieu that reflects the actual tax situation in the places where federal property is located.” [para. 46]

In the second case, decided in 2012, the Court in [\*Halifax \(Regional Municipality\) v. Canada \(Public Works and Government Services\)\*](#) stated:

“Just as fairness to the Federal Crown demands that the Minister retain the discretion to come to his own opinion on property value, fairness to municipalities demands that the Minister’s opinion be informed by the tax system that would apply to the federal property in issue if it were taxable ...

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“But the Act is directed to fair and equitable PILTs with reference to what taxes would be payable if the site were taxable” ...

“The Minister’s position is also at odds with the broader policy of the *PILT Act*, which is to treat municipalities fairly. It can hardly be thought either fair or equitable to conclude that 42 acres in the middle of a major metropolitan centre has no value for assessment purposes.

The City, having [won at the Federal Court of Canada](#) on this precise issue in 2010, hasn’t taken that Court’s decision back to the Disputes Resolution Tribunal, in relation to the Island Airport lands.

<sup>17</sup> A relatively new term for areas overwhelmed by noise and pollution from Airports. From <http://www.truth-out.org/news/item/42161-the-collateral-damage-of-the-us-s-airport-sacrifice-zones>:

A sacrifice zone is a geographic area -- most commonly found in low-income and minority communities -- that has been permanently impaired by environmental damage or economic disinvestment.

It's sacrificed, in theory, for the "greater good".

<sup>18</sup> Ken Greenberg, Anne Golden, David Crombie, Jack Diamond, and Paul Bedford, writing in the Toronto Star on Feb 9, 2014

<sup>19</sup> City of Toronto, “Profile Toronto,” April 2017 <https://www.toronto.ca/wp-content/uploads/2017/10/9773-How-Does-the-City-Grow-April-2017.pdf>

<sup>20</sup> [Statistics Canada data](#) indicate that Toronto is 36<sup>th</sup> in Canada in terms of volume of goods passing through its port – 1,797,800t, or 0.39% of total goods through Canadian ports.

<sup>21</sup> See paragraph 4.7 and 4.9.

<sup>22</sup> The *Canada Marine Act*, in section 14, requires that directors be appointed in consultation with users selected by the Minister or the classes of users mentioned in the letters patent. No such consultation has occurred – for any appointees to the TPA Board.

<sup>24</sup> The [Watson Report](#), issued by Mary Dawson, the Federal Conflict of Interest and Ethics Commissioner, on June 25, 2009, states, on page 10:

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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.

<sup>25</sup> These directors were:

Craig Rix, was an aide to Finance minister Jim Flaherty when he was a member of the Mike Harris government in Ontario.

Christopher M. Henley, was a donor to the Federal Conservatives - \$1000 to federal Tories in 2006.

Douglas Reid, teaches and conducts research in business strategy at Queen's School of Business, Queen's University.

Krista L. Scaldwell, worked for the Ontario Conservatives at Queen's Park.

Colin D. Watson who, with Robert Deluce, was a director at Spar Aerospace in 2002. Spar gave \$4,000 to the Conservatives prior to the ban on corporate donations. Although admittedly a friend of Deluce's, the federal Ethics Commissioner [found](#) that there are friends, and there are friends, exonerating him from voting to support Mr. Deluce's business as a TPA director

Mark McQueen worked as an executive assistant and advisor in the Office of the Prime Minister of Canada – Brian Mulroney.

<sup>26</sup> The recent Liberal appointments are:

- Darin Deschamps, an Oakville resident Co-Head of Wells Fargo Securities Canada, Ltd. and Head of Investment Banking and Capital Markets Canada for Wells Fargo Securities. He is said to have donated \$5,000 to the Trudeau Liberals.<sup>26</sup>
- Hellen Siwanowicz, a securities lawyer at McMillan LLP. She will "represent" the Port User Group \$357.03 contributed to the Ontario Liberal Party in 2013
- Donald MacIntyre, is a businessman who is a pilot. He will "represent" the Airport User Group.