REDACTED VERSION

May 16, 2016

STRICTLY PRIVATE AND CONFIDENTIAL

BY REGISTERED MAIL

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The Honourable Marc Garneau
Minister of Transport
Transport Canada
330 Sparks Street
Ottawa, ON K1A 0N5

Dear Minister Garneau:

Re: Request for Issuance of Exemption Order for Canada Jetlines Ltd. Pursuant to subsection 62(1) of the *Canada Transportation Act*

1. Introduction

Further to our prior discussions with members of your staff and our submission dated March 14, 2016 (copy attached at Appendix "A"), we are writing on behalf of Canada Jetlines Ltd. ("Jetlines") and Jet Metal Corp. ("Jet Metal") (collectively, the "Parties").

For the reasons outlined below, the Parties believe that it would be in the public interest for the Minister of Transport (the "Minister") to exercise his discretion under subsection 62(1) of the *Canada Transportation Act*[1] (the "Act") and issue an exemption order with respect to the requirement that Jetlines be Canadian (as defined at subsection 55(1) of the Act). Further, given that the 2009 amendments to the Act contemplate increasing the current foreign ownership restriction from 25% to up to 49% of voting equity of a Canadian air carriers, the Parties believe that an exemption order would be an appropriate and temporary measure that will allow Jetlines to launch in the short term, while the Minister takes steps to implement the 2009 amendments.

2. Confidentiality

This request and all supporting information is being provided to the Minister and his staff on a confidential basis. It contains information that the Parties and their respective affiliates and/or subsidiaries consistently treat as confidential, the disclosure of which could result in material financial loss and prejudice to the competitive position of the Parties and interference in their contractual relations and negotiations with third parties. This information is provided solely for the purposes of the Minister's consideration of Jetlines' exemption request.

The Parties do not authorize the Minister to waive any applicable privilege and do not consent to the release of this request or any information therein by the Minister to any third parties. They

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[1] *Canada Transportation Act*, S.C. 1996, c. 10, s.62(1).

also request that the Minister actively oppose and assert public interest and all other applicable forms of privilege in response to any attempt by third parties to gain access to or discovery of any such information from the Minister. Furthermore, the foregoing applies equally in respect of any additional information that the Parties may provide with regard to this request. Finally, the Parties request that the Minister immediately notify the Parties of any request for disclosure of this submission or any information subsequently provided in connection with the request for an exemption.

3. The Parties

Jetlines is a federally registered Canadian corporation in the pre-revenue stage with its head office located in Richmond, British Columbia. Jetlines plans to operate scheduled point-to-point all jet air service nationally with primary bases at the Vancouver International Airport and the Hamilton International Airport, with a secondary base at the Winnipeg International Airport. Jetlines plans to operate flights throughout Canada, the United States, Mexico and the Caribbean. Jetlines has a team of former airline professionals, led by Captain Jim Scott as Chief Executive Officer.

Recognising that despite the presence of incumbent airlines such as Air Canada and WestJet servicing the mainstream airline industry in Canada, Jetlines has determined that there is no discount airline in Canada able to service the 10 million passenger trips per year that are currently not flown due to the cost of air travel to the average Canadian traveler. As a result, Jetlines plans to use the proven commercial aviation ultra-low cost carrier ("ULCC")[2] profitability model to attract new Canadian passengers with low airfares and plans to retain these passengers by demonstrating a passion for service. As a result of using the ULCC business model, Jetlines intends to operate into Canada's secondary airports that have lower operating costs. Many of these airports are currently underserved or are not served with jet passenger aircraft service altogether. [redacted]

In order to facilitate the launch of the ULCC, earlier this year, Jetlines entered into an agreement with Jet Metal for a business combination transaction.[3] Jet Metal brings a stock exchange listing on the TSX Venture Exchange, [redacted] and a management team with a strong track record in raising capital from domestic and foreign investors. Please refer to Appendix "B" for the biographies of the combined Jetlines and Jet Metal teams.

[redacted]

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[2] The proven ULCC model provides the capability for specifically designed airlines to reduce their costs in a manner that provides scheduled airline service at base airfares averaging 40% below their nearest competitor thus creating new passenger demand by market stimulation.

[3] See Jetlines Press Release, *Jetlines Moving Forward,* February 17, 2016, available online at: <http://www.jetlines.ca/news-room/>.

The initial funds that will be available upon completion of the transaction will, among other things, serve to enter into agreements to acquire initial airplanes allowing Jetlines to complete the Transport Canada Air Operator Certificate ("AOC") process. This in turn is important to advance Jetlines' Canada Transportation Agency (the "Agency") licencing process and prepare for a commercial launch.[4]

[redacted] Investors from the United States and Europe that will be participating in the second round of financing have already been identified and are ready to invest if (i) the foreign ownership restriction can be increased to 49% of voting equity of a Canadian air carriers (as contemplated by the 2009 amendments to the Act) or (ii) an exemption order is issued by the Minister.

4. Need for Foreign Investment

a. *Strong Interest by Foreign Investors*

As outlined in our submission dated March 14, 2016, Canada is the only G-7 country that does not have an ULCC. The principal reason for this is the lack of available risk capital for the launch of such a service. The ULCC model is globally proven and successful with companies such as EasyJet, Ryanair, Allegiant, Spirit and Air Asia achieving tremendous growth and profitability.

Jetlines has spent the past two years meeting with various Canadian financial institutions, institutional investors and high net-worth individuals in an effort to obtain the requisite funding requirements outlined by the Agency. While there is significant interest from Canadian investors to support the launch of the ULCC, it is not sufficient to meet the capital requirements imposed by the Agency under the licencing process.

On the other hand, when meeting with potential international investors, there is significant interest and capital available to support the launch of an ULCC in Canada. However, the current foreign ownership limit of 25% is too restrictive to attract suitable international investors. Based on the work already done by Jetlines and Jet Metal with prospective investors in the United States and Europe, it is clear that should the foreign ownership limit be raised to 49% of voting equity of a Canadian air carriers, foreign investors would be willing to provide the requisite lead order capital, with Canadian capital markets picking up the balance.

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[4] Assuming Jetlines can obtain the requisite financing and licensing approvals, the Parties anticipate that commercial launch could occur by the end of this year.

b. Conclusions from the Pathways Report

On February 25, 2016, you tabled before Parliament a report[5] that reviewed the Canadian transportation system and the legal and regulatory frameworks which govern it. The report was the result of 18 months of analysis, including over 340 stakeholder consultations across Canada and international travel to research and analyze models and best practices, over 200 stakeholder submissions and over 30 review secretariat commissioned studies.

The report is viewed by the airline industry as being well-balanced and practical. Among its many findings, the following strongly support our request for an exemption order under subsection 62(1) of the Act:

1. ULCCs have been highly successful in other major aviation markets, inducing significant growth in traffic volumes. Ultra-low cost services involve very low ticket prices to consumers for services between secondary or tertiary airports.
2. In 2012, the Conference Board of Canada estimated that as many as 5 million Canadians were crossing into the United States in an effort to access lower cost flights.
3. Canada's small investment market makes it difficult for small operators to grow, and for new competitors to enter the market. The two largest Canadian carriers together control more than 80 percent of the domestic market. A lack of competition is consistently cited among the reasons Canadians generally face higher airfares.
4. Canada has a relatively small pool of capital with the expertise and interest in investing in aviation. It may be impossible for a new competitor to enter the market, since there are simply not enough investors within Canada to provide 75 percent of the capital required to launch a commercial air carrier. A consequence of this is that many smaller markets are underserved (or not served at all) by existing carriers. Canadian travelers face relatively-high prices when compared to similar jurisdictions overseas (even when controlling for government taxes and user fees for airports).

Currently, both Air Canada and WestJet are experiencing record profits and passenger load factors. According to The Conference Board of Canada's latest *Canadian Industrial Outlook: Canada's Air Transportation Industry,*[6] Canada's airline industry's pre-tax profits are expected to reach $1.5 billion in 2016 and at current oil prices, Canada's air transportation industry is realizing significant savings that, in turn, has pushed profitability to record levels.

[5] *Pathways: Connecting Canada's Transportation System to the World*, February 25, 2016, available online at: < http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html >.

[6] Canada's Air Transportation Industry: Industrial Outlook Winter 2016, The Conference Board of Canada, 12 pages, March 3, 2016, Report by Todd A. Crawford.

Regrettably, while record profits are being achieved by legacy air carriers such as Air Canada and WestJet, none of the potential savings are being passed along to Canadian air travelers.

The Parties are of the view that should the Minister grant an exemption order under subsection 62(1) of the Act, Jetlines would focus on under-served and non-served markets and would develop its own market through price stimulated passengers currently not flying. This will be achieved in large part due to the ULCC model which is designed to pass along savings to passengers.

c. *Indirect Service Providers*

Recently, the Agency appears to have taken a less restrictive approach to Canadian air policy, as it relates to Indirect Service Providers ("ISPs"). Earlier this year, it launched a consultation process to determine whether persons who do not operate any aircraft, but market and sell air services to the public, should be required to hold Agency licences. It had been argued that by allowing ISPs to operate through reselling of contracted air service, this would, in theory, allow access to air services in vacated, under-served, or unserved markets in Canada. Jetlines is of the firm view that the ISP model is not sustainable in these markets.

While recognizing that the ISP model may benefit specific purpose tour operations (e.g., connecting consumers to ski or sun hotel package vacations), it is evident that the ISP model is not designed to be sustainable for secondary markets by a scheduled carrier. Jetlines has run financial models based on the prices announced by two of Canada's leading ISPs and has concluded that there is no sustainable way they can sustain such a pricing model for routes into and from secondary markets. In one case, even assuming a 100% load factor and $50 of ancillary revenue per person (which are extremely favorable factors for the ISP), the ISP would still lose money over a twelve-month period.

Simply put, ISPs rely on a dual margin business structure – one at the air operator level and the other at the booking level. Building a dual margin into a discount air service for secondary markets and/or vacated, under-served, or unserved markets is not one which can be maintained in the short or even near term. To the extent it is helpful, Jetlines would be willing to share its analysis and financial models in support of this conclusions.

Accordingly, the Parties do not believe that the ISPs can provide the requisite in vacated, under-served, or unserved Canadian markets.

d. *Foreign Ownership Concerns*

Jetlines is alive to the hypothetical concerns raised that an increase in foreign ownership to 49% of voting equity of a Canadian air carriers may allow foreign airlines to not only acquire a significant interest in a Canadian airline, but that they could use such an interest to direct Canadian passengers into their network system(s) – as opposed to them being directed to the Air Canada or WestJet networks. To alleviate any such concerns and expedite the issuance of an exemption order pursuant to subsection 62(1) of the Act, the Parties are amenable to providing the Minister binding commitments for the duration of the exemption order confirming that it will not allow any foreign airline holding an interest in Jetlines (through the normal course of purchasing its publicly listed shares) to direct Canadian passengers into their networks.

At issue is the belief that certain international airlines receive unfair subsidies from their governments that allow them to offer artificially lower prices to attract Canadian passengers. Specifically, there are concerns with what is commonly referred as the ME3 Airlines (i.e., Qatar Airways, Etihad Airways and Emirates). In the United States, the organization *Coalition for Open and Fair Skies* lobbies against ME3 Airlines from gaining connectivity into North America. It is noteworthy that the organization is a coalition consisting of American Airlines, Delta Air Lines and United Airlines, along with the Air Line Pilots Association, Int'l, the Allied Pilots Association, the Airline Division of the International Brotherhood of Teamsters, the Association of Flight Attendants-CWA, the Association of Professional Flight Attendants, the Communications Workers of America and the Southwest Airlines Pilots' Association. They claim that "[s]ince 2004, the governments of Qatar and the UAE have provided $42 billion in subsidies and other unfair benefits to Qatar Airways, Etihad Airways and Emirates."[7]

Jetlines has examined the possibility of commercial agreements with the ME3 Airlines, including meeting with the CEO of Qatar Airways at his request. The result of this examination is that <u>Jetlines cannot and will not enter into an agreement with any international carrier to supply feed or connectivity access</u>. The basic reason for this position is that the ULCC model only works when there are no code-sharing, interline or other commercial agreements for passenger feed. These arrangements are based on a complex settlement system that does not allow for the ULCC airline to exclusively use its own website for booking passengers and adds significant costs that are inconsistent with the ULCC model. Further, Jetlines is not aware of a single ULCC airline in the world that has such a business arrangement with another carrier, let alone an ME3 Airline.

As discussed in more detail below, to the extent the Minister deems it appropriate to impose conditions in connection with the issuance of an exemption order, the Parties would be amenable to being precluded from flying into or from airports in Montreal and Toronto. This would effectively address any concerns that any ME3 (or other foreign airline) could use Jetlines to gain connectivity access to the Canadian domestic market.

e. Options available to the Minister

As previously communicated to the Minister's staff, the Parties are of the view that there are two regulatory options available to the Minister to allow the launch of a ULCC in the public interest: (i) have the Governor in Council, upon recommendation by the Minister, pass a regulation increasing the foreign ownership limit to 49% of voting equity of a Canadian air carriers, or (ii) have the Minister order an exemption, specific to Jetlines, which permits Jetlines to have foreign ownership of up to 49% of voting equity of a Canadian air carriers.

Our team has also had several meetings, teleconferences and discussions with senior officials from Transport Canada. Our principal contact has been Sara Wiebe, Director General Air Policy. [redacted]

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[7] Partnership for Open and Fair Skies, *Massive Subsidies Are Distorting the International Aviation Market*, available online at: < http://www.openandfairskies.com/subsidies/>.

[redacted] there is a strong preference by Transport Canada to go through a complete consultation exercise. In addition, time would also be required to develop and rollout the requisite regulatory framework (including the potential creation of separate classes of non-Canadians might have different percentage limitations within the total foreign ownership threshold) before making a recommendation to the Governor in Council. The Parties understand that this can take up to 24 months.

Jetlines is of the view that a comprehensive consultation process has already occurred as part of the *Pathways Report*, as discussed above. It is reasonable to assume that Transport Canada will likely approach the same stakeholders that were recently consulted for the Report and, given the currency of the report, receive the same views. With respect to the creation of separate classes of non-Canadians, this type of framework would be unworkable within the variable voting share structure that a public company would need to establish. Capital intensive businesses such as airlines need to be public in order to access the necessary capital to finance operations and expand.

Ultimately, Jetlines cannot wait for the results of the Transport Canada process to conclude. From a practical business standpoint, such a delay would seriously compromise Jetlines' prospects of launching the ULCC in the foreseeable future. Start-up companies with world class teams, such as Jetlines, require significant funds to operate and Jetlines cannot continue indefinitely without being able to complete the capital raise required to obtain its CTA license and commence air operations. In addition, following the financial crisis, global financial markets have been in a continuous state of instability. Economic conditions can change quickly and while foreign investors that are interested in investing at the present time have been identified, changing global financial and economic conditions can result in those investors no longer being interested in 12 to 24 months. More importantly, Canadian consumers have paid high airfares for too long and Jetlines provides an immediate solution to that problem that affects all Canadians.

Simply put, without greater access to foreign capital, Jetlines cannot meet the Agency's financial requirements for a licence and foreign investors are not interested in investing without an increase in the foreign ownership limit.

f. Minister Has Authority to Issue and Exemption Order

Under subsection 62(1) of the Act, the Minister has the ability to issue a domestic license to a non-Canadian where it is necessary or advisable in the public interest.

The Parties submit that Jetlines establishing a ULCC would be in the public interest for the following reasons:

i. **Better Connectivity.** Better air connections between Canadian communities that are currently not served or under-served (e.g. Hamilton, Kitchener-Waterloo, Winnipeg, Prince Rupert).

ii. **Reduced Airfare for Canadian Consumers.** The ULCC model will allow travelling Canadians to save up to 30% “net” on airfares. The traveling public would have access to a pricing range not currently provided.

iii. **Increased Competition.** Jetlines would provide true competition by operating flights into airports that can presently support that air service, but have been unsuccessful in soliciting the two major Canadian carriers to enter their market. Also, in many markets the public would have the choice of flying on a jet instead of only a turbo-prop aircraft.

iv. **Encourage Consumers to Fly From Canada.** Repatriation of the high percentage of Canadian passengers seeking low cost air service from US carriers and bring the associated revenue and economic activity back to Canada.

v. **Increase Air Travel in Canada.** Stimulating up to 10,000,000 new Canadian air passenger trips per year that are predominantly complementary and adjunct to those serviced by incumbent national carriers.

vi. **Creation of New Jobs.** Every 1,000 new passengers into the market supports 3.3 new jobs and contributes CAD $750,000 to the national GDP (10 million passenger trips would potentially result in 33,000 new jobs and CAD $7.5 billion to GDP).

vii. **Balanced Air Service Policy.** Secondary airports, various Chambers of Commerce and the Canadian travelling public would have their needs met with Jetlines offering service to the secondary market and at a reduced ticket price. This would ensure an air service policy that is seen to address all Canadians, not just the need of major city centres and two major airlines. The previous air policy appeared to focus on protecting the major carriers during times of restructuring and a return to sustainable profitability, which has now occurred.

viii. **Ensure Financial Fitness in Canadian Air Policy.** Jetlines with full CTA financial fitness provides a better air policy than any ISPs attempt to enter the same market without proper funding with past and possible future cancelation of service at short notice once tickets have been purchased.[8]

ix. **Protection from Possible Improper Foreign Government Subsidies**. The conditions proposed by Jetlines would provide protection to the Canadian airlines that possible improper foreign government subsidies would not enter the market.

x. **Provides Improvements to the Public During any Consultation Process**. Although Jetlines’ position is that enough consultation has occurred on this issue, an exemption will demonstrate government action in improved air policy during any lengthy consultation process.

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[8] Shut down of a recent ISPs attempt at schedule air service is widely known being the result of the lack of funding to secure the intended aircraft, not CTA matters as reported to the media

Practically speaking, this would mean that foreign investors would be allowed to hold an interest in Jetlines greater than the current 25% but no more than 49% of voting equity of a Canadian air carriers. The Parties are amenable that the exercise of Minister's discretion under subsection 62(1) of the Act be provided on a one-off basis in order to allow Jetlines to launch the ULCC, while the Government of Canada spends additional time establishing a broader air policy on foreign ownership.

Should the Minister issue such an exemption order, the Parties believe that they could secure the requisite financing within [redacted] and be in a position to launch the ULCC, [redacted] after securing full funding, on multiple routes across Canada as per Jetlines' business plan. Jetlines intends to hire or create [redacted]

g. Conditions

Given the importance of quickly securing foreign investment for the launch of the ULCC, the Parties would be amenable to conditions being imposed in an effort to expedite the process, should the Minister deem them to be necessary. These conditions could be crafted in a manner to satisfy the Minister that a non-Canadian would not have effective control of Jetlines. Other conditions could include Jetlines obtaining the Minister's approval of any foreign investor investing in Jetlines, providing regular updates on financing status to the Minister, a commitment to service certain Canadian routes on a priority basis during the initial ULCC launch phase, etc.

In addition, Jetlines is also prepared to accept conditions that ensures that it operates as a true ULCC. This will provide comfort to other industry stakeholders that Jetlines will provide lower airfares and service underserved secondary markets. In order to operate as an ULCC in Canada, an airline would have to avoid providing service into Pearson International Airport and Montreal Trudeau Airport. These are some of the highest cost airports in Canada and these costs would disrupt the ULCC model. In addition, as discussed above, Jetlines has no intention in connecting with a foreign airline at these major airports to provide passenger feed to them in return for foreign investment. As a result, Jetlines has no intention to provide service into these airports.

The Parties remain open to discussing what conditions, if any, should accompany an exemption order under subsection 62(1) of the Act. Jetlines would also not object to anyone else applying for a exemption on similar terms.

5. Conclusion

Ultimately high airfares and lack of regular air service to secondary airports are a significant issue for Canadians. Collectively this is stifling economic development and pushing Canadians to move money outside of the Canadian economy by travelling across the border to access low cost airlines from the United States. This exemption provides the Minister with an immediate solution to these issues, while allowing additional time to develop a broader air policy related to foreign ownership of Canadian airlines.

For the reasons outlined above, the Parties submit that it would be in the public interest for the Minister to issue an exemption order under subsection 62(1) of the Act.

Should you have any questions or wish to further discuss, please do not hesitate to contact the undersigned.

Yours truly,

Jim Scott **CEO** **Canada Jetlines Ltd.**	**Mark Morabito** **CEO** **Jet Metal Corp.**

cc: **Imran Ahmad**, *Cassels, Brock & Blackwell LLP*

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APPENDIX “A”

REDACTED VERSION

BRIEFING NOTE

Date: **March 14, 2016**

To: [redacted]

I. Executive Summary

Further to our meeting at the end of February, this briefing note provides a high-level overview of the proposed launch of Canada's first ultra-low cost carrier ("ULCC") and outlines steps the Federal Government can take to support this initiative (including using the existing legislative and regulatory tools at its disposal). We would be happy to provide any additional information that may be required and to have a follow-up meeting to discuss the contents of this briefing note.

Canada is on the only G-7 country that does not have an ULCC. The principal reason for this is the lack available risk capital for the launch of such a service. The ULCC model is globally proven and successful with companies such as EasyJet, Ryanair, Allegiant, Spirit and Air Asia achieving tremendous growth and profitability.

Jetlines is requesting that the Federal Government increase the foreign ownership limit applicable to a Canadian airline from the current 25% to 49%. This will enable Jetlines to access the capital necessary to establish Canada's first ULCC.

As Canada's first ULCC service, Jetlines will be able to:

1. provide Canadians with a cost effective air travel option as the only Canadian ULCC and in so doing provide economic benefits to many stakeholders across Canada;

2. establish bases of operation in Vancouver, Winnipeg, Kitchener and Hamilton. The focus cities of Hamilton and Vancouver will result in the repatriation of Canadian air travelers currently using Buffalo and Bellingham to access United States based ULCC carriers;

3. Jetlines has identified over 200 routes, most of which are currently under serviced or not being serviced at all. The existence of a Canadian ULCC will stimulate more air travel in Canada, allow Canadians to better connect with each other and stimulate economic growth; and

4. [redacted]

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This is truly a national unity endeavor. A Canadian airline, with a head office in British Columbia, a maintenance base in Manitoba, a secondary operations base in Ontario, flying planes manufactured by a Quebec institution (that also has a significant presence in Ontario). It would be very difficult to identify a Canadian who doesn't want lower airfares or doesn't want more regular air service to their community.

II. Background

Canada Jetlines Ltd. ("Jetlines"), a Canadian federally incorporated company, is planning to launch Canada's first ULCC airline. In order to facilitate the launch of the ULCC, Jetlines has entered into an agreement with Jet Metal Corp. ("Jet") for a business combination transaction.[1] Jet brings a stock exchange listing on the TSX Venture Exchange, CAD$2 million in cash and a management team with a strong track record in raising capital from domestic and foreign investors.

[redacted]. The initial funds that will be available upon completion of the transaction will, among other things, serve to advance Jetlines' Canada Transportation Agency (the "Agency") licensing process, acquire initial airplanes, complete the Transport Canada Air Operator Certificate ("AOC") and prepare for a commercial launch.

[redacted]

Jetlines has spent the past [redacted] years meeting with various financial institutions, institutional investors and high net-worth individuals in Canada in an effort to obtain the requisite funding requirements of the CTA. While there is significant interest from Canadian investors to support the launch of the ULCC, it is not sufficient to meet the capital requirements imposed by the Agency under the licensing process. On the other hand, when meeting with potential international investors, there is significant interest and capital available to support the launch of a ULCC in Canada. However, the current foreign ownership limit of 25% is too restrictive to attract suitable international investors. Based on the work already done by Jetlines and Jet with prospective investors in Europe and the United States, it is clear that should the foreign ownership limit be raised to 49%, foreign investors would be willing to provide the requisite lead order capital, with Canadian capital markets picking up the balance.

The Jetlines team has spent over three years developing a business plan and route structure for a Canadian ULCC airline. It has assembled a world class management team with deep experience within the airline industry and start-up companies. The original Jetlines business plan involved

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[1] See Jetlines Press Release, *Jetlines Moving Forward*, February 17, 2016, available online at: <http://www.jetlines.ca/news-room/>/

[2] In April 2014, Jetlines received a CTA Stage One letter requiring funding of approximately CAD$40,000,000 to be licensed as a Canadian large aircraft airline. In January 2016, Jetlines submitted an updated airline application to the CTA and was advised that Jetlines will receive a new Stage One Letter in March 2016 with a requirement of approximately CAD$40 million.

initially using [redacted] and thereafter transforming into a fleet of [redacted]. [redacted] There are a number of operating international airlines that are customers of [redacted] and have not attained this status. The data and material prepared by management with the assistance of [redacted] is now in the hands of the Federal Government. Jetlines still plans to utilize [redacted] aircraft on routes which justify the larger [redacted]; however, Jetlines has been advised that due to a planned redesign the [redacted] aircraft may not be available as currently planned.

When Jetlines was initially developing its business plan, the [redacted] provided an attractive option; however, there was significant uncertainty regarding the [redacted]. However, Jetlines recently re-evaluated its business plan and it has identified an opportunity to use the [redacted] on many of its routes. Since that time, [redacted] This will provide significant revenue to [redacted] at this critical juncture of the [redacted]. By making this change the government would therefore directly assist [redacted]

[redacted] has agreed to provide data inputs for the operational model to, where applicable, replace the confidential [redacted] data. Once that process is complete, this new operational and logistical data set, and business plan, will be provided to the Federal Government in short order.

Jetlines is requesting Government of Canada assistance in the form of an increase in the foreign ownership limit to 49% on an expedited basis for several reasons. First, the foreign ownership limit has been under review since 2009, several reports support the change and there is justification that supports implementation without further delay. Second, Jetlines will be able to quickly provide orders for [redacted] aircraft building market confidence for the product and generating revenue for [redacted] at a critical time. Third, Canadian travelers have paid high airfares for too long and would receive immediate benefits from the launch of an ULCC (both in terms of pricing offered by Jetlines and the increased competition with respect to air ticket pricing). Lastly, a ULCC airline will stimulate economic growth that can help to counteract slowdowns in the resource sector. It is also important to note that start-up companies with world class teams like Jetlines take money to operate and Jetlines cannot continue indefinitely without being able to complete the capital raising required to obtain its CTA license and start real operations.

III. Legislative History

The current foreign ownership limit of 25% for Canadian airlines was originally introduced in the *National Transportation Act*, 1987 and mirrored the equivalent US limit. The Government of Canada has recognized for some time the need to increase the foreign ownership limit for Canadian airlines from 25% to 49% in order to attract additional capital to the airline industry.

In 2009, the *Budget Implementation Act* was passed and included an amendment to the *Canada Transportation Act* (the "CTA").[3] The amendment essentially increased the foreign investment restriction from 25% to 49% - with the important caveat that control must remain with Canadians. This amendment has not yet been brought into force, but demonstrated the will of Parliament to raise the foreign investment restriction so as to allow the airline industry to access foreign capital.

More recently, the Government of Canada released a report titled *Pathways: Connecting Canada's Transportation System to the World - Canada Transportation Act Review – Feb 25, 2016* (the "Transportation Report"). Relevant excerpts from the Transportation Report are set out below.

> *"Small, privately held carriers,* ***<u>prospective start-ups</u>****, industry analysts, and others report that the 25 percent foreign ownership limit is a barrier to entry: in contrast to larger markets like the U.S.,* ***<u>there may not be enough capital in Canada to finance 75 percent of a new national carrier</u>****."*
>
> *"In Canada, "there is room to increase competitiveness, as evidenced by the high load factors and the record profits of the two largest carriers,* ***<u>as well as the fact that Canada is the only major air market without an ultra-low-cost carrier</u>****. Such carriers have been highly successful in every other major aviation market, as they generate significant traffic, offer the best average returns on investment, and provide increased connectivity and choice, at lower prices."*
>
> *"The Review recommends that the Government of Canada amend the Canada Transportation Act and Canadian Aviation Regulations to:* ***<u>a. increase foreign ownership limits to at least 49 percent for air carriers operating commercial passenger services</u>****."*
>
> *"The Review has heard that Canada's small investment market makes it difficult, if not impossible, for small operators to grow, and for new competitors to enter the market. The*
>
> *Canadian market is dominated by the two largest carriers that together control more than 80 percent of the domestic market. During consultations, more than one stakeholder referred to Canada as "the land that ultra-low cost carriers have forgot,"* ***<u>and a lack of competition is consistently cited among the reasons Canadians generally face higher airfares."</u>***
>
> [Emphasis added]

IV. <u>Government Request and Implementation Options</u>

Jetlines and Jet submit that an increase of the foreign ownership limit under the CTA from 25% to 49% will not only support the launch of Canada's first ULCC but also strengthen the Canadian airline industry as a whole by allowing it to access increased foreign capital. Moreover, such an increase would be consistent with legislative change to the CTA in 2009 and the recommendation outlined in the recent Transportation Report.

To this end, Jetlines and Jet believe that there are two potential options available to the Federal Government to effect this change. The first option is to have the Governor in Council, upon

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[3] See Schedule "A" for the excerpt.

recommendation by the Minister of Transport, pass a regulation increasing the foreign ownership limit to 49%. The second option is for the Minister of Transport to provide an exemption, specific to Jetlines, which permits Jetlines to have foreign ownership of up to 49%.

Option #1 – Regulation

The term "Canadian" is current defined in subjections 55(1) of the CTA as follows:

> ***Canadian*** means a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least seventy-five per cent, **or such lesser percentage as the Governor in Council may by regulation specify**, of the voting interests are owned and controlled by Canadians; [Emphasis added]

In its current form, the CTA allows the Governor in Council to reduce the percentage of voting interests of an airline that must be owned and controlled by Canadians. In other words, the percentage of Canadian ownership can theoretically be reduced from 75% to 51% by way or regulatory amendment - a reduction that would have as its corollary a potential increase of the foreign ownership limit from 25% to 49%.

Another option would be to rely on the amendment from 2009 by way of the *Budget Implementation Act* discussed above. It included an amendment to the CTA[4] which essentially increased the foreign investment restriction from 25% to 49% while ensuring that ultimate control remains with Canadians. Although the amendment was passed by Parliament, it has not come into force yet (it can be enacted upon decision by the cabinet following a recommendation by the Minister of Transport).

The 2009 amendment creates a legislative framework to establish regulations (a) setting a foreign ownership threshold, which can be no more than 49%, and (b) creating separate classes of non-Canadians that may have different percentage limits within the total foreign ownership threshold. The 2009 amendment could be brought into force and the requisite regulatory changes could be quickly.

Option #2 – Exemption

Under subsection 62(1) of the CTA, the Minister of Transport has the ability to issue a domestic license to a non-Canadian where it is necessary or advisable in the public interest. We believe that should Alternative #1 not be available at this time, the Minister of Transportation could nonetheless exercise his discretion. Practically, this would mean that a foreign investor would be allows to own more than the current 25% foreign ownership limit.

The exercise of his discretion could be provided on a one-off basis in order to allow Jetlines to establish the ULCC, while the Government of Canada spends additional time (i) developing the regulations discussed above, and/or (ii) establishing a broader air policy on foreign ownership. Special conditions could be attached to any such exemption. Jetlines and Jet remain open to

[4] See Schedule "A" for the excerpt.

further discussions on whether any conditions could be associated with the exercise of the Minister's discretion.

V. Benefits to Canada

There are numerous benefits to Canada that would materialize immediately from an increase in the foreign ownership limit from 25% to 49%. Such a change would provide Jetlines with the necessary capital to establish Canada's first and only ULCC.

- ***National Benefits***[5]
    - Jetlines will repatriate the high percentage of Canadian passengers seeking low cost air service from US carriers and bring the associated revenue back to Canada.
    - Better air connections between Canadian communities that are currently not served or under-served (e.g. Winnipeg, Hamilton, Kitchener-Waterloo).
    - New routes will better connect Canadians to each other.
    - Stimulating 10,000,000 new Canadian air passenger trips per year that are predominantly complementary and adjunct to those serviced by incumbent national carriers.
    - Every 1,000 new passengers into the market supports 3.3 new jobs and contributes CAD$750,000 to the national GDP (10 million passenger trips would potentially result in 33,000 new jobs and CAD$7.5 billion to GDP).
    - Given Jetlines' ULCC model, travelling Canadians can expect to save up to 30% "net" on airfares.
- ***Regional Benefits***
    - [redacted]
    - Head office in British Columbia will create approximately 1,000 direct jobs and approximately 4,000 total jobs with up to CAD$745 million in total economic output by year four of operations.
    - [redacted]

[5] Reference: The Conference Board of Canada: Growing Canada's Economy: A New National Air Transportation Policy – September 2013 available online at: <http://www.conferenceboard.ca/topics/engery-enviro/airpolicy.aspx/>/

[redacted]. It will also bring a significant increase in air traffic to the airport.

- Passenger service provided to multiple secondary airports in B.C., Alberta, Saskatchewan, Manitoba, Ontario, Quebec and the Maritime Provinces.

This is truly a national unity endeavor. A Canadian airline, with a head office in British Columbia, a maintenance base in [redacted], a secondary operations base in Ontario, and that is [redacted] It would be very difficult to identify a Canadian who doesn't want lower airfares or doesn't want more regular air service to their community.

VI. Air Policy Considerations

There are several considerations from an air policy perspective that will factor into the Government of Canada's decision making process and are outlined below.

Control in Fact Test

It is a requirement of subsection 55(1) of the CTA that an airline be "controlled in fact" by Canadians. The Agency has published a document that sets out the factors that it commonly considers when evaluating whether a corporation or other entity is "controlled in fact" by Canadians.[6]

It is important to distinguish between two types of control: control in law (known as *de jure* or legal control) and control in fact (known as *de facto* control). Control in law is generally manifested by the ownership of such number of securities that carry the right to a majority of votes. Control in fact goes beyond control in law and includes the ability to exert control by any direct or indirect influence.

What Jetlines is proposing to change relates solely to control in law, increasing the foreign ownership limitation to 49%. **Jetlines is not proposing any change to the control in fact assessment.**

The Agency will continue to be able to evaluate Jetlines or any other airline to ensure that it is "controlled in fact" by Canadians. Where the Agency determines that a licensee ceases to meet the requirement, it must suspend or cancel the appropriate license.

Reciprocation from Foreign Countries

While some argue that any increase in the foreign ownership limit must be accompanied by a similar increase by the United States, the practical reality is that the United States is unlikely to reciprocate in the foreseeable future.

Interestingly, the Transportation Report directly addresses this point (see excerpt below). From a practical standpoint, by insisting on reciprocity from the United States as a condition precedent for any increase to the foreign ownership limit, Canada is effectively limiting the ability of the entire Canadian airline industry (not just Jetlines) to access much needed capital. Failure to

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[6] https://www.otc-cta.gc.ca/eng/control-in-fact

increase the foreign ownership limit is resulting in the Canadian airline industry hurting itself and ultimately Canadian passengers by not providing competitive pricing and services.

> *"…**a policy of insisting that increases to foreign ownership be on a reciprocal basis effectively restricts access to Canada's largest and most likely source of capital—the United States**—as the politics around this issue in that country are such that it is unlikely to increase foreign ownership limits for the foreseeable future."*
>
> *"The United States (Canadian operators' most likely source of capital) is unlikely to increase its ownership limits for domestic and political reasons for the foreseeable future. **It is also noted that Air Canada and WestJet have called for increased ownership limits in the past when they were in need of investment**."*

Moreover, notwithstanding the reciprocity issue with the United States, we note that the European Union allows up to 49% foreign ownership in its airlines, while Australia and New Zealand allow 100 percent foreign ownership for airlines operating within their domestic markets. These markets have very dynamic and competitive airline services for their respective citizens.

Additionally, in 2009 Canada and the European Union entered into the "Agreement on Air Transport" (Bilateral). This agreement is relatively liberal in nature and unique in that traffic rights are phased in based on permitted foreign ownership levels. Traffic rights will progressively be liberalized ultimately to the point where the Canada – E.U. Agreement would be "Open Skies". The bilateral consists of three phases:

1. 25% foreign ownership of Canadian airlines (existing).

2. 49% foreign ownership – this would result in enhanced traffic rights including additional intermediate passenger fifth freedom rights[7] and open skies for all-cargo operations.

3. "Right of Establishment" – on a reciprocal basis, permits an airline to be established in Canada with up 100% foreign ownership (and vis-a-versa). This would result in the Canada – European Union agreement being "Open Skies".

The increase to 49% ownership would move this agreement to phase 2, resulting in enhanced traffic rights between Canada and the European Union and open skies arrangement for all-cargo services.

Necessity of Establishing Separate Classes of Non-Canadians

One of the issues that has been raised by Transport Canada officials is the 2009 amendments to the CTA provided for (a) an increase in the total foreign ownership limitation to up to 49%, but also included a legislative framework to (b) create separate classes of non-Canadians that might have different percentage limitations within the total foreign ownership threshold. Transport Canada officials have indicated that they would prefer to establish regulations on (a) and (b) at the same time as opposed to rolling them out in a sequential manner.

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[7] A "fifth freedom" right is one where an airline from one country has the right to fly between two different countries. For example Cathay Pacific is able to fly from New York to Vancouver.

Jetlines' position is that the foreign ownership limitation can immediately be increase to 49% and thereafter Transport Canada can take the time it needs to consult and determine if it needs to create regulations creating separate classes of non-Canadians. Ultimately after consultation, Jetlines believes the conclusion should be that separate classes of non-Canadians are not required.

Publicly traded air operators, such as Air Canada and WestJet, can and do access capital in excess of the limit through the use of variable voting shares. A variable voting regime involves two or more classes of stock which are given different weights in votes at shareholders' meetings, such as for the election of Directors. A carrier can meet the Act's definition of being Canadian (section 55 (1) of the CTA) so long as the separate class of shares offered to non-Canadians does not carry more than 25 percent of the aggregate votes, even if the value of these shares represents more than 25 percent of the equity in the company. Creating separate classes of non-Canadians would make this structure virtually impossible to manage. An alternative to separate classes of non-Canadians is to rely on the provisions of the *Competition Act* and the *Investment Canada Act* that apply to Canadian business outside of the transportation sector. This recommendation was also contained in the Transportation Report:

> *"Expertise already exists at Industry Canada and the Competition Bureau for assessing the implications of a large foreign investment for competition, security, and other national interests that should be leveraged. These changes should contribute to narrowing the gap between Canada and other markets in terms of our relatively low level of competition and our relatively high airfares. They would also bring Canada up to the OECD average for "trade friendliness" in air transport."*
>
> *"Increasing the ownership limit would likely require safeguards for to ensure competition, a level playing field, national security, and so on.* ***Canada already has a process in place to assess issues related to competition and the national interest for large investments in Canadian businesses under the Investment Canada Act****. In other sectors outside of transport, non-Canadians who acquire control of an existing Canadian business or who wish to establish a new Canadian business are subject to the Investment Canada Act and its regulations, and they must submit a notification or an application for review."*

In addition Jetlines' view is that the creation of separate classes of non-Canadians in order to create a bargaining chip for international air policy negotiations with other countries is of limited utility. Separate classes providing different countries with different ownership limits might be useful to have other countries reciprocate with higher ownership limits for Canadians to invest in that country's airline. However, major trading partners in the European Union, Australia and New Zealand have of course already reciprocated. Further, its use to gain additional benefits, such as air connectivity into those jurisdictions is likely very limited. The more logical trade-off for that is increased air connectivity for the foreign country's airlines into Canada. The vast majority of Canadians are going to be much more concerned with their ability to access lower airfares and obtain better connectivity to secondary airports, than they are going to be concerned about their ability to acquire 49% of a foreign airline. Canadian air policy should focus on the domestic market first and foremost and operate in a manner that provides benefits to all Canadians.

SCHEDULE "A"
EXCERPT FROM 2009 BUDGET IMPLEMENTATION ACT

PART 14

1996, c. 10

CANADA TRANSPORTATION ACT

AMENDMENTS TO THE ACT

2001, c. 27, s. 222

466. The definition "Canadian" in subsection 55(1) of the *Canada Transportation Act* is replaced by the following:

"Canadian"
« *Canadien* »

"Canadian" means a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which the percentage of voting interests owned and controlled by non-Canadians is not more than

(a) in respect of all non-Canadians, the percentage specified in the regulations, or

(b) in respect of any class of non-Canadians specified in the regulations, the percentage specified in the regulations in respect of that class;

467. The Act is amended by adding the following after section 55:

Regulations

55.1 The Governor in Council may, by regulation,

(a) specify a percentage for the purpose of paragraph (*a*) of the definition "Canadian" in subsection 55(1), which percentage may not be more than 49%; and

(b) for the purpose of paragraph (*b*) of that definition, specify classes of non-Canadians and specify a percentage with respect to each such class, which percentage may not be more than 49%.

APPENDIX "B"

MANAGEMENT BIOGRAPHIES

Daniel James (Jim) Scott , BGS, MA & ATPL, Director and Chief Executive Officer – Mr. Scott is one of the founders of CJL has been working on the business model since 2005. With over 25 years of aviation experience in North America, Europe and Asia his experience includes regional jet airline operations as a pilot for Time Air (Canadian Regional Airlines) in Western Canada and as a jet airline captain for Transport Aérien Transrégional contracted to operate flights for Air France throughout Europe, and major airline operation experience as a Boeing 747-400 pilot for Cathay Pacific Airways on worldwide routes. While at Cathay Pacific Airways, Mr. Scott specialized in transport category aircraft performance at airports, specifically being involved in winter operations. As an aviation consultant he provided airline culture & safety management training to aviation companies, oversaw a major university airline feasibility study, and performed pilot testing as a Transport Canada appointed examiner. Mr. Scott holds a Canadian Airline Transport Pilots Licence endorsed for the Fokker F28 regional jet, the Boeing 747-200, and the Boeing 747-400, has 9000 hours flying experience, and is appointed by Transport Canada as a pilot examiner. He holds a Bachelor's Degree that includes the study of aviation and aircraft performance, and a Masters of Arts Degree that focused on cybercrime and corporate network intrusion prevention, both from the University of the Fraser Valley in Canada.

In addition to his aviation experience, Mr. Scott has an extensive leadership background in project start-ups, leading organizations, and financial oversight. Previously, he was a senior planner for the 2010 Vancouver Winter Olympic Games involved in organizational structure and communications of the security aspects of the games, Vice-President of an airline start-up venture (Nexus Project), local Chairperson for the Canadian Airline Pilots Association, founder and initial Chairperson for the Canadian Hong Kong Aircrew Association Officers' Pension Program that now has $120 million of assets, EDA President for the Conservative Party of Canada (WRSSC), Director for the Better Business Bureau of Mainland BC Vancouver, Director for the Society for the Policing of Cyberspace, and he ran a financial investigation unit for the Vancouver Police Department including working regularly with the BC Securities Commission and other financial regulators

Mark J. Morabito, BA, JD, Director and Executive Chairman – Mr. Morabito has over fifteen years' experience in public markets and extensive experience in capital-raising and corporate development. Mr. Morabito founded and has been the principal driving force behind a number of successful resource development companies including Alderon Iron Ore Corp., Excelsior Mining Corp. and others. He has raised over $700 million for companies and he led the team that struck an off-take agreement with Hebei, China's largest steel producer, worth over $400 million. Mr. Morabito has a BA from Simon Fraser University and completed his J.D. at the University of Western Ontario.

John Korenic , BSC, MBA, Vice President Commercial & IT – Mr. Korenic's role encompasses a wide range of commercial activities including route planning, sales and marketing, revenue generation/management including ancillary revenues, reservations, forecasting, communications and community relations. Mr. Korenic has nearly 30 years aviation experience, most recently 16 years with the Vancouver Airport Authority and prior to those 13 years with Canadian Airlines and Wardair. He is highly regarded in the industry for his broad and extensive knowledge. John has also twice been a sessional lecturer at the University of British Columbia on Air Transport Management and Policy and has participated on various tourism boards and chaired a number of committees. Mr. Korenic obtained a BSc from the University of Calgary, and an MBA degree from the University of British Columbia.

With the Vancouver Airport Authority Mr. Korenic re-launched YVR's business development and marketing strategies to make YVR one of North America's leading airports. The focus was to create an environment conducive to airlines considering YVR as a new or growth opportunity. This was evidenced by successfully attracting 12 major international airlines to YVR. In partnership with an array of airlines, John spearheaded the development and implementation of innovative and successful joint marketing programs. As Director of Alliances with Canadian Airlines, Mr. Korenic was accountable for the development, expansion and ongoing management of the airline's alliances. Prior to that role he was involved in various facets of the airline including operations, route planning, international affairs and marketing. His key accomplishments included the development of 5-year strategic plans and the restructuring of its route networks.

Rick Lang, BSc., Chief Operating Officer – Mr. Lang is an experienced airline executive specializing in airport operations, airline start-ups, and in-flight services including managing the flight attendant work force. Mr. Lang was the Vice–President of Service Delivery for the start-up airline Air Astana in Kazakhstan, an airline with scheduled service using the Boeing 767, Boeing 757, Airbus A319, Airbus A320, Airbus A321 and Embraer 190 aircraft. Previously, Mr. Lang was in-charge of World-Wide Airport Operations for Cathay Pacific Airways, Hong Kong, a position classified as General Manager in Asia, or Vice-President by North American terms. In this role Mr. Lang controlled a U.S. $200 million budget for Cathay Pacific Airways' 45 airport operations throughout the world. Between 1993 and 2000 Mr. Lang was the Director of In-flight Service Development & Standards for Cathay Pacific Airways. Mr. Lang has also held the position of Vancouver Base Manager of Cabin Crew for Canadian Airlines and Wardair. Mr. Lang holds a Bachelor of Science degree from Simon Fraser University, Canada, and has undergone business studies at INSEAD University, France.

Dixon Lawson, OMM, CD, MPM, PMP, PCIP, Vice President Strategic Planning - Mr. Lawson is a professional project manager and a former field officer in the Canadian Military. He has a Master's Degree in Project Management (MPM) and maintains his currency as a certified Project Management Professional (PMP). He is using his applied Military Science Diploma, from Cranfield University, Shrivenham, UK, to assist with his work in the technical planning and operational planning of CJL build-out and transition to the revenue stage. Mr. Lawson has well developed Portfolio/Program/Project Management knowledge and skills. He has a strong background in operational planning and support activities, managing risk, executing strategy and plans, and integrating multiple projects to achieve Program goals. He has worked on a number of large projects and programs covering a range of equipment projects of $50 - $80 million, building infrastructure project of $50 million, and a Supply Chain re-engineering project with savings valued at $200 million. In addition, Mr. Lawson has conducted airport emergency planning consulting services.

For three years Mr. Lawson was the Program Manager for security of the 2010 Vancouver Olympic Winter Games Security program where he worked as a member of the Royal Canadian Mounted Police executive management team to integrate more than 40 projects affecting the preparation and planning for security. His work impacted approximately $200 million of spending of the $525 million allocated for security.

Carlo Valente, CA, Chief Financial Officer – Mr. Valente is a chartered accountant with a background in corporate transactions, public markets and accounting obtained over a fifteen-year span with the Vancouver and Milan offices of PricewaterhouseCoopers. He is currently the CFO of Excelsior Mining and Logan Resources and Executive VP of Business Development at King & Bay West. Mr. Valente graduated from Simon Fraser University in 1997 with a BBA and obtained his CA designation in 2000. He is a member of both the Institute of Chartered Accountants of British Columbia and the Canadian Institute of Chartered Accountants.

Olen J. Aasen, J.D., Vice President, Legal – Mr. Aasen is a practicing corporate and securities lawyer. He is currently Executive VP and General Counsel with King & Bay West Management Corp., a management company that provides management services to companies in the resource sector. Mr. Aasen is also the Corporate Secretary of Alderon Iron Ore Corp. (TSX: ADV / NYSE MKT: AXX). Mr. Aasen began his career as an associate in the securities and business law group of Blake, Cassels & Graydon LLP where he gained significant experience with respect to public companies, capital markets, securities laws and the natural resources sector. He obtained his J.D. from the University of British Columbia in 2006 and is a member of the British Columbia Bar.