

**REPORT OF THE MISSISSAUGA
JUDICIAL INQUIRY**

Updating the Ethical Infrastructure

The Honourable J. Douglas Cunningham
Commissioner

Copyright © 2011 City of Mississauga

LIBRARY AND ARCHIVES CANADA CATALOGUING IN PUBLICATION

Mississauga Judicial Inquiry (Ont.)

Updating the ethical infrastructure.

J. Douglas Cunningham, commissioner.

Report of the Mississauga Judicial Inquiry.

Available also on the Internet.

Includes bibliographical references.

ISBN 978-0-9878012-0-3

1. Mississauga Judicial Injury (Ont.). 2. Conflict of interests – Ontario – Mississauga. 3. Governmental investigations – Ontario – Mississauga. 4. Municipal government – Ontario – Mississauga. I. Cunningham, J. Douglas II. Title.

JL269.5 C6 M57 2011

353.4'6309713

C2011-909052-X

Copies of this publication are available at the
Office of the City Clerk

City of Mississauga

300 City Centre Drive

Mississauga, ON L5B 3C1

and online at www.mississaugainquiry.ca

CONTENTS

Abbreviations and Acronyms / xv

INTRODUCTION

Overview / 1

The Principles of the Inquiry Process / 3

Setting Up the Inquiry / 3

 Public Inquiries / 4

 Background to This Inquiry / 4

The Inquiry Process / 5

Appointment of Commission Counsel / 5

Communications and Media Relations Officer / 5

Document Management / 6

Document Management Software / 6

 Signature / 6

 Signature Court / 7

 Transcend / 8

Confidentiality Undertakings / 8

Infrastructure / 8

viii CONTENTS

Hearing Room / 8
Offices / 9
Mississauga Judicial Inquiry Website / 9
Terms of Reference and Rules of Procedure / 9
Standing and Funding / 10
Applications for Standing and Funding / 10
Decisions on Standing and Funding / 10
Investigation / 11
Document Production / 11
Witness Interviews / 11
Notices of Alleged Misconduct / 12
Hearings / 13
Documentary Evidence / 13
Oral Evidence / 13
Expert Panel / 14
Cross-Examination / 15
Mayor Hazel McCallion's Evidence / 15
Questions from the Commissioner / 15
Submissions / 16
Addendum / 16

PHASE I – THE ENERSOURCE TRANSACTION

1 Change to Energy Structure in Mississauga / 17
Energy Structure in Ontario / 17
<i>Electricity Act, 1998</i> / 19
Request for Proposals / 20
Key Participants for the City / 20
Procedure / 20
Proposals Received and Considered / 20
Recommendation to Accept the Borealis Proposal / 22
2 Negotiation with Borealis / 23
Pre–March 29, 2000, Negotiations / 24

	The “Put” / 24
	Corporate Governance / 27
	Post–March 29, 2000, Negotiations and Authority to Instruct Solicitors / 29
	Strategic Alliance Agreement / 30
	April Press Release / 30
	Strategic Alliance Amending Agreement / 31
	Further Change to Energy Structure / 32
	Final Negotiations / 33
	David O’Brien Appointed President of Enersource / 33
	Council Approval, November 29, 2000 / 34
	Instructions from OMERS, December 3, 2000 / 35
	Communication Changes, December 4, 2000 / 37
	Reasons for the Borealis Veto and Its Importance to OMERS / 38
	Should Council Have Been Advised of the Change? / 40
	Could Council Have Been Advised of the Change? / 41
	Was Council Advised of the Borealis Veto? / 42
	Execution of Deal, December 6, 2000 / 44
	Post–December 6, 2000 / 45
3	Problem, Investigation, and Proposed Changes / 46
	The Penny Drops: Borealis’s Veto Discovered by Council / 46
	City Council’s Investigation / 47
	Contact with Mr. Houston / 47
	Contact with Mr. Lever / 49
	Council Meeting, October 24, 2007 / 50
	The Jeffrey Singer Investigation / 51
	Correspondence in December 2008 / 51
	Proposed Changes to the Shareholders’ Agreement / 52
4	Governance Issues Raised by the Enersource Transaction / 54
	Analysis / 54
	Duty to Advise Council / 54
	Mr. O’Brien’s Two Roles / 56
	Summary of Key Findings / 56

RECOMMENDATIONS FOR PHASE I / 57

Informal Meetings of Council / 57

Minutes of In Camera Meetings / 57

Importance of Involvement of City Solicitor / 59

Certification of Personal Familiarity / 59

PHASE II – CITY CENTRE LAND AND WORLD CLASS DEVELOPMENTS

5 Factual Background / 61

City Council's Goal of a Five-Star Hotel / 62

The Mayor's Vision / 63

Complementary Use Important to City Centre Land Owners / 64

World Class Developments / 66

Corporate History of WCD / 67

Peter McCallion's Interest in WCD / 68

Leo Couprie's Role / 74

Declaration of Trust / 76

OMERS' and AIM's Understanding of Peter McCallion's Interest in WCD / 78

6 The Mayor's Role in the WCD Project / 82

Introduction / 82

Steps Taken, October 2005 Onward / 83

Steps Taken to Secure the Land / 83

Impact of the Mayor's Intervention on the Relationship between the Co-owners / 85

The Mayor's Knowledge of Peter McCallion's Interest in WCD / 90

Witnessing the Signing of the Declaration of Trust and the Loan Agreement / 92

Understanding of the Nature and Extent of Peter McCallion's Interest / 94

7 Development of a Four- or Five-Star Hotel / 96

Agreement of Purchase and Sale / 96

	Hotel Conditions in the APS / 96
	Amending Agreement – Extension Rights / 99
	Planning Approvals and the City / 103
	Site Plan Approval / 103
	Dealings of City Staff with WCD / 105
	<i>Increase in Development Charges</i> / 105
	<i>WCD and Application Fees</i> / 106
	<i>Actions of City Staff</i> / 107
	Failure to Lift the H Designation / 107
	The Mayor and City Staff / 108
	WCD's Financial and Other Difficulties / 108
	Tony DeCicco and WCD / 109
	Meeting the Hotel Conditions / 109
8	The Mayor's Involvement in Negotiations between WCD and the Vendors / 113
	The Mayor and the Conditional Period in the Agreement of Purchase and Sale / 114
	The Amending Agreement / 114
	The Mayor's Involvement in the Extensions / 119
	The Practical Effect of the Mayor's Role / 129
9	The Optics of Peter McCallion's Interest in WCD / 132
	Senior Managers of OMERS / Oxford / 132
	Actions of OMERS / Oxford in Response to Pressure from the Mayor / 133
	OMERS' / Oxford's Knowledge of Peter McCallion's Role in WCD / 134
	AIM's Knowledge of Peter McCallion's Role in WCD / 134
10	Other Matters / 134
	Declaration of Conflict of Interest at Council / 134
	City Council Meeting, April 23, 2008 / 135
	City Council Meeting, May 21, 2008 / 135
	The Mayor's Involvement in WCD's Internal Affairs / 136

II Termination of the Agreement of Purchase and Sale / 138

Sheridan College's Interest in the City Centre Land / 139

Peter McCallion's Interest in WCD Revealed / 140

The Settlement / 142

David O'Brien as Emissary of the Mayor / 142

David O'Brien as Emissary of OMERS / 143

Phase II – Analysis

12 Conflict of Interest / 146

The Common Law Framework / 146

Did the Mayor Face a Conflict of Interest? / 149

The Mayor's Knowledge of Peter McCallion's Interest in WCD / 149

The Mayor's Approach to a Conflict of Interest / 150

13 Appropriate Action Given Conflict of Interest / 151

The Mayor and Due Diligence / 151

The Mayor and Council / 152

The Mayor and the Vendors / 153

The Mayor and World Class Developments / 154

14 David O'Brien, City Officials, and Conflict of Interest / 154

David O'Brien's Many Hats / 154

Appropriate Action in the Circumstances / 155

City Staff and Conflict of Interest / 155

Appropriate Action for City Officials / 156

Impact of the Conflicts of Interest / 156

Impact on the Vendors / 156

Necessity for the Inquiry / 157

RECOMMENDATIONS FOR PHASE II / 157

Existing Framework of Accountability / 158

The *Municipal Act, 2001* / 158

The *Municipal Conflict of Interest Act* / 158

Municipal Codes of Conduct / 159

The Mississauga Code of Conduct / 160	
Integrity Commissioner / 162	
Lobbyist Registry / 164	
Recommended Amendments to the <i>Municipal Act, 2001</i> / 165	
Recommended Amendments to the <i>Municipal Conflict of Interest Act</i> / 166	
Create a Preamble / 166	
Clarify Scope of Act / 167	
Remoteness / 167	
Knowledge of the Elected Officials / 169	
Clarify Who Is Captured by the MCIA / 169	
Beyond Pecuniary Interests / 170	
Clarify Types of Meetings Captured by the MCIA / 171	
The Need for Lesser Sanctions / 171	
Standing to Pursue Claims / 172	
The MCIA and the Integrity Commissioner / 173	
Coordination with Municipal Codes of Conduct / 173	
The Mississauga Code of Conduct / 174	
Preamble / 174	
Changes to the Conflict Rules / 174	
Integrity Commissioner / 176	
Improper Use of Influence, Gifts, and Benefits / 177	
Lobbyists / 178	
Procedural Fairness / 178	
Sanctions / 179	
Office of the Integrity Commissioner / 179	
Lobbyists / 182	
Additional Considerations / 182	
Publication of All Known Conflicts of Interest / 182	
Comfort Letters / 183	
The <i>Municipal Councillor's Guide</i> / 183	

Effect of Such Reforms in This Case / 184

On the Mayor / 184

On David O'Brien / 184

On City Staff / 185

On City Council / 185

On the Vendors / 185

CONCLUSION / 187

Endnotes / 189

ADDENDUM – THE MAYOR’S BENEVOLENT ACTIVITIES / 215

Agreed Statement of Facts / 216

The Mayor’s Gala / 216

The Hazel McCallion Fund for Arts, Culture and Heritage / 217

The Hazel McCallion Foundation for the Arts, Culture and Heritage / 220

The Hazel McCallion Charitable Fund / 220

Appendix 1 / 222

Appendix 2 / 230

APPENDICES

A Terms of Reference / 233

B Rules of Procedure / 237

C Commissioner’s Ruling on Standing, December 14, 2009 / 243

D List of Exhibits / 247

E Commissioner’s Opening Remarks, December 14, 2009 / 307

F Witnesses and Other Key Individuals and Organizations / 311

G Enersource Shareholders’ Agreement (Exhibit 50) / 317

H Oxford’s Mississauga City Centre Land Holdings (Exhibit 96) / 340

I Agreement of Purchase and Sale, Blocks 9 and 29 (Exhibit 97) / 341

J Ruling on Conflict of Interest, July 8, 2010 / 372

Acknowledgements / 383