

**MAYOR'S FINAL SUBMISSIONS**  
**TO**  
**MISSISSAUGA JUDICIAL INQUIRY**

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## **Overview**

1. The City of Mississauga's long term vision for the City Centre is set out in the Official Plan. The City's vision, and the Mayor's "dream", encompassed a hotel and convention centre in the downtown core adjacent to the Living Arts Centre, to bring tourists into the downtown and make the City an attractive locale for conferences and conventions.

2. Municipalities face challenges in City growth where they do not own the land, but rely on private parties to develop in accordance with the City's vision. Mississauga faced particular challenges, since a significant amount of land in the City Centre was owned by two private parties – OMERS<sup>1</sup> and AIMCo.<sup>2</sup> Much of this land was vacant or low density.

3. For over a decade, the City and the Mayor had sought private parties willing to build an upscale hotel and convention centre in the City Centre adjacent to the Living Arts Centre, to meet the needs of the growing business community and visitors to the City. Indeed, the City's Economic Development Office in 2005 had solicited thirty developers and hoteliers to build a hotel in the City core, to no avail. The vision of the Mayor, Council and staff incorporated the vision of a convention centre/hotel facility.

4. The Mayor's son, Peter McCallion, together with Murray Cook, through World Class Development ("WCD"), proposed to develop a high-quality hotel and convention facility in the downtown core, consistent with the City's vision, together with a residential condominium development. There were two main challenges to the project. The first was acquiring land in the City Centre from the co-owners, OMERS and AIMCo. The second was the development of the project, from both a financial and a City planning

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<sup>1</sup> OMERS and Oxford are generally referred to as "OMERS" in these submissions.

<sup>2</sup> 156 Square One Limited (formerly 1331430 Ontario Inc.), Alberta Investment Management Corp. and Alberta Investment Management (AIM), are generally referred to in these submissions as "AIMCo".

perspective. The condominium aspect of the WCD project made the project financially viable.

5. When WCD shared its vision with the Mayor, the Mayor supported the hotel/convention centre project, because it was consistent with the City's long-term objectives. At no time did she involve herself in the condominium aspect of the project. Furthermore, from the outset the Mayor made it clear that she would declare a conflict of interest at Council, and would not interfere with City planning or Council processes related to the development.

6. The Mayor viewed her limited role in the project as facilitating the acquisition of the lands adjacent to the Living Arts Centre for the hotel and convention centre. From the Mayor's point of view, she was representing the City's interests. The Mayor's interventions were directed to the private landowners, OMERS and AIMCo, two sophisticated institutional investors which are among the largest pension plans in Canada. The Mayor attempted to persuade the landowners to cooperate with the sale of lands, as she had on many prior occasions with other land owners and developers, when it was consistent with the City's vision.

7. The Mayor did not intervene in the City's role – the planning function – either at the staff level, with Councillors, or at Council meetings. The evidence is that the Mayor did not interfere with City planning staff's treatment of the project. Furthermore, there is no evidence of preferential treatment given by City staff to the WCD project. Certainly the Mayor never sought preferential treatment of the project from City staff. The Mayor never used any municipal governance tools in relation to the landowners. She phoned and met with the private parties to urge them to cooperate and facilitate the sale of the lands to assist in the public vision for the growth of the City. The testimony is clear that her motivation throughout was to achieve the City's long standing objective of a hotel/convention centre in the City Core.

8. The evidence is that the landowners had no other projects, bids or plans for the City Centre lands under consideration at the time. There was no other proposal or group

pursuing the lands at the time. The evidence is that all decisions made by OMERS and AIM with respect to the development were made in the best interests of the companies, and they were acting in their own financial interests. Furthermore, the landowners were aware of Peter McCallion's involvement in WCD. There is no evidence that Peter's involvement impacted on the owner's decision-making in entering into the agreement of purchase and sale, or the July 31, 2008 amending agreement.

9. When the WCD matter first came before City Council for planning approvals on April 23, 2008, the Mayor declared a conflict of interest by virtue of her son representing an investor in the project, which was what she understood to be his interest. The WCD matter again came before Council at a special meeting on April 30, 2008. Although the Mayor was absent, the Acting Mayor twice reminded Council on April 30 that Mayor McCallion had previously declared a conflict of interest on the WCD matter. At a Council meeting on May 7, 2008, although the WCD matter was not on the agenda, when the minutes of the April 23 and 30 meetings came up for approval, the Mayor again referred to her previously declared conflict of interest. Thus, by May 7, the Mayor's conflict had been brought to Council's attention in three separate meetings. Although the WCD matter was on Council's agenda for May 21, 2008, it was deferred at WCD's request. The Mayor inadvertently did not declare a conflict, although the minutes record a declaration of conflict. The City Clerk staff member gave a reasonable explanation for why she recorded a conflict. The Mayor did not direct that the minutes be altered to record a conflict. The evidence on this point is clear. The City Clerk staff member testified that the Mayor did not direct her to record a conflict in the minutes, and never asked her to change the minutes.

10. The Mayor conducted herself throughout in accordance with her understanding of the rules regarding conflict of interest that applied to municipal politicians. The Mayor submits that the framework established under the *Municipal Conflict of Interest Act* ("MCIA") – declare a conflict, recuse and abstain from voting – was reasonably understood by municipal politicians as the required standard of conduct when confronted with a pecuniary conflict. As the Commissioner ruled on July 8, 2010: "No one at the

end of the Inquiry should feel as though a standard any different than that which existed at the relevant times was being imposed.”

11. The WCD project would have been a significant benefit to the City. Mr. Sajecki, the City’s Commissioner of Planning and Building, testified that if the project had been completed, it would have enhanced the use of the Living Arts Centre and generated substantial property tax revenue for the City. The WCD project would likely have generated between \$650,000.00 and \$1,000,000.00 per year, significantly more than the existing property tax revenue. City Manager Janice Baker testified that the hotel/Convention centre project supported the City’s long-term vision of a mixed-use, active downtown.

12. If the project was successful, the Mayor would have had the satisfaction of achieving a golden objective that the City had been pursuing unsuccessfully for many years. Peter McCallion’s prospect of gaining financially did not influence the Mayor at all. She would have given the same attention to the project if it had been put forward by persons not related to her. It was good for the City.

13. Ultimately, the hotel project failed. The Mayor was informed of this on December 15, 2008, and she then moved on, focussing her efforts on supporting the development of a Mississauga campus of Sheridan College which was another long-standing objective for the City. The Mayor was not aware of any ongoing WCD claims to the land until June 24, 2009, when the City Solicitor brought this to the Mayor’s attention.

14. On June 10, 2009, the City entered into a memorandum of understanding to develop a Sheridan College Mississauga campus. The City would acquire the same City Centre lands at fair market value from OMERS/AIM. The City subsequently obtained an indemnity from OMERS/AIM to protect it, given the prior WCD acquisition of the lands. Litigation between OMERS/AIM and WCD ensued. OMERS/AIM settled the litigation, at no cost to the City. The City’s purchase price was not affected by either the litigation or the settlement. The Mayor had no involvement in the litigation or the settlement, other than asking Mr. O’Brien, an OMERS Board member, to inform himself of what was

happening to ensure that OMERS was aware of the issues, and to ensure the Sheridan College project could come to a successful completion.

15. The Sheridan College construction project is proceeding as planned, and will be a major benefit to the Mississauga community.

16. During this Inquiry, certain representatives of the landowners expressed discomfort with the Mayor's involvement due to Peter McCallion's role in the WCD project. This was not brought to the Mayor's attention, and she had no opportunity to address these issues at the time.

17. The Mayor sets out submissions on the facts in Part I, below, followed by a response to issues identified by Commission Counsel in Part II, and submissions on the Recommendations in Part III.

18. The Commissioner must consider recommendations, if any, relating to municipal governance. The Mayor submits that in considering recommendations, and in assessing the facts, the Commissioner should be guided by certain principles. The Commissioner should search for recommendations that will provide mayors and councillors with a clear, consistent, predictable and procedurally fair system for dealing with conflicts of interest. It is important that the recommendations do not create such an onerous system that it dissuades individuals from running for municipal office.

19. Thus, the protective aspect of the MCIA system for pecuniary conflicts is important: the system whereby a politician may declare a conflict, recuse herself, and refrain from voting is a bright line system which protects individual politicians, and provides transparency at council. The Mayor submits that the existing deemed pecuniary interest in the MCIA for adult, non-dependent children should, however, be eliminated. Given the gravity of the MCIA remedy of disqualification, the Mayor further submits that there should be no expansion of existing prohibited categories and relationships in the MCIA to capture, for example, friends and business partners.

20. It is clear that while the MCIA will continue to play an important role in guiding municipal governance, local codes of conduct will be of increasing significance. To provide clarity in regard to the regulatory scope of each scheme, the Mayor submits that the legislature should clarify the extent to which municipal codes of conduct may address pecuniary conflicts of interest, through amendments to either the MCIA or the *Municipal Act, 2001*.

21. The Commissioner may consider Mississauga's draft Code of Conduct. The Mayor submits that the Mississauga Code should be enacted as a by-law. The Commissioner should recommend that if an integrity commissioner is adopted for conflict issues, the integrity commissioner should be empowered to give advice relating to a code of conduct, and municipal politicians should be entitled to rely on that advice. This too will provide a consistent, predictable and procedurally fair system. Binding advice given by an integrity commissioner is an important protection for councillors or the mayor.

22. The Mayor submits that the independence and impartiality of the Integrity Commissioners are critical. Municipalities should carefully consider the form and length of tenure when designing this position. The legislature should consider amendments to the *Municipal Act, 2001* that will provide effective guarantees of independence of integrity commissioners, including the creation of independent officers of Council. The legislature should also amend the *Municipal Freedom of Information and Protection of Privacy Act* to ensure that municipal accountability officers are institutions for the purposes of MFIPPA, rather than the corporate municipality.

23. The Mayor submits that the Association of Municipalities of Ontario should consider establishing a central or regional integrity commissioner system, and Mississauga should consider whether the three lower-tier municipalities, as well as the Regional Municipality of Peel, should share a common Integrity Commissioner.

24. The Mayor submits that the Commissioner should recommend against setting up an "apparent" conflict standard, or a broad "improper use of influence" standard, since

such a standard would not create a clear, consistent, predictable and procedurally fair system for dealing with conflicts of interest. The Mayor submits that there should be no extension of the Mississauga Code of Conduct to include the categories of “close personal friends” and business partners.

25. In order to increase public transparency regarding conflict of interest declarations, the Mayor submits that the Commissioner should recommend that the City Clerk’s office should maintain a searchable electronic conflicts registry.

26. The current reference to the mayor as “Chief Executive Officer” in the *Municipal Act, 2001* introduces a degree of uncertainty with regard to this position. The Mayor submits the legislature should delete this reference or the role should be clarified. The Mayor submits that in order to provide a consistent, predictable and procedurally fair system, any code of conduct must be clearly tied to official acts and official powers or duties under the *Municipal Act, 2001*. Any other system creates significant risks for municipal politicians, and will dissuade individuals from running for municipal office.

## **Part I: Submissions on Findings**

### **A. Mayor McCallion's Background**

27. Hazel McCallion has been the Mayor of Mississauga for 33 years, winning her first election as Mayor of Streetsville in 1978.<sup>3</sup> In November, 2010 she was elected for her 12<sup>th</sup> consecutive term.

28. Mayor McCallion has lived and worked in Mississauga since 1951. She worked at a community newspaper, and was president of the Streetsville and District Chamber of Commerce (as was her husband). They were both active in the Trinity Anglican church. They started a community newspaper, the Mississauga Booster, to help the merchants of Streetsville.<sup>4</sup>

29. Mayor McCallion has served as president of the Association of Municipalities of Ontario (“AMO”), and a member of its predecessor organization, the Mayors and Reeves of Ontario. She served on the Board of Mayors and Reeves for many years, and as chairman of the Large Urban Mayors of Ontario, which is a committee of municipalities of over one hundred thousand that reports to the Board of AMO regarding issues facing large urban centres of the province.<sup>5</sup> She is also a part of the Big City Mayors Caucus.<sup>6</sup>

30. Mayor McCallion served as Chair of the Central Ontario Smart Growth Panel and Chair of the Golden Horseshoe Planning Task Force. These groups consisted of many stakeholders, including, developers, builders, environmentalists and looked at what is now the growth plan for the Province of Ontario.<sup>7</sup>

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<sup>3</sup> Hazel McCallion, 4791.

<sup>4</sup> Hazel McCallion, 4791-92. See also Exhibit 674.

<sup>5</sup> Hazel McCallion, 4792-93.

<sup>6</sup> Hazel McCallion, 4793.

<sup>7</sup> Hazel McCallion, 4793-94.

## **B. Community Participation**

31. In addition to discharging her duties as Mayor and her involvement as a member of Council, Mayor McCallion has been involved in extensive community activities.

32. Mayor McCallion's Mayor's Gala has allowed the Mayor to raise millions of dollars that she has used to support the arts community of Mississauga and other community and charitable events. In 2005, on the 22<sup>nd</sup> anniversary of the Gala, \$2.34 million from the Mayor's Gala Holding Fund was turned over to a community foundation for arts, culture and heritage, the McCallion Endowment Fund. The Mayor's Gala generally raised a quarter of a million dollars over the years.<sup>8</sup>

33. The Mayor often entertains community groups at her home. For example, in September, 2010 the Mayor hosted a barbecue at her home for the three Chinese Business Associations of Mississauga, at which 140 people attended. Similarly, one of the auction items at the Mayor's Gala is dinner at the Mayor's house. The dinner happens on an annual basis, and has been auctioned off for the last eight to nine years. Tony DeCicco was the successful bidder in the years 2003 and 2004.<sup>9</sup>

34. Mayor McCallion also sponsors an annual golf tournament. Exhibit 577 sets out a list of charities that contributed to the proceeds of that tournament. The charitable golf tournament has helped many sports groups and social agencies, and is especially sensitive to the needs of children. It has supported the Mississauga International Children's Festival and the Mississauga New Santa Claus fund. Corporations, builders, developers and citizens support the tournament. Each year one project is chosen for extra support, in the range of \$5,000.00 to \$15,000.00 dollars, and they are closely involved with helping out with the golf tournament.<sup>10</sup>

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<sup>8</sup> Hazel McCallion, 4795-97; Exhibit 578.

<sup>9</sup> Hazel McCallion, 4797.

<sup>10</sup> Hazel McCallion, 4799-4800; Exhibit 577.

## 1. Relations with Business Community

35. During 32 years as Mayor, Mayor McCallion has seen the City grow from very few companies to having 63 of the Fortune 500 companies. She has overseen the increase in the level of industry and commerce from an assessment ratio of 72:28 to 63:37.<sup>11</sup>

36. Mayor McCallion makes it a point to personally meet most of the people who do business in the area.<sup>12</sup> Her economic development department arranges one visit a week, where they invite themselves to visit a company and find out whether they are happy with the services the City is providing, and how the City can assist them with issues involving the provincial and federal governments. An example is when a large number of pharmaceutical companies in Mississauga were being challenged by generic companies who were asking the federal government to reduce the number of years of patent protection.<sup>13</sup> The City took a strong stance and influenced the retention of patent protection.

37. The Mayor knows thousands of business people on a first name basis in Mississauga.<sup>14</sup> She has thousands of “business friends” - from barbershop owners, hairdressers, to corporate CEOs and the like. She knows all the major developers who have developed in the City over the years, and has been to many social events with them, including the Mayor’s Gala and Golf Tournaments.<sup>15</sup> In comparison to Mr. DeCicco – a WCD principal – the Mayor has had more association with people like Mark Amusso, Peter Langer of Markborough, Iggy Kaneff, and Harold Shipp who have been developing in Mississauga for many years.<sup>16</sup>

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<sup>11</sup> Hazel McCallion, 4801-02.

<sup>12</sup> Hazel McCallion, 4801-02.

<sup>13</sup> Hazel McCallion, 4802.

<sup>14</sup> Hazel McCallion, 4802-03.

<sup>15</sup> Hazel McCallion, 4803-04.

<sup>16</sup> Hazel McCallion, 4804.

38. Developers call the Mayor quite often, especially if they feel an application is not getting properly expedited. The Mayor then discusses with the staff why there would be a hold up. City of Mississauga staff follow city policies very diligently which developers often do not like.<sup>17</sup> Eight times out of ten the delay is usually the fault of the developer. In this context, the calls from developers such as Mr. DeCicco to the Mayor were not unusual at all.

39. It would be very common to have restaurant meals with business associates like Mr. DeCicco and Mr. Couprie.<sup>18</sup> It is also quite common for the Mayor to have people to her house for meetings.<sup>19</sup> Her address and phone number are in the phonebook, so people know where she lives and often come to her with problems. The week she testified, the Mayor had four early morning meetings at her house.

### **C. City Core Development**

40. There have many plans introduced over the years to build a City Core and it has been a very difficult exercise. One of the reasons was that the City did not own any land in the City Core and had to work with landowners to accomplish the vision.<sup>20</sup>

41. Throughout her time in office, the Mayor has been actively, and some may say aggressively, involved in pressuring private landowners to develop in accordance with the City's vision for the downtown.<sup>21</sup> One example given by the Mayor was the addition of the YMCA to the City Core.<sup>22</sup> The YMCA took an interest in building a facility in the City Core and they had extreme difficulty in purchasing land from a group that owned a fair amount of land in the City Core. The Mayor stated that she had to get very much involved in the acquisition of the land for the YMCA, because the City wanted to secure

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<sup>17</sup> Hazel McCallion, 4804-05.

<sup>18</sup> Hazel McCallion, 4806.

<sup>19</sup> Hazel McCallion, 4807.

<sup>20</sup> Hazel McCallion, 4811-12; Exhibit 180.

<sup>21</sup> Hazel McCallion, 4814-17.

<sup>22</sup> Hazel McCallion, 4871-72.

the YMCA as a major asset to the City Core. It took some strong persuasion to convince the landowners to sell a portion of their land to the YMCA.<sup>23</sup>

42. The Mayor's efforts have not always been successful. For example, she explained that the City very much wanted a major sports facility in the City Core, but the City's attempts to get the landowners to work with the City were unsuccessful and as a result, the City had to resort to an area with limited access, located a fair distance from the City Core.<sup>24</sup> The Mayor believed that locating a sports facility downtown would have been a major impetus to the City Core development.

### **1. City's Desire for Convention Centre/Hotel in Core**

43. The City of Mississauga's long term vision for the City Centre is set out in the Official Plan. The City's vision, and the Mayor's "dream", encompassed a hotel and convention centre in the downtown core adjacent to the Living Arts Centre, to bring tourists into the downtown and make the City attractive to conferences and conventions.<sup>25</sup>

44. The Official Plan of the City specifically recognizes a hotel/convention centre as an approved use in the downtown core.<sup>26</sup> Council and staff for some 10 to 15 years, envisioned a mini convention centre in the City Core, not to compete with the Metro Convention Centre but that would allow the City to cater to medium sized conventions and provide the necessary services that the office commercial sector required and which would allow the City to develop a major City Core. Mississauga has 63 of the Fortune 500 head offices in the City and 80 of the Fortune 500 companies and close to 100 Japanese companies and over 80 German companies.<sup>27</sup> The concept of council for the

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<sup>23</sup> Hazel McCallion, 4871, 5130.

<sup>24</sup> Hazel McCallion, 4812-13; Exhibit 180.

<sup>25</sup> Official Plan, City Centre District Plan, section 4.6.4.1.1.OMR.002.002.895; SOL.001.003.374; Sajecki, 1386-87.

<sup>26</sup> Sajecki, 1386-87, 2788; Kitt, 4111.

<sup>27</sup> Hazel McCallion, 4820-21.

city centre was a four or five star hotel, combined with facilities to hold large meetings in conjunction with the Living Arts Centre facility.<sup>28</sup>

45. In 1994, the Living Arts Centre was built next to the Civic Centre. This facility was not just a performing arts facility but a multi-use facility with a number of meeting rooms so that organizations and the corporate business sector could use the facility for meetings, conferences, and seminars etc. and it has been extremely well used.<sup>29</sup> The performing arts section, Hammerson Hall, has capacity for 1200.<sup>30</sup>

46. The vision of a mini convention centre adopted by Council and staff, some 10 to 15 years ago, was to have a major four or five star hotel next to the Living Arts Centre so that the combined facility of the Living Arts Centre and a major hotel would create a convention centre of the size that the Mayor, Council and staff felt would be extremely beneficial to the City of Mississauga.<sup>31</sup>

47. In her evidence in chief, the Mayor testified that:

“As a result of this direction by Council and staff, I took on the challenge because I felt strongly that the City Core would never develop into a core that would be attractive to foreign investments and corporate headquarters if we did not have such a facility in our core. We know of no city our size that doesn’t have a four or five star hotel in their City Core when compared with even much smaller cities such as Windsor and London. We would welcome a four or five star hotel anywhere in the City Core but the combination of the Living Arts Centre and a hotel with connection overhead or underground could result in a medium size convention centre.”<sup>32</sup>

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<sup>28</sup> Hazel McCallion, 4822; Exhibit 180.

<sup>29</sup> Hazel McCallion, 4818-19.

<sup>30</sup> Exhibit 180.

<sup>31</sup> Exhibit 180.

<sup>32</sup> Exhibit 180.

48. The development of the City Core has been an extremely difficult undertaking.<sup>33</sup> The Mayor noted that on many occasions, when visiting Mississauga businesses, the issue was raised with her as to why they did not have a major hotel in the City Core.<sup>34</sup>

49. The Mayor noted that she has been very much involved in discussions with property owners around the development of the City Core over the years, and the City has formed numerous committees to look at various problems such as road pattern and transit infrastructure. The Staff involved the Mayor in these kinds of issues.<sup>35</sup>

50. Mr. Latimer, the former President and CEO of Oxford Properties, was aware that the City was developing a traditional downtown core as opposed to a suburban environment. He agrees that OMERS and its partner would have been integral to that development as owners of Square One. He was aware of the City's plan to develop a hotel convention centre and that the Mayor was a vocal supporter of the official plan generally and the hotel development in particular.<sup>36</sup>

51. It was not unusual for the Mayor to communicate with Oxford with respect to her vision of the development of the City core. The Mayor had been very active in communicating her views on a wide range of matters relating to the City core and Square One with various employees of Oxford. There was nothing unusual about her contact with Mr. Latimer, Mr. Nobrega and Mr. Haggis with respect to the WCD project.<sup>37</sup>

52. Oxford deals with a number of mayors in other jurisdictions, as the same co-owners own Yorkdale and Scarborough Town Centre.<sup>38</sup> Mr. Latimer testified that Mayor McCallion is known to be an enthusiastic promoter of her city. She is very strategic and has deep knowledge of the management of the City because she's had many years to develop relationships with individuals in various businesses, including Oxford. He

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<sup>33</sup> Hazel McCallion, 4822-25.

<sup>34</sup> Hazel McCallion, 4821; Exhibit 180.

<sup>35</sup> Hazel McCallion, 4807-22.

<sup>36</sup> Latimer, 2223.

<sup>37</sup> Latimer, 2224.

<sup>38</sup> Latimer, 2224-25.

testified that Oxford and AIM have benefited from the unparalleled growth of Mississauga.<sup>39</sup>

53. The Mayor expressed her opinion that: “the City core will not have the status of a core that the sixth largest city of Canada should have until we can attract a four or five star hotel with a capacity to attract medium size conventions and provide the necessary acceptable accommodation for our international corporations that we have so successfully attracted to Mississauga in other parts of City other than the City Core.” She testified that not only the Mayor, but Council and the staff of the City felt the City core would not be attractive to foreign investment if it did not have such a facility.<sup>40</sup>

## **2. City Staff Evidence Regarding the Hotel Project**

54. City staff testified that the hotel/convention centre project was consistent with the City’s vision, would have brought in substantial property tax revenue, and would have contributed to a mixed-use, active downtown environment.

### **(a) Mr. Edward Sajecki**

55. Edward Sajecki, the Commissioner of Planning and Development for the City of Mississauga, testified that the City’s vision, since at least the early nineties, was to obtain a hotel conference centre next to the Living Arts Centre.<sup>41</sup> The WCD project was the only proposal put forward that was in keeping with City’s vision.<sup>42</sup> If the project had been completed, it would have been good for the City, as it would have enhanced the use of the Living Arts Centre and generated significant property taxes for the City.<sup>43</sup> The WCD

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<sup>39</sup> Latimer, 2225.

<sup>40</sup> *Ibid.* at 4821-23; Exhibit 180.

<sup>41</sup> Sajecki, 2795.

<sup>42</sup> Sajecki, 2796.

<sup>43</sup> Sajecki, 2798.

project would likely have generated between \$650,000.00 and \$1,000,000.00 per year; there is no question that the property tax revenue would be substantial.<sup>44</sup>

(b) Ms. Marilyn Ball

56. Ms. Ball testified that the project would include a four-star plus hotel and convention centre with all of the amenities that come along with that, and that this was something that would certainly fit within the City's vision for downtown.<sup>45</sup> One of the reasons that City staff was quite excited about entertaining a hotel conference centre on the site was its synergy with the Living Arts Centre and the opportunities that that presented.

(c) Ms. Mary Ellen Bench

57. Mary Ellen Bench indicated that the Mayor has always been a strong supporter in building the downtown core. Ms. Bench testified that a conference centre hotel has "always" been discussed at the City.<sup>46</sup>

(d) Ms. Janice Baker

58. Janice Baker testified that the concepts for the WCD development were, in her perspective, in line with the City's vision for the downtown. She liked what she saw. The artist rendering showed that they were looking at a project that had some quality to it. The things that were important to the City were the quality of the hotel and the relationship of the project to the streetscape. The City wanted to make downtown Mississauga a more pedestrian friendly environment and retail on the street would be able to generate pedestrian traffic, and connect to such facilities as the Living Arts Centre. The hotel project could satisfy all of those outcomes. Ms. Baker told the Inquiry that the Hotel/Convention centre fed into the vision of a mixed-use, active downtown.

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<sup>44</sup> Sajecki, 2800.

<sup>45</sup> Ball, 4212.

<sup>46</sup> Bench, 2589-2590.

Mississauga has some significant commercial and residential development, and they understand that successful downtowns have a variety of uses that generate traffic at different parts of the day, and create an environment for street front restaurants and cafes which will attract people to come out and do business in that particular area. To Ms. Baker, these were concepts that were important to the City.<sup>47</sup>

### 3. OMERS/AIM Evidence re Hotel Project

59. The OMERS and AIM witnesses testified that the decision to participate in the Hotel/Convention Centre project was made in the best economic interests of the private parties, so that commercial interests prevailed. Further, at the time the deal was conceived it was economically feasible if partnered with condominiums, and would help fulfill the city's vision.

(a) Mr. Nobrega

60. Mr. Nobrega, the CEO of OMERS, testified that he didn't make any decisions contrary to OMERS' interests in the WCD or the Sheridan deal because of the Mayor's or Mr. McCallion's involvement. None of his executives took any decisions contrary to the interests of OMERS because of the Mayor's or Peter McCallion's involvement. Decisions regarding the WCD deal made by OMERS and Oxford were all made pursuant to the interests of OMERS.<sup>48</sup>

61. Mr. Nobrega further testified that he had known since 2001 that building a hotel downtown was important to the Mayor, and that it was part of the City's vision for the City Centre. He understood that OMERS and AIM had an important role because they owned so much undeveloped and low (25%) density land in the City core. He understood

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<sup>47</sup> Baker, 4614 -15.

<sup>48</sup> Nobrega, 3350-52

that the City's vision would depend on working closely with OMERS and AIM. Throughout the WCD deal, he believed that a hotel and condo development would be of economic benefit to Oxford, to OMERS as co-owner of Square One, and to the City. He believed it would serve an important public purpose to build the hotel in the vibrant downtown. He understood that there would be significant economic benefit to the City from increased municipal taxes if the complex were built because the taxes on 2400 condos and a hotel would be more than the annual revenue paid on existing uses. He notes that was especially true with the City struggling with an operating deficit. In his view, the project involved OMERS as a private land owner working with municipal government to achieve a mutual benefit.<sup>49</sup>

62. Mr. Nobrega also testified that he is a private businessperson who has the ability to make decisions that may affect the City's interests and who has relationships with the City in all its manifestations, including top-level officials. Mr. Nobrega agrees that a good relationship between senior Oxford members and the City, including the Mayor, is vital for the City because Oxford has a big investment and a good relationship is vital to make sure it continues to develop the lands.<sup>50</sup>

63. Mr. Nobrega testified as follows:<sup>51</sup>

Q: -- but since you're head of OMERS you're very sharp, and I'm sure ready to continue. Mr. Nobrega, throughout the course of this piece did you make any decisions contrary to the interests of OMERS in relation to either the WCD deal or the Sheridan deal because of the Mayor's involvement in the piece?

A: No.

Q: Did you make any decisions contrary to the interests of OMERS because you became aware at some point of Peter McCallion's involvement?

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<sup>49</sup> Nobrega, 3352.

<sup>50</sup> Nobrega, 3364-66.

<sup>51</sup> Nobrega, 3350-51.

A: No.

Q: And throughout the course of this piece, as you talked to your executives -- people like Mr. Latimer or Mr. Kitt -- did they make decisions contrary to the interests of OMERS because of the Mayor's involvement?

A: No.

Q: And did they make any decisions -- did they tell you that they made decisions contrary to the interests of OMERS because of Peter's involvement?

A: No.

Q: To the best of your knowledge then, were the decisions that were made by OMERS, by all of its executives, by Oxford, in relation to both WCD and Sheridan, were those decisions made to pursue the interests of OMERS and its --

A: Absolutely.

Q: -- in this deal?

A: Absolutely.

(b) Mr. Latimer

64. Mr. Latimer testified that for an organization like Oxford which has big land holdings in a municipality, getting along with the Mayor's office, Planning and other departments is fundamentally important. Ideally, the interests of a landholding organization and the City can align, but ultimately, the interests of Oxford's shareholders are paramount.

65. Mr. Latimer testified that timing is one factor that could make the economics of developing a 4-star hotel challenging. In the time that OMERS has had an interest in the

Mississauga City centre, it has evolved and OMERS would expect that over time a 4-star hotel would be part of the city core.<sup>52</sup>

66. Mr. Latimer testified that the hotel and high-rise condominium project was a very good complementary use. A mixed hotel/condo use would have been appropriate. Establishing a four-star hotel without condominiums in this location in Mississauga would have been economically difficult because hotels have a maturation period during which the initial return on investment would have been nominal. The mixed hotel and residential use would have helped the economics of overall development. It is becoming more common to combine high-end hotel developments with condominiums.

67. Mr. Latimer testified that sale price was of secondary importance to Oxford in the scheme of negotiations.<sup>53</sup> Use is most important, since it drives value. Oxford's material investment is Square One. Where it has the opportunity to add complementary uses by allowing someone else to risk their capital, this is a good use of that capital on behalf of Oxford for value creation.

68. OMERS viewed a hotel and condos as a complementary use for the property and it was a willing seller to WCD as long as the price and use and other terms were right. Mr. Latimer testified that this use would have benefited the co-owners in terms of the vibrancy of the City core by increasing activity and bringing shoppers into the mall.<sup>54</sup> It would have benefited the City not only by developing the vision of the downtown core but also by generating property tax revenue.<sup>55</sup> Other than WCD, Oxford was not pursuing any other potential buyers for this land, nor was Mr. Latimer aware of any other parties pursuing Oxford.<sup>56</sup> Given his awareness of the Mayor's consistent agenda of

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<sup>52</sup> Latimer, 2237.

<sup>53</sup> Latimer, 2201.

<sup>54</sup> Latimer, 2227.

<sup>55</sup> Latimer 2228.

<sup>56</sup> Latimer, 2229-2230.

getting the hotel built, Mr. Latimer testified that he would never have contemplated that she was pushing her agenda because of Peter's interest in the project.<sup>57</sup>

(c) Mr. Dal Bello

69. Mr. Dal Bello, Senior Vice-President of Real Estate at AIMCo, was aware that having a four-star hotel in the centre of Mississauga had been identified as an important public goal by Mayor and council as early as 1994<sup>58</sup> and he was aligned with the Mayor on getting a 4-star hotel in the City Centre.<sup>59</sup> He testified that both OMERS and AIM wanted to work with the Mayor to build a hotel on the land. Mr. Dal Bello was agreeable to the sale of Square One lands for a hotel project.<sup>60</sup> Mr. Dal Bello said it would be “good in the economic interest of our investment there”<sup>61</sup>.

70. Mr. Dal Bello was also of the opinion that there is nothing improper with any mayor promoting development of lands consistent with the City's vision.<sup>62</sup> He agreed that because AIM and OMERS own most of the land in the City Core, the only way for the City to achieve its vision of development is to have cooperation with the property owners. He agreed that it makes sense for property owners and municipal government to work together on projects that are consistent with their mutual benefits. This is part of being a good corporate citizen and participating in society, so long as it is consistent with economic performance. Dal Bello stated that “[the property owner's] investment endures the tenure of any politician”.<sup>63</sup>

(d) Mr. De Bever

71. Mr. De Bever, CEO of AIMCO, testified that the overriding issue for AIMCO in entering into any transaction is its fiduciary duty to the beneficiaries of the funds that it

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<sup>57</sup> Latimer, 2236.

<sup>58</sup> Dal Bello, 2339.

<sup>59</sup> Dal Bello, 2361.

<sup>60</sup> Dal Bello, 2340.

<sup>61</sup> Dal Bello, 2277.

<sup>62</sup> Dal Bello, 2340.

<sup>63</sup> Dal Bello, 2293.

manages. AIM is there to preserve its capital and make a profit. But in doing that, AIM does like to maintain a positive relationship with the municipalities in which it has investments. It's seen as a positive business goal to keep in close contact with municipal politicians and civil service. The views of politicians, and civil service is something that is appropriate for business people to monitor closely, and to take into account when making business decisions, as long as it doesn't jeopardize their economic interests.<sup>64</sup>

72. Mr. De Bever testified that “having a five-star hotel on that location made lots of sense, and AIMCo was supporting it for that reason, because whenever you can take your economic interests and make them correspond to the interests of the City, why wouldn't you do that?”<sup>65</sup>

73. Mr. De Bever agreed with Mr. Dal Bello's assessment at that time that the hotel development, supported by the condos, would be an economic benefit to Square One, and that this would have been consistent with the City's vision for the development of the downtown core. OMERS and AIM together, own a significant amount of land in downtown Mississauga; about eight acres. Much of that land is vacant or low density. The City did not own these lands. It had to work with them to accomplish its goals if it wanted a vibrant downtown.

74. The cross-examination of Mr. De Bever is instructive in this regard. He stated:<sup>66</sup>

Q: And you agreed with Mr. Dal Bello's assessment at that time that the hotel development, supported by the condos, would be an economic benefit to Square One?

A: I don't think anybody disputes that.

Q: And that this would have been consistent with the City's vision for the development of the downtown core?

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<sup>64</sup> De Bever, 4342.

<sup>65</sup> De Bever, 4305.

<sup>66</sup> De Bever, 4306-09.

A: Right.

Q: And I take it you don't think generally that there's anything improper in a mayor promoting the development of a city consistent with the official plan and the city's vision?

A: As long as that does not require us to make economic concessions, I don't see anything wrong with that.

Q: And you know that OMERS and AIM together, own a significant amount of land in downtown Mississauga; I think it's about 8 acres?

A: Right.

Q: And that much of that land is vacant or low density?

A: Yes.

Q: And you know that the City didn't own these lands. It had to work with you to accomplish its goals if it wanted a vibrant downtown in that area?

A: I don't think anybody disputes that.

Q: Indeed, some say that the biggest impediment to the development of downtown Mississauga has been the failure of OMERS and AIM to develop this block of land in the heart of the City.

A: Well, look, when we own a piece of land, I think the way our capitalist system works, we have the right to decide what to do with that. A failure to develop is not anything that I see as an obligation or a crime that I commit in a municipality.

Q: Right. But the City can't do it, because AIM and OMERS owns most of the land, so the only way for the City to achieve its vision in that -- on those lands is to have cooperation from you?

A: And we gave that cooperation.

Q: And you gave that cooperation in part because, it's like you said, that as a property owner you work with -- you try to work

with municipal government in order to achieve the City's vision, because that's something you would like to do as a good corporate citizen, so long as it's profitable for AIM?

A: Exactly.

Q: But you said, or what I understood you to say today though, is that notwithstanding this long desire for this type of project, that you would not have wanted AIM to enter into this agreement, even though it would have benefited OMER -- OMERS and AIM and was consistent with the plan, that you wouldn't have supported the project because of the relationship between the Mayor and Peter?

A: I never said that. What I did say is, when the Mayor's son has a direct stake in the project, your radar goes up and you have to start saying, Wait a sec, is there more to this than I can see. And so, you know, it might have been a good project and we might have been able to get our minds around it because of that, but it's just a matter of -- of good corporate governance that when there are overlapping interests that you start digging a little deeper and start making sure that there is no conflict.

Q: So if, after fifteen (15) years --

A: M-hm.

Q: -- finally the company comes that will finally build the project that's been important to the City, are you saying if Peter McCallion had disclosed a -- a beneficial ownership at that point, it would not have precluded you from entering into the agreement?

A: We would have given it a much harder look, but that by itself wouldn't have precluded the project.

Q: Because in that case, there would have been an alignment of interest. The City's interests would be aligned with the interests of WCD, to the extent of building a hotel on those lands?

A: Right.

(e) Mr. Lusk

75. Mr. Lusk was working with Hawthorne Realty, advising 156/AIMCo. He testified that an upscale hotel complex would have benefited Square One if hotel guests shopped at the mall.<sup>67</sup> It would also increase the value of the mall land because the value tenants pay is related to their sales. The driver of value is rent and the driver of rent are sales. An upscale hotel and owners' condo development would get the right kind of shoppers, i.e. women, into the mall.<sup>68</sup>

76. Mr. Lusk testified that the hotel alone was uneconomic and depended on the condos to subsidize it, so Mr. Lusk saw it as one project.<sup>69</sup> The hotel portion of the project was high risk, but Mr. Lusk felt that the condos could offset the cost of the hotel.<sup>70</sup> He recommended that AIM sell the land, and testified that if the project had been built to the standard contemplated by the parties and the Mayor, it would likely have been very good for Mississauga.<sup>71</sup>

77. Mr. Lusk testified that he regarded the hotel as complementary use to Square One. Square One was valued at around \$800M, so AIM's half interest would have been around \$400M, excluding the additional lands.<sup>72</sup> Having a complementary use for those lands was more important to Mr. Lusk than the purchase price obtained because AIM/OMERS are looking for long-term value creation for the Square One core asset.<sup>73</sup>

#### **4. WCD Evidence re Hotel Viability**

78. Mr. Barry Lyon was retained by Mr. Cook to provide project management for the WCD project, acting essentially as a developer. He stated that the Mayor and the City

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<sup>67</sup> Lusk, 1706.

<sup>68</sup> Lusk, 1707.

<sup>69</sup> Lusk, 1716.

<sup>70</sup> Lusk, 1717.

<sup>71</sup> Lusk, 1722.

<sup>72</sup> Lusk, 1751-52.

<sup>73</sup> Lusk, 1752.

“wanted and needed a quality hotel in the downtown areas, and we share that – that belief very strongly.”<sup>74</sup> It would have been a “stunning design”, with between 150 and 225 hotel rooms, and condo towers with 2,300 units, spanning two full City blocks, to be built out over a period of eight to ten years. It would have created the live/work relationship that the City feels strongly about, and was consistent with the City’s vision.<sup>75</sup>

79. Mr. Cook testified that the hotel study done early on concluded that a four star hotel was economically feasible.<sup>76</sup>

80. Mr. Lyon and Mr. Walker, on behalf of WCD, hired architects, lawyers, engineers, acoustics experts, wind design experts and other sub-consultants.<sup>77</sup> They retained a hotel consultant, who filed a very positive report on the potential of the site for a four star hotel, though not a five star given the economics. This would have been a high class hotel. They also located a U.S. hotelier, and had many meetings with the Marriott chain.<sup>78</sup>

## **5. Economic Development Office Attempts to Secure Hotel**

81. In June, 2005, the Mississauga Economic Development Office contacted over 30 developers and hoteliers, promoting a hotel development opportunity and seeking expressions of interest.<sup>79</sup> The Economic Development Office’s efforts had no results in terms of finding somebody to invest in a major hotel in the City core.

## **6. The Mayor’s Efforts to Secure a Hotel**

82. On her many visits to China, the Mayor has tried to encourage investors to look at the City Core. For example, she met with the Shangri-la Hotel Chain in Hong Kong,

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<sup>74</sup> Lyon, 2447.

<sup>75</sup> Lyon,

<sup>76</sup> Cook, 4448.

<sup>77</sup> Lyon, 2543.

<sup>78</sup> Lyon, 2460-62.

<sup>79</sup> Hazel McCallion, 4822; Exhibit 182.

trying to encourage hotel investment.<sup>80</sup> She noted that when Japanese visitors from their parent companies in Japan visit the Japanese companies in Mississauga they usually stay at the Prince Hotel in Scarborough. On a couple of occasions, she has approached the Prince Hotel principals to build a hotel in Mississauga due to the fact that Mississauga had attracted close to 100 Japanese companies.

83. The Mayor has turned the sod for many hotels in the Mississauga area that are not four or five star hotels, and are not in the City Centre.<sup>81</sup> Every time she did this she would try and convince hotel owners to build a hotel in the City core.

#### **D. The WCD Hotel Project**

84. The Mayor cannot remember exactly when she learned that Peter McCallion was pursuing the achievement of the City's vision of building a hotel in the City core.<sup>82</sup> At some point the Mayor recalls Peter telling her he had convinced an investor, Leo Couprie, to invest money in purchasing the land for the development of a hotel next to the Living Arts Centre.<sup>83</sup> It was Peter's idea to involve Mr. Couprie in the project. The Mayor did not know what Mr. Couprie's ability to finance the project was.<sup>84</sup>

85. Upon learning that Peter McCallion had found an investor for the WCD project, the Mayor was excited to know that someone was finally prepared to invest money in building a hotel in the City core.<sup>85</sup> The Mayor had little interest in the proposed condominium development.<sup>86</sup> There were many condominium plans in the works in the City's core and getting more condos was not a problem.<sup>87</sup> The Mayor has concentrated on

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<sup>80</sup> Hazel McCallion, 4823-24; Exhibit 180.

<sup>81</sup> Hazel McCallion, 4823-24.

<sup>82</sup> Hazel McCallion, 4827.

<sup>83</sup> Hazel McCallion, 4827-4828.

<sup>84</sup> Hazel McCallion, 4832.

<sup>85</sup> Hazel McCallion 4850.

<sup>86</sup> Hazel McCallion, 4830-4831.

<sup>87</sup> Hazel McCallion, 4831.

commercial development as mayor because residential development does not need encouragement; it comes automatically in almost any city.<sup>88</sup> What the Municipality needs to focus its attention on is the development of industry and commerce in order to offset tax increases, increase assessment and create jobs.<sup>89</sup>

86. The Mayor was aware that Mr. Cook was involved in the WCD project.<sup>90</sup> When Peter McCallion told her that he and Mr. Couprie had engaged Mr. Cook, she thought it was an excellent idea.<sup>91</sup> The Mayor had known Mr. Cook and his mother for many years and thinks highly of Mr. Cook's abilities.<sup>92</sup> The Mayor met with Peter McCallion and Mr. Cook on May 18, 2005 at the Delta Meadowvale Hotel.<sup>93</sup>

87. The Mayor made it clear to Peter McCallion and Mr. Cook from day one that if the WCD application ever came before Council, or a committee of Council, that she would declare a conflict of interest according to the MCIA and would not participate in the vote.<sup>94</sup> The Mayor also made it clear that she would not get involved on the WCD application itself or in any discussions with City staff about the project.<sup>95</sup>

88. Peter McCallion also brought Tony DeCicco into the project. The Mayor assumed that Mr. DeCicco came on as an experienced developer who, along with Mr. Cook, would move the project along.<sup>96</sup>

### **1. Mayor's Understanding of Peter McCallion's Interest**

89. The Mayor understood from the outset that Peter McCallion had a "pecuniary interest" in the WCD Project within the meaning of the MCIA. This formed the basis for

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<sup>88</sup> Hazel McCallion, 4831.

<sup>89</sup> Hazel McCallion, 4831.

<sup>90</sup> Hazel McCallion, 4836.

<sup>91</sup> Hazel McCallion, 4837, 5099-5100.

<sup>92</sup> Hazel McCallion, 4837.

<sup>93</sup> Exhibit 228.

<sup>94</sup> Hazel McCallion, 4844.

<sup>95</sup> Hazel McCallion, 4844.

<sup>96</sup> Hazel McCallion, 4895-4896.

her declaration of conflict of interest at Council. From the Mayor's perspective, the exact nature of Peter McCallion's interest did not affect her obligation to declare a conflict of interest at Council, which she did. The MCI A does not distinguish between pecuniary interest as an agent or a principal. The words used to describe the nature of Peter McCallion's interest may have been modified, but the effect – declare, recuse, abstain – remained the same.

90. The Mayor understood Peter McCallion's role to be a representative of Mr. Couprie.<sup>97</sup> This understanding was based on information Peter provided to the Mayor and did not change between 2006 and 2008.<sup>98</sup> The Mayor also assumed that Peter would get a commission from someone, perhaps the investor, when a deal was consummated.<sup>99</sup> Peter never advised the Mayor that there was no such commission arrangement,<sup>100</sup> nor did he advise the Mayor that he hoped to be the listing agent on the subsequent sale of condos.<sup>101</sup>

91. The Mayor was not advised at any time by Peter McCallion or by anyone else that Peter had an equitable interest in WCD.<sup>102</sup> She did not know he had loaned money to WCD and she was not aware that he was involved as a principal of WCD prior to the Inquiry.<sup>103</sup> Indeed, the Mayor testified that it would have come as a complete surprise to her that Peter had the resources to invest in WCD.<sup>104</sup>

92. Mr. Couprie testified that he never had a discussion with the Mayor about his role in WCD, nor did he ever inform her he was holding shares in trust for Peter McCallion.<sup>105</sup>

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<sup>97</sup> Hazel McCallion, 4828-4829.

<sup>98</sup> Hazel McCallion, 4829.

<sup>99</sup> Hazel McCallion, 4829.

<sup>100</sup> Hazel McCallion, 4830.

<sup>101</sup> Hazel McCallion, 4830.

<sup>102</sup> Hazel McCallion, 4843.

<sup>103</sup> Hazel McCallion, 4843.

<sup>104</sup> Hazel McCallion, 4843.

<sup>105</sup> Couprie, 3447-8.

93. Mr. Cook testified that he never had any discussions with the Mayor about the nature of Peter McCallion's interest in WCD.<sup>106</sup>

94. Mr. McCallion testified that he hoped to gain from the deal in the long-term, on the sale of the condos. He had initially hoped to get a commission on the sale of the land, but in the end it was apparent OMERS was not willing to pay.<sup>107</sup> He further testified that the Mayor did not realize that he was anything other than a real estate agent in the deal, until relatively recently. In fact, even though Peter McCallion as a matter of law may be the beneficial owner of shares of WCD, he himself did not have that understanding through 2007 and 2008.<sup>108</sup>

95. Mr. McCallion testified that the Mayor understood throughout, up until the Inquiry, that it was Mr. Couprie who was the investor in the project. At no time did Peter McCallion tell her anything that would make her think any differently than that. Peter McCallion informed the Mayor that his role was as agent and representative of Mr. Couprie. This made sense to the Mayor because the only job he ever had was as a real estate agent – he'd never worked as a developer or investor.<sup>109</sup>

96. Peter McCallion led the Mayor to believe that Mr. Couprie was the investor throughout and he did not advise her otherwise. The Mayor did not see the incorporation documents of WCD. Peter McCallion agreed that the Mayor never thought Peter McCallion was a shareholder, director, owner, in any way of WCD -- consistent with Peter McCallion's understanding of his role.<sup>110</sup>

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<sup>106</sup> Cook, 4493-94.

<sup>107</sup> Peter McCallion, 1807.

<sup>108</sup> Peter McCallion, 1890-91.

<sup>109</sup> Peter McCallion, 2148.

<sup>110</sup> Peter McCallion, 2151-2.

97. Mr. McCallion testified that the Mayor understood he was going to be compensated in some way, but didn't discuss how or when. Peter McCallion didn't get into the specifics of the commission arrangements, if there were any, in fact.<sup>111</sup>

98. Mr. DeCicco never discussed Peter McCallion's role in WCD with the Mayor. He did not discuss Peter McCallion's financial arrangements or any other equity interests in WCD with the Mayor. She showed no interest in WCD's financial arrangements, but was single-mindedly focused on the 5-star hotel she wanted for the City.<sup>112</sup>

99. There are significant issues for municipal politicians in determining the financial interests of adult, non-dependent children in a system where there is no obligation to disclose, and financial matters are difficult for adult children to discuss with parents. As a result, the Mayor suggests that the deemed pecuniary interest of adult, non-dependent children should be eliminated from the MCIA.

100. From the Mayor's perspective, the exact nature of Peter McCallion's interest did not affect her primary obligations – to declare a conflict of interest at Council, which she did. The MCIA does not distinguish between pecuniary interest as an agent or a principal.

## **2. Mayor's Role in the Hotel Project**

101. WCD proposed to develop a high-quality hotel and convention facility in the downtown core, consistent with the City's vision, together with a residential condominium development. There were two main challenges to the project. The first was acquiring land in the City Centre from the co-owners, OMERS and AIMCo. The second was the development of the project, from both a financial and a City planning perspective. The condominium aspect of the WCD project made the project financially viable.

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<sup>111</sup> Peter McCallion, 2183-4.

<sup>112</sup> DeCicco, 3944-45, 3953.

102. The Mayor supported the WCD hotel/conventional centre project, because it was consistent with the City's vision. At no time did she involve herself in the condominium aspect of the project. From the outset the Mayor made it clear that she would declare a conflict of interest at Council, and would not interfere with City planning or Council processes related to the development.

103. The Mayor viewed her limited role in the project as facilitating the acquisition of the lands adjacent to the Living Arts Centre for a hotel and convention centre that the City had long been striving to establish for the purposes of a successful city core.<sup>113</sup> From the Mayor's point of view, she was representing the City.<sup>114</sup> If the project was successful, she would have the satisfaction of achieving a golden objective that the City had been pursuing unsuccessfully for many years.<sup>115</sup> Peter McCallion's prospect of gaining financially did not influence the Mayor at all.<sup>116</sup> She would have given the same attention to the project if it had been put forward by persons not related to her.<sup>117</sup> It was good for the City.<sup>118</sup>

### **3. The Mayor's Approach to City Business**

104. All the witnesses agreed that Mayor McCallion is a "hands on" Mayor who gets things done in Mississauga's interests. The Mayor's actions in the WCD Project are consistent with her past pattern of conduct.

105. Mr. Sajecki, the Commissioner of Planning and Building for the City of Mississauga, has worked at the City since 2003. In that time he has been included in a number of meetings where the Mayor was in attendance. He stated that the Mayor works very hard to achieve the City's vision with respect to development. Mr. Sajecki has seen

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<sup>113</sup> Hazel McCallion, 4867.

<sup>114</sup> Hazel McCallion, 4867.

<sup>115</sup> Hazel McCallion, 4867-68.

<sup>116</sup> Hazel McCallion, 4868.

<sup>117</sup> Hazel McCallion, 4868. Indeed, Mr. DeCicco testified that he never had any hint that the Mayor was motivated by a concern for him, WCD or Peter McCallion and that the Mayor would have behaved the same way with any developer she thought could achieve a hotel: DeCicco, 3958-59.

<sup>118</sup> Hazel McCallion, 4868.

the Mayor meet with developers, property owners, and business leaders in Mississauga, and it is not uncommon for her to act as an intermediary between various parties to try to work out differences. Often, the Mayor does this at the request of a local councillor who has an issue in their own ward, and feels they would like to get the Mayor involved to help resolve these matters. She is very clear, and very to the point.<sup>119</sup>

106. The City Manager, Ms. Baker testified that the Mayor is very “hands on”. She quite regularly gets involved with federal and municipal politicians for the benefit of the City. In fact, Ms. Baker stated the Mayor is happy to call anybody for the benefit of the City.<sup>120</sup>

107. Ms. Bench, the City Solicitor, testified that the Mayor is very hands on with any major development. In working with the Mayor Ms. Bench has come to know her as a strong advocate for the City in trying to achieve the vision of the downtown core. She was aware of the Mayor’s use of her negotiating skills with developers to try to bring about development of the City core that was consistent with the City’s vision.<sup>121</sup> In that context, the Mayor would use her negotiating skills to try to help parties overcome problems and move forward with projects. Although Ms. Bench was not aware of discussions the Mayor had with respect to the parties involved in the WCD project, it did not surprise her.<sup>122</sup> It would be sort of a presumption that the Mayor would be involved in any big project in some way.<sup>123</sup>

108. Ms. Bench agreed with Commission counsel that the Mayor is a very effective negotiator, and that the Mayor has indicated in the past that she is willing to play the role of “star closer from the bullpen” if it helps. In fact, the Mayor has frequently played this role.<sup>124</sup>

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<sup>119</sup> Sajecki, 2805-06.

<sup>120</sup> Baker, 4679- 81.

<sup>121</sup> Bench, 2666.

<sup>122</sup> Bench 2667.

<sup>123</sup> Bench, 2591.

<sup>124</sup> Bench, 2599.

109. Mr. Nobrega, CEO of OMERS, agreed that when the Mayor has an issue she will come to Mr. Nobrega very directly: “I would call it laser.” She deals with obstacles in the same laser-like fashion. Mr. Nobrega agrees that this approach is generally good for business in Mississauga. He gives the example of sitting on the Enersource Board with her and recounts her ability to secure, within two days, deposits from major corporations that senior Enersource management had repeatedly failed to get. Mr. Nobrega agrees that if it is possible for OMERS to align its interests with what the Mayor wants to do in the public good, it will generally attempt to do that.<sup>125</sup>

110. With respect to the Mayor’s approach to the interests of the City, Mr. Nobrega stated: “I’ve never seen a person work harder for the citizens of any municipality than I’ve seen Mayor McCallion do. And I think that everything that – I have had 10 years of experience with her, and her relationship with me has been pristine. She has never crossed the line with me. She’s never offered me anything, promised me anything. Anything we did together was in the best interests of Mississauga”.<sup>126</sup>

111. Mr. Nobrega has worked with other mayors through Borealis and OMERS. Mr. Nobrega says that Hazel McCallion loves her city, province and country. Mr. Nobrega agrees that the Mayor is a hands-on Mayor. She has contacted OMERS executives on a variety of issues in that capacity. Mr. Nobrega has also seen her contact federal and municipal politicians. Mr. Nobrega believes that the Mayor was active in the 2006 pension related changes in Ontario. In her dealings with OMERS, she has tried to get OMERS executives to make decisions that will benefit the people of Mississauga.<sup>127</sup>

112. Mr. Nobrega thinks that the Mayor’s involvement in the WCD matter was all about pushing the interests of the City Centre and the convention centre, not her own or her son’s interests. Mr. Nobrega had no indication that she was pushing the building of

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<sup>125</sup> Nobrega, 3196-98.

<sup>126</sup> Nobrega, 3352.

<sup>127</sup> Nobrega, 3355.

the hotel and the extensions because of the benefit to Mr. DeCicco and Peter McCallion personally. Her robust involvement was an attempt to advance the City's interests.<sup>128</sup>

113. Mr. DeCicco testified that in his dealings with the Mayor, he came to conclude that she was motivated by good development and what was good for the City of Mississauga. He thinks that, to her, good development means a city vision and prime development that staff would support.<sup>129</sup>

114. Mr. Cook testified that it never occurred to him that Peter McCallion's involvement would lead to preferential treatment of this Project. Mr. Cook did not see any evidence of preferential treatment from City staff as a result of Peter's relationship to the Mayor. Mr. Cook did not see preferential treatment on the part of the co-owners, Oxford or AIMCo, because of Peter's participation in the project. When Peter McCallion initially approached Mr. Cook on the WCD project he didn't suggest to Mr. Cook that this deal would proceed because his mother was the Mayor. Mr. Cook did not see any indication that the Mayor used her influence to advantage Peter throughout the process.<sup>130</sup>

115. Mr. Kitt testified that all of the Mayor's interventions in the piece were with respect to Oxford as a private company and WCD as a private company. To the best of Mr. Kitt's knowledge, she wasn't intervening before the City council to vote. She never threatened the use of any municipal governance tools in any of the conversations Mr. Kitt had with her. She didn't refer to how she would or could exercise municipal government tools. She brought pressure to bear on the private parties to carry out her public vision for the growth of the City.<sup>131</sup>

116. Mr. Kitt agreed that the Mayor is a "hands on" leader and aggressive proponent of what she thinks is best for the City of Mississauga. Mr. Kitt expected AIMCo to

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<sup>128</sup> Nobrega, 3356.

<sup>129</sup> DeCicco, 3941.

<sup>130</sup> Cook, 4493.

<sup>131</sup> Kitt, 4150.

appreciate how involved the Mayor was and what kind of advocate, in a positive way, she was to the development at Square One and surrounding lands.<sup>132</sup>

117. The Mayor often sees her role as a closer.<sup>133</sup> The City staff do the work, but when they hit a snag they approach the Mayor to get her opinion or to make a phone call.<sup>134</sup> Councillors work in a similar fashion.<sup>135</sup> When they face obstacles with developers in their ward, they seek assistance from and the involvement of the Mayor.<sup>136</sup> The Mayor would often contact developers and convince them that, for the good of the City, they ought to consider doing one thing or another.<sup>137</sup> It is not the Mayor's style to yell, but she does occasionally raise her voice.<sup>138</sup> She has sometimes thrown lawyers out of her boardroom to get a deal negotiated in a proper way.<sup>139</sup>

118. The Mayor testified that no special consideration is given to any developer and that all developers must abide by the City's policies and rules.<sup>140</sup> She noted that the City needs to work cooperatively with developers to make sure the City's interests are protected, and it is up to those it deals with to protect their own corporate or private interests.<sup>141</sup> The Mayor acknowledges that when she calls someone like Mr. Nobrega at OMERS, she expects he will answer the call having regard for her position as Mayor.<sup>142</sup> However, she never expects corporations or developers to bend their principles, to act against their interests or to provide her with personal favours.<sup>143</sup>

119. The Mayor's interventions were directed to the private landowners, OMERS and AIMCo, two sophisticated institutional investors which are among the largest pension

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<sup>132</sup> Kitt, 4146.

<sup>133</sup> Hazel McCallion, 4872.

<sup>134</sup> Hazel McCallion, 4872.

<sup>135</sup> Hazel McCallion, 4872-4873.

<sup>136</sup> Hazel McCallion, 4872-4873, 5040-5041.

<sup>137</sup> Hazel McCallion, 4873. See also 5043 where the Mayor states that the City is straightforward with all developers and that it is not a case of give and take, but of what is right for the City.

<sup>138</sup> Hazel McCallion, 4873.

<sup>139</sup> Hazel McCallion, 4873.

<sup>140</sup> Hazel McCallion, 5044-5045 and 5122.

<sup>141</sup> Hazel McCallion, 5045.

<sup>142</sup> Hazel McCallion, 5049.

<sup>143</sup> See, for example, Hazel McCallion, 5108-5110, and 5372.

plans in Canada. The Mayor attempted to persuade the landowners to cooperate with the sale of lands, as she had on many prior occasions with other land owners and developers, because it was consistent with the City's vision.

120. The Mayor understood that the MCIA states that one must declare a conflict at council if it comes to council. It doesn't mention anything about discussions with staff or the discussions about the issue before it comes to council. The reasons the Mayor would avoid discussions with staff is to avoid the perception that the Mayor might be seeking to influence staff, and to respect Staff's responsibility for the planning process.<sup>144</sup>

121. The Mayor did not place a lot of emphasis on optics in thinking about these issues because as she stated, no matter what decision you make, the press will have its own perception.<sup>145</sup>

#### **4. Prior to Execution of Agreement of Purchase and Sale**

##### **(a) October 2005 – Contact with Paul Haggis**

122. In October, 2005, upon hearing that the owners were dragging their feet with respect to negotiations, the Mayor contacted Paul Haggis, then President and CEO of OMERS, to discuss Oxford selling the land at Square One to WCD for the hotel project.<sup>146</sup> This exchange was relayed by Mr. Haggis to Fred Biro, also of OMERS, in an e-mail chain from October 4, 2005.<sup>147</sup> Although the e-mail refers to the Mayor's desire to have Oxford sell the lands to "her preferred group" the Mayor does not know what Mr. Haggis means by "preferred group, as there was only ever one group".<sup>148</sup> There was no evidence to the contrary from any other witness.

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<sup>144</sup> Hazel McCallion, 5288.

<sup>145</sup> Hazel McCallion, 5213.

<sup>146</sup> Hazel McCallion, 4869.

<sup>147</sup> Exhibit 261; Hazel McCallion, 4869.

<sup>148</sup> Hazel McCallion, 4869.

123. In a continuation of the e-mail chain on October 4, 2005 Mr. Haggis states that he had again spoken to the Mayor and that she indicated that “it was her dream to get a good hotel there and she doesn't want to let that go”.<sup>149</sup> The Mayor agrees that she communicated the aim of having a five star hotel in the City core to Mr. Haggis.<sup>150</sup>

124. At the end of the day, however, it was always the Mayor’s understanding that Oxford and OMERS would act in their best interest, as indicated by Mr. Latimer in the same e-mail chain:

“Let there be no misunderstanding, we are interested to make the best investment decision, in the context of what will be the best economic decision for our shareholders, while attempting to meet the appropriate commercial uses for the City of Mississauga and to compliment our substantial financial investment in Square One and our partner Alberta Revenue. Our decisions may not always be popular and may not fit a third party agenda but they are based upon what is best for us, that being Omers. Independent of Omers Alberta Revenue our co owner in Square One is entitled to ensure their investment decisions are in their best interest.”<sup>151</sup>

(b) Ken Lusk

125. The Mayor had lunch with Ken Lusk in March, 2006.<sup>152</sup> The Mayor had learned through Mr. Cook that Mr. Lusk represented AIM.<sup>153</sup> The Mayor felt she should meet Mr. Lusk as it was the first time she was aware that AIM had a representative in the area.<sup>154</sup> Mr. Lusk testified that the purpose of the meeting was that the Mayor wanted to get to know the 50% partner of the shopping centre.<sup>155</sup> He did not view this as an unusual

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<sup>149</sup> Exhibit 591; Hazel McCallion, 4876.

<sup>150</sup> Hazel McCallion, 4876.

<sup>151</sup> Exhibit 591 and Hazel McCallion, 4875 and 5108-5110.

<sup>152</sup> Hazel McCallion, 4879-80.

<sup>153</sup> Hazel McCallion, 4879.

<sup>154</sup> Hazel McCallion, 4879.

<sup>155</sup> Lusk, 1727-28.

occurrence, and was surprised that it had taken so long. They did not discuss the WCD transaction in any detail.<sup>156</sup>

126. Prior to the WCD project, the Mayor was not aware that Oxford needed approval from their partner in Alberta.<sup>157</sup> The Mayor had previously only dealt with Oxford and OMERS, not AIM.<sup>158</sup> The Mayor had worked with Oxford because they were the decision makers regarding the City core land.<sup>159</sup>

127. It is clear that AIMCo was well aware of the City's longstanding interest in a hotel/convention centre in the downtown core. It is also clear that AIMCo knew, at least since 2006, of Mr. McCallion's involvement in the project.<sup>160</sup> As indicated in a March 9, 2006 e-mail from Mr. Lusk to Mr. Dal Bello, "Mayor Hazel McCallion has been wanting an upscale hotel and convention facility beside the living arts centre for some time now. Last year an offer was received from an unidentified purchaser to purchase the hostel site plus the 2 adjacent land parcels encompassing just under 14 acres, the offer was presented by the Mayor's son, who is a broker."<sup>161</sup> The Mayor was aware that the owners knew Peter McCallion was involved in the deal.<sup>162</sup>

128. In October, 2006 the Mayor made a phone call to Mr. Lusk. Mr. Lusk's e-mail to Ron Peddicord (Sr. Vice President of Development at Oxford) on October 20, 2006 stated that:

"The Mayor was very upset that the transaction was taking so long to complete. She told me that another developer had approached the City about building a hotel in the vicinity and she was concerned that this could jeopardize, as she calls it, the hotel for the Livings (sic) Arts Centre. I advised the Mayor that it was my understanding that Murray Cook would be submitting a revised

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<sup>156</sup> Lusk, 1727-28.

<sup>157</sup> Hazel McCallion, 4879-4880.

<sup>158</sup> Hazel McCallion, 5316.

<sup>159</sup> Hazel McCallion, 4880.

<sup>160</sup> See, for example, Kitt, 4014-15.

<sup>161</sup> Exhibit 146; Hazel McCallion, 4881.

<sup>162</sup> Hazel McCallion, 4881.

proposal at the end of this week and that we would want the opportunity to review this proposal. She was okay with that.”<sup>163</sup>

129. Although the Mayor does not recall another developer being involved, she agrees that she was displeased with the slow pace of the transaction.<sup>164</sup> She recalls that development was starting to slow down in Mississauga at this time.<sup>165</sup>

#### **E. Witness to Signatures**

130. On January 29, 2007 the Mayor went for dinner at a restaurant with Peter McCallion and Mr. Couprie, both of whom were leaving for Asia the next day.<sup>166</sup> The Mayor witnessed the signatures of Mr. McCallion and Mr. Couprie on the loan and trust agreement. She was informed that the documents were required for estate planning purposes, because of the trip to Asia; they did not discuss the contents of the documents. The Mayor did not read the documents, but did attest to the signatures, as is her practice. The Mayor was formerly a Commissioner for the taking of oaths, and has witnessed a significant number of signatures. It was her understanding that her role was limited to serving as a witness to the signatures only, and did not involve the substantive aspects of the documents upon which the signatures are affixed.<sup>167</sup>

131. Over the course of the dinner, at their request, the Mayor gave suggestions on business contacts in China who might be interested in investing in the hotel project.<sup>168</sup> The Mayor recommended that they check out the Shangri La Hotel as she thought it would be a real coup if it opened its first hotel in Canada in Mississauga.<sup>169</sup>

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<sup>163</sup> Exhibit 162; Hazel McCallion, 4883.

<sup>164</sup> Hazel McCallion, 4884.

<sup>165</sup> Hazel McCallion, 4884.

<sup>166</sup> Hazel McCallion, 4887-88.

<sup>167</sup> Hazel McCallion, 4889-90.

<sup>168</sup> Hazel McCallion, 5112.

<sup>169</sup> Hazel McCallion, 4888.

132. During the dinner Peter McCallion asked the Mayor to witness his and Mr. Couprie's signatures on a loan agreement and declaration of trust.<sup>170</sup> Peter McCallion and Mr. Couprie explained to the Mayor that the documents were just in case something happened to them while they were abroad.<sup>171</sup> The Mayor did not read the documents; she simply witnessed their signatures, as requested.<sup>172</sup>

133. Mr. McCallion testified that the Mayor signed as witness. They did not review the document with the Mayor. The Mayor did not appear to read it before signing it. Mr. Couprie and Mr. McCallion did not discuss the agreement in Mayor's presence – they had discussed it prior.<sup>173</sup> The Mayor, according to Peter McCallion, did not read the two documents during the course of the dinner; there was no conversation about them; and he never reviewed them with the Mayor after the dinner.<sup>174</sup>

134. Mr. Couprie testified that Peter asked the Mayor to witness the documents because they were travelling the next day, and the signing was for estate purposes. It was presented to the Mayor as - we are flying out tomorrow for a trip and this is just for estate purposes, an understanding of the transactions, in case something happened to the plane.<sup>175</sup> The Mayor signed these two documents together within a short space of time -- 30 seconds. Mr. Couprie stated that the Mayor looked to him for acknowledgement, and he nodded. She did not read the documents prior to signing; she signed them like an autograph, and there was no discussion with the Mayor about the documents.<sup>176</sup>

135. Mr. Couprie testified that he drafted the documents which he found on the Internet. He modified it to what he thought he needed.<sup>177</sup>

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<sup>170</sup> Exhibits 189 and 190.

<sup>171</sup> Hazel McCallion, 4889.

<sup>172</sup> Hazel McCallion, 4890 and 5114-5115.

<sup>173</sup> Peter McCallion, 1812-14.

<sup>174</sup> Peter McCallion, 2157.

<sup>175</sup> Couprie, 3414-15.

<sup>176</sup> Couprie, 3419-20, 3481.

<sup>177</sup> Couprie, 3416-18.

136. The Mayor testified that had she read the documents, questions would have been raised in her mind about whether Peter McCallion was in fact an agent of Mr. Couprie. She would not have thought it likely that Mr. McCallion would have been able to pay \$1.5 million to Mr. Couprie.<sup>178</sup> As drafted, the trust agreement indicates that the trustee would hold 80 percent of the shares and the beneficiary, Peter, would pay the trustee double the amount of money advanced.<sup>179</sup>

137. No explanation was given to her at any time as to the financial arrangements of WCD, other than the information conveyed by Peter McCallion that Mr. Couprie owned 100 percent of the shares in WCD.<sup>180</sup> If the Mayor had known that Peter had a shareholder's interest in WCD, she would have given a different reason for declaring a conflict at Council, although both agent and principal interests are pecuniary interests for the purposes of the MCIA and the effect would have been the same. It would not have changed her interactions with the private parties involved in this project.<sup>181</sup>

#### **F. Agreement of Purchase and Sale – January 31, 2007**

138. After more than a year of negotiations, an Agreement of Purchase and Sale between WCD and Oxford/156 was executed on January 31, 2007.<sup>182</sup> The Mayor had no involvement in the negotiation or terms of the Agreement of Purchase and Sale. The vendors and the purchaser were both represented by lawyers in the contract negotiation process.

139. The vendors were responsible for conducting due diligence before entering into a deal. OMERS and AIMCo witnesses testified that they were not relying on the Mayor

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<sup>178</sup> Hazel McCallion, 4892.

<sup>179</sup> Hazel McCallion, 4890-4891.

<sup>180</sup> Nor did the Mayor know that Peter McCallion had borrowed money from TACC for WCD or that he had transferred his house to Mr. Couprie until the inquiry: 4895.

<sup>181</sup> Hazel McCallion, 4893-4894.

<sup>182</sup> SOL.001.003.040; Exhibit 647.

for due diligence. The Mayor did not see or read this agreement at the time.<sup>183</sup> She believes that she likely heard of the Agreement through Mr. Cook and that she was reassured at the time that there was a condition in the agreement that the hotel be built first.<sup>184</sup>

140. The vendors chose not to negotiate a change of control clause. Any discussion of whether or not to put in a change in management clause would have been delegated to Mr. Latimer's management team. Subject to how it was drafted, that type of clause would have meant that Oxford would have been entitled to notification of a change in control of the purchaser's company;<sup>185</sup> it could also have been negotiated with veto rights, for example. No such commercial protection was sought by the vendors, and there is no evidence or suggestion that this was attributable in any manner to the Mayor's involvement. It was purely a commercial choice by parties represented by lawyers in a commercial transaction.

### **1. No Reliance by Vendors on Mayor**

141. The vendors did not rely on the Mayor to conduct due diligence on WCD or its principals. It appears that both AIMCo and Oxford knew Mr. Cook's reputation, and gained comfort from his participation. Although WCD is a private corporation, it does not appear that either vendor seemed to inquire into or understand the exact nature of the shareholdings at the time of the execution of the Agreement of Purchase and Sale. This was a choice made by the vendors at the time. There is no evidence or suggestion that the failure to inquire into the shareholders or structure was attributable in any manner to the Mayor's involvement. Again, this was purely a commercial choice by parties represented by lawyers in a commercial transaction.

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<sup>183</sup> Hazel McCallion, 4885.

<sup>184</sup> Hazel McCallion, 4885.

<sup>185</sup> Latimer, 2233.

142. Mr. Dal Bello testified that he felt comfortable that Cook “could make something work there” based on hospitality experience.<sup>186</sup> He testified that AIMCo in no way relied on Mayor’s endorsement of Cook.<sup>187</sup> Mr. Dal Bello knew Cook from past employment at Inducon Development.<sup>188</sup> Mr. Lusk knew Mr. Cook as well and shared his favourable opinion of him with Oxford.<sup>189</sup>

143. Mr. Dal Bello also testified that AIMCo would have done their own due diligence on Mr. DeCicco although at the end of the day, because of the change of control clause, there was nothing they could do.<sup>190</sup>

144. Mr. De Bever testified that AIMCo always does its own due diligence. Mr. De Bever generally inquires into the nature of the shareholding interests in privately held corporations before they enter transactions with them. They were told in this case there was nothing to worry about.<sup>191</sup> Mr. De Bever initially stated that in every transaction AIMCo enters into that they inquire into the exact nature of the shareholders in the corporate entity opposite them. Mr. De Bever then clarified that “it’s harder with a private company. You can try. But -- yes, you do as a matter of course, and I think we did in this case.”<sup>192</sup> “We always inquire who the shareholders are. And then we make a -- judgments as to what connections they may have to related parties or related institutions. It -- it mostly arises in real estate and infrastructure where the connection, because of real estate, to particular locations le -- and naturally leads you to -- to either the municipality, or provincial, or state government, or whatever.”<sup>193</sup>

145. Mr. Lusk testified that Mr. Cook was a good bet because of Mr. Lusk’s past experience with him, not because of the Mayor’s say-so.<sup>194</sup> Oxford would have had to

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<sup>186</sup> Dal Bello, 2275-2275.

<sup>187</sup> Dal Bello, 2343.

<sup>188</sup> Dal Bello, 2274.

<sup>189</sup> Lusk, 1664 &1669.

<sup>190</sup> Dal Bello, 2320-2323.

<sup>191</sup> De Bever, 4294.

<sup>192</sup> De Bever, 4294-95.

<sup>193</sup> De Bever, 4296.

<sup>194</sup> Lusk, 1720.

satisfy itself. Mr. Lusk testified that he knew Mr. Cook to be a credible developer in need of financing, and he understood that Oxford would do its own due diligence.<sup>195</sup> Mr. Lusk was not in any way relying on the Mayor's feedback regarding Murray Cook; it was just another check he did. Vendors in this kind of sophisticated business deal are required to do due diligence and in this case did not negotiate a change in control clause.<sup>196</sup>

146. Mr. Kitt testified that nobody at Oxford knew who WCD was.<sup>197</sup> In Mr. Kitt's experience, an extensive review would be conducted by the vendor regarding who the purchaser was. When Mr. Kitt took over the file he sought to reconstruct what had happened in terms of the original due diligence. Mr. Kitt asked the principals that did the original deal. They informed him that Mr. Cook was the primary person involved in the file at the time. Mr. Cook had significant experience, and AIM had previous business dealings with him and there was confidence in him. The report contained a line that due diligence was to be conducted on the purchase. Due diligence would have been about two things: the ability of the purchaser to meet the conditions of the transaction, and, on a property that is tied to a piece of land close to the Square One mall, the ability to develop the property post-closing. Mr. Kitt was not able to find any due diligence done regarding the financial ability of WCD to close the transaction.<sup>198</sup> He would have expected to find very little, as it was a single purpose entity. The comfort taken was in the size of the deposit they put up. They had over a million dollars in, plus all the costs they had incurred to date. Reputable firms were working on the file.<sup>199</sup>

147. Mr. Cook testified that he never asked the Mayor to speak to the owners about his credentials for the project or to vouch for him in any way.<sup>200</sup>

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<sup>195</sup> Lusk, 1738.

<sup>196</sup> Lusk, 1740.

<sup>197</sup> Kitt, 4090.

<sup>198</sup> Kitt, 4091.

<sup>199</sup> Kitt, 4090-4091.

<sup>200</sup> Cook, 4502.

148. Mr. DeCicco never asked the Mayor to give any kind of endorsement regarding his financial resources to Oxford/OMERS.<sup>201</sup> Mr. DeCicco testified that he had the financial resources to close the sale.<sup>202</sup>

### **G. 2008 Interactions Between Mayor and Co-Owners**

149. During 2008 on several occasions the Mayor intervened on WCD's behalf to request an extension to allow them more time to secure a hotel. When she did so, it was always at the request of Mr. Cook or Mr. DeCicco.<sup>203</sup> Peter McCallion never asked the Mayor to intervene on behalf of WCD.<sup>204</sup> The Mayor's decision to intervene was based on her desire to fulfill the City's objective to get a hotel and convention centre.<sup>205</sup>

#### **1. Prior to July 31, 2008 Amending Agreement**

150. On March 27, 2008, Mayor McCallion met with Mr. Nobrega, Mr. Kitt, Mr. Latimer and Mr. Filipetti at Mr. Nobrega's office to discuss the WCD project and the importance of having a high-end hotel and convention centre in the City core.<sup>206</sup> The gist of this meeting is captured in two e-mails.<sup>207</sup> Although Mr. Filipetti suggests in an internal Oxford e-mail chain from March 31, 2008 (Exhibit 429) that Mayor McCallion indicated at that meeting that Mr. DeCicco had "significant financial resources", the Mayor does not recall making such a statement nor does she think it is something she would have said.<sup>208</sup> While the Mayor believes she said positive things about Mr. DeCicco because she felt he could do the project with the assistance of others, she had no idea

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<sup>201</sup> DeCicco, 3944.

<sup>202</sup> DeCicco, 3944.

<sup>203</sup> Hazel McCallion, 5449.

<sup>204</sup> Hazel McCallion, 5449.

<sup>205</sup> Hazel McCallion, 5449-5450.

<sup>206</sup> Hazel McCallion, 4912-13. Mr. Nobrega testified that the purposes of the meeting were to introduce the Mayor to the Oxford team and for the Mayor to share her vision of the hotel and convention centre: 3101-02.

<sup>207</sup> Exhibit 546; Exhibit 429.

<sup>208</sup> Hazel McCallion, 4913-4914.

whether Mr. DeCicco had significant financial resources.<sup>209</sup> At most she knew that he had met his financial obligations in past development projects.<sup>210</sup> It is not the Mayor's practice to ask individual developers, even those who are friends, about their financial status.<sup>211</sup> Moreover, the Mayor would be surprised if sophisticated business partners like OMERS or AIM would expect her to vouch for Mr. DeCicco's financial resources.<sup>212</sup> The Mayor testified that she would not have vouched for Mr. DeCicco in these circumstances or for anybody.<sup>213</sup> The e-mail also indicates OMERS' unwillingness to remove the hotel condition, something that pleased the Mayor.<sup>214</sup>

151. When asked by Commission Counsel whether he would put credit on the Mayor's opinion of Mr. DeCicco, Mr. Nobrega replied that he is a "financial guy" and "until the deal lands on my desk and is properly signed, it's not a deal".<sup>215</sup>

152. According to an e-mail from Mr. Kitt to Mr. Nobrega, dated April 29, 2008, Mr. Kitt spoke to the Mayor that day and set out the landowners' "compromise position" of allowing the development of the hotel and condos at the same time and keeping the north site in the deal.<sup>216</sup> The Mayor testified that would have been pleased that the hotel requirement was still there, but does not know the significance of the condos proceeding at the same time.<sup>217</sup>

153. On April 30, 2008, the Mayor had a conversation with Mr. Kitt and he agreed to meet with Peter McCallion the following week.<sup>218</sup> The Mayor does not recall arranging a meeting with Peter McCallion and Mr. Kitt.<sup>219</sup>

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<sup>209</sup> Hazel McCallion, 4914 and 5147.

<sup>210</sup> Hazel McCallion, 4914 and 5147.

<sup>211</sup> Hazel McCallion, 5123.

<sup>212</sup> Hazel McCallion, 4914-4915.

<sup>213</sup> Hazel McCallion, 4915.

<sup>214</sup> Hazel McCallion, 4915-4916.

<sup>215</sup> Nobrega, 3200.

<sup>216</sup> Exhibit 264; Hazel McCallion, 4917.

<sup>217</sup> Hazel McCallion, 4917-4918.

<sup>218</sup> Exhibit 271; Hazel McCallion, 4918.

<sup>219</sup> Hazel McCallion, 4918.

154. Mr. Kitt met with Mayor McCallion and Peter McCallion at the Delta hotel in Mississauga on May 13, 2008.<sup>220</sup> Mr. Kitt recalls that it was the Mayor who set up the meeting since he did not have Peter McCallion's contact information.<sup>221</sup> When asked by Mr. Filipetti how the meeting went, Mr. Kitt replied in an e-mail as follows: "I think we came to an agreement. Basically, our letter plus an additional six (6) months to start and finish the hotel. They're going to send a revised letter and we'll see. Hazel's son did show up later and asked for more."<sup>222</sup> Mr. Kitt also communicated to Mr. Nobrega about this meeting in a May 20, 2008 e-mail: "I believe we are in good shape as far as the hotel project goes. Hazel and I met again last week and resolved the final issues. She seemed pleased and was then on to discussing the Sheridan opportunity and potential parking projects. I will let you know if anything changes."<sup>223</sup>

155. Mr. Kitt testified regarding the May 13, 2008 meeting as follows:

Q: ... And so you negotiated with Mr. McCallion, and this is the agreement that you were able to reach?

A: There was no negotiation really. It was -- I walked into that meeting with the terms already having been discussed at various points. And so it was -- it was -- it wasn't a -- the terms of the -- of the six (6) month period were not discussed in a negotiation context. There was no five (5) or seven (7) or -- Peter asked for more time at the end, but this was really -- I didn't -- I wasn't negotiating specific terms with Hazel. If -- if you're taking that away from this email, that is -- that is -- isn't true. I was -- it wasn't -- it wasn't negotiating. It was me sitting down, agreeing to meet with Hazel, telling her what the period was, her impressing how important the hotel was once again, Peter coming after the fact saying he needed more time, me saying no, and then Peter nodding his head. So that was the context of "came to an agreement," but I didn't look at what I -- that was not a negotiating session for -- from my point of view.<sup>224</sup>

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<sup>220</sup> Exhibit 200, p. 8; Kitt, 4016 and 4021.

<sup>221</sup> Kitt, 4020-21.

<sup>222</sup> Exhibit 246.

<sup>223</sup> Exhibit 421.

<sup>224</sup> Kitt, 4019-20.

156. The Mayor does not recall discussing an extension to the WCD agreement at the meeting; however, she does recall discussing the City's desire to get Sheridan College to the City Core, which OMERS was working on.<sup>225</sup> The Mayor testified that OMERS knew the Sheridan deal would be an asset to Square One.<sup>226</sup> This occurred prior to the in the year prior to the request of proposals regarding the choice of a site for Sheridan College.

157. The Mayor approached Mr. Kitt and Mr. Nobrega in July, 2008, asking that WCD be given six more months to find a hotel.<sup>227</sup> The Mayor was not involved in the negotiations of the details of the extension or the monetary penalties involved.<sup>228</sup> The Mayor's focus was solely on getting WCD more time, because of the economic conditions.<sup>229</sup> The Mayor recalls that WCD asked for her assistance in getting the extension and that she told Mr. DeCicco that he better turn up real evidence that there was hope of getting a hotel.<sup>230</sup>

158. WCD and the owners negotiated an amending agreement to the Agreement of Purchase and Sale dated July 31, 2008. The Mayor was not involved in the negotiations or the agreement, and did not see the amending agreement signed on July 31, 2008.<sup>231</sup>

159. Mr. Kitt testified that the discussions he had with the Mayor between March 27, 2008 and the signing of the amending agreement on July 31, 2008 all led to changes that enhanced the potential for a hotel deal.<sup>232</sup>

## **2. Fall, 2008**

160. Prior to the Inquiry, the Mayor was unaware of any attempts by WCD to negotiate a "straight sale of the land with no hotel conditions." She was unaware that in October,

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<sup>225</sup> Hazel McCallion, 4919.

<sup>226</sup> Hazel McCallion, 4921.

<sup>227</sup> Exhibit 285; Exhibit 644.

<sup>228</sup> Hazel McCallion, 4923.

<sup>229</sup> Hazel McCallion, 4923.

<sup>230</sup> Hazel McCallion, 4926.

<sup>231</sup> Hazel McCallion, 4926.

<sup>232</sup> Kitt, 4162.

2008 Mr. DeCicco wrote a letter to Mr. Kitt suggesting the straight sale of the land with no hotel conditions.<sup>233</sup> The Mayor was also unaware that Peter McCallion had delivered this letter at a meeting with Mr. Filipetti and Mr. Kitt and had presented a WCD business card with his name on it on October 24, 2008.<sup>234</sup>

161. In an e-mail from Mr. Filipetti to Mr. Charles on October 24, 2008, Mr. Filipetti states that Peter McCallion “has advised us that he has spoken to the 'Key people' at the City who are apparently OK with these [hotel] restrictions being removed.”<sup>235</sup> The Mayor was not aware of the letter or the meeting about the straight sale of the land.<sup>236</sup> She testified that Peter would not dare raise it with her.<sup>237</sup> The Mayor further testified that she would be surprised if any City staff would have okayed the removal of hotel restrictions.<sup>238</sup>

162. Mr. McCallion testified that the key person he spoke to was Mr. Sajecki, who indicated that removing the hotel restriction was alright with respect to the timing of the hotel.<sup>239</sup> The idea was still to have the hotel built eventually and that either the zoning or the official plan would be changed to require that a hotel be built.<sup>240</sup> Mr. McCallion testified that he never spoke to his mother about this issue.<sup>241</sup>

163. Neither Mr. Kitt nor anyone from Oxford or AIM contacted the Mayor to discuss the straight sale of the land in the fall of 2008.<sup>242</sup> Nor did anyone from Oxford discuss with the Mayor the possibility of changing the City’s official plan, an idea which was put forward by Mr. Sajecki in an e-mail from Mr. Filipetti to Mr. Kitt, dated November 7, 2008.<sup>243</sup> Mr. Sajecki also suggested preserving a portion of the site for a hotel with a

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<sup>233</sup> Exhibit 245; Hazel McCallion, 4929.

<sup>234</sup> Hazel McCallion 4931 and 5319; and Peter McCallion, 2169-70.

<sup>235</sup> Exhibit 262; Hazel McCallion, 4931.

<sup>236</sup> Hazel McCallion, 4931.

<sup>237</sup> Hazel McCallion, 4931.

<sup>238</sup> Hazel McCallion, 4931.

<sup>239</sup> Peter McCallion, 1945.

<sup>240</sup> Peter McCallion, 1945-46.

<sup>241</sup> Peter McCallion, 1947.

<sup>242</sup> Hazel McCallion, 4934.

<sup>243</sup> Exhibit 321; Hazel McCallion, 4935.

restrictive covenant.<sup>244</sup> No one from the City or WCD spoke to the Mayor about the use of a restrictive covenant.<sup>245</sup>

164. Had anyone discussed the removal of the hotel condition with the Mayor, she would not have agreed with it, because in her view it would have been a gamble, with no way of guaranteeing the hotel would be built.<sup>246</sup> Putting the hotel on the site plan was not a sufficient safeguard for the City since it could be amended at a later date.<sup>247</sup> Even if the hotel was part of the official plan of the City, the OMB could always overrule such a requirement.<sup>248</sup>

165. According to an e-mail from Mr. Nobrega to Mr. Kitt, dated November 16, 2008, Mayor McCallion raised with Mr. Nobrega the week before the fact that AIM was objecting to a land transaction with the City and that she was prepared to pressure them to take another, considered look at the request for an extension.<sup>249</sup> Although the Mayor does not recall this conversation it appears as though the referenced transaction is the WCD deal.<sup>250</sup>

166. The Mayor called Mr. Nobrega on November 20, 2008 to request that Mr. DeCicco be given some slack on the deposit which was almost due.<sup>251</sup> The Mayor testified that she must have been informed by Mr. DeCicco that they were having difficulty with the deposit, and that she asked Mr. Nobrega to give Mr. DeCicco extra time to raise the required funds. Otherwise the hotel deal would have died then and there.<sup>252</sup> She testified that she did not think a call from the Mayor or any member of

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<sup>244</sup> Hazel McCallion, 4935.

<sup>245</sup> Hazel McCallion, 4935.

<sup>246</sup> Hazel McCallion, 4934.

<sup>247</sup> Hazel McCallion, 4933-49334.

<sup>248</sup> Hazel McCallion, 4933-4934.

<sup>249</sup> Exhibit 422; Hazel McCallion, 4936-4937.

<sup>250</sup> Hazel McCallion, 4937.

<sup>251</sup> Exhibit 423; Hazel McCallion, 4940.

<sup>252</sup> Hazel McCallion, 4940.

Council would deter a major pension plan from making decisions in a business transaction based on their own interests and policies.<sup>253</sup>

167. Mr. Nobrega testified that if he had received a similar phone call from Mr. DeCicco instead of the Mayor, he probably would have followed up in the same manner.<sup>254</sup> Mr. Nobrega also noted that Mr. DeCicco would probably have been able to get through to him since he is listed on the OMERS website.

168. The Mayor further testified that the City has in the past given extensions to companies that have not been able to pay development levies up front.<sup>255</sup> Such flexibility has ultimately resulted in economic development for the City.<sup>256</sup> The Mayor was trying to gain Mr. DeCicco time to find a hotel, because she knew that without a hotel there was no deal.<sup>257</sup> There were no other applications for development of the land adjacent to the Living Arts Centre at that time.<sup>258</sup> Indeed, there was nothing on the Living Arts Centre land at this time.<sup>259</sup>

169. The Mayor testified that she does not know why Mr. DeCicco did not make efforts to get extensions himself.<sup>260</sup> However, it is not uncommon for people to ask the Mayor to assist them. The Mayor does not feel that Mr. DeCicco put her in an awkward position by asking for her assistance in obtaining extensions. Mr. DeCicco had a right to make such a request, as a citizen and businessman. It was a private business deal and the Mayor felt she was complying with the law.

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<sup>253</sup> Hazel McCallion, 4942 and 5172.

<sup>254</sup> Nobrega, 3270-72.

<sup>255</sup> Hazel McCallion, 4942.

<sup>256</sup> Hazel McCallion, 4942.

<sup>257</sup> Hazel McCallion, 4942.

<sup>258</sup> Hazel McCallion, 4942.

<sup>259</sup> Hazel McCallion, 4939-4943.

<sup>260</sup> Hazel McCallion, 5175.

### 3. Effect of the 2008 Economic Crisis

170. The world economic crisis struck in the late summer and fall of 2008. Mr. Nobrega testified that in the Fall 2008, all pension plans were in trouble. When asked about the economic conditions in September, 2008, Mr. Nobrega gave the example that for 60 days after the collapse of Lehman Brothers, OMERS' commercial paper was frozen: "if OMERS tried to get any commercial paper whatever, where there was a spread of four or five basis points. . . . in many respects, the commercial paper that we could have placed two months earlier, maybe in June or July we could not place in the fall"<sup>261</sup>. Mr. Nobrega thinks construction financing in credit facilities for developers would also have been frozen at this time.<sup>262</sup>

171. Mr. Nobrega understands that the economics of building hotels is difficult at the best of times. He thinks it would have been impossible to build a hotel in the September-December 2008, so the extensions sought by WCD were not surprising. Also, OMERS did not have another use for the land and Mr. Nobrega thought they would not for a long time because of the crisis. The extension was therefore not a pressing concern in the circumstances.<sup>263</sup>

172. The winter of 2008 is the only time in Mr. Nobrega's career that he has seen that kind of credit freeze. He testified that he has never before seen a credit freeze of commercial paper for AAA clients like OMERS.<sup>264</sup>

173. Following September, 2008, the worldwide economic crisis made obtaining financing for the hotel envisioned by the WCD project very difficult.<sup>265</sup> The liquidity crisis made the financing environment much more difficult, as lenders did not want to lend. Mr. Kitt testified that he was not surprised that the extensions were sought by Mr.

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<sup>261</sup> Nobrega, 3359-60.

<sup>262</sup> Nobrega, 3360-61.

<sup>263</sup> Nobrega, 3361-62.

<sup>264</sup> Nobrega, 3362-63.

<sup>265</sup> Kitt, 4162.

DeCicco given his history with the lands and the state of the global economy.<sup>266</sup> At the time Oxford did not have another competing use for the land, and was not swamped with other offers for it.<sup>267</sup> Mr. Kitt thought the extensions were responsible given the circumstances, including the week extension on the deposit.<sup>268</sup> Mr. Kitt testified that the extensions harmed neither Oxford nor AIM.<sup>269</sup>

#### 4. December, 2008

174. Mayor McCallion phoned Mr. Filipetti on December 2, 2008. As indicated in an e-mail chain among Mr. Filipetti, Mr. Coleman, and Mr. Charles of that same date, the Mayor told Mr. Filipetti that she “wants a deal in place to enable hotel development to go forward when conditions improve.”<sup>270</sup> To this end the Mayor requested a meeting with Mr. Kitt, Mr. Nobrega, and Mr. DeCicco as soon as possible, so as to find out what was 'up their sleeve'. The Mayor also suggested that the Agreement be extended if they were not able to meet before it expired.<sup>271</sup>

175. The Mayor’s intention on the call was to acknowledge that development was slowing in Mississauga due to the economic crisis, and that she recognized the difficulty of getting a four or five star hotel under the conditions at that time.<sup>272</sup> Mr. Kitt testified that he understood Mr. Filipetti’s e-mail to mean that the Mayor was expressing concern that there were difficult economic conditions which made it impossible to live up to the hotel timelines and that an extension was needed until such a time when conditions improved and a hotel development was possible.<sup>273</sup>

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<sup>266</sup> Kitt, 4163-64.

<sup>267</sup> Kitt, 4163-65.

<sup>268</sup> Kitt, 4164-65.

<sup>269</sup> Kitt, 4165.

<sup>270</sup> Exhibit 310.

<sup>271</sup> Hazel McCallion, 4944.

<sup>272</sup> Hazel McCallion, 4944-4945.

<sup>273</sup> Kitt, 4166-4167.

176. The Mayor spoke with Mr. DeCicco during this same time period to tell him that his efforts had not been working out.<sup>274</sup> She never dropped the focus on the hotel in these discussions.<sup>275</sup> Significantly, Mr. DeCicco never told the Mayor about the fact that he was trying to negotiate the clean sale of the land.<sup>276</sup> Nor did Peter McCallion.<sup>277</sup>

177. Contrary to the suggestion in a memo prepared by Mr. Filipetti for Mr. Kitt on December 11, 2008, the Mayor never requested (as was represented by Mr. DeCicco) that the owners make a clean sale of the land.<sup>278</sup> The Mayor testified that this was absolutely false and that she would never have made such a request at any time to anybody.<sup>279</sup> Indeed, the Mayor would have been very upset to know that such a proposal was on the table, given that all parties involved knew that the hotel was her one condition for the sale of the land.<sup>280</sup>

178. The Mayor called Mr. Dal Bello from AIM on December 15, 2008, prior to her meeting with Mr. Kitt.<sup>281</sup> Mr. Dal Bello described the telephone call as follows:

Q: What did she say to you?

A: Well, she was very, you know, frustrated that we weren't kind of supporting the deal and that we weren't necessarily of the mind to let it move forward. She talked to us about not being good corporate citizens, not working to -- to build the City, and there was a fair bit of that.

Q: Okay.

A: I got a word in edgewise every once in a while.

Q: When you got a word in edgewise, what did you say to her?

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<sup>274</sup> Hazel McCallion, 4945-4946.

<sup>275</sup> Hazel McCallion, 4946.

<sup>276</sup> Exhibit 143; Hazel McCallion, 4946-4947; and DeCicco, 3956.

<sup>277</sup> Peter McCallion, 2169-2170.

<sup>278</sup> Hazel McCallion, 4948.

<sup>279</sup> Hazel McCallion, 4948.

<sup>280</sup> Hazel McCallion, 4948.

<sup>281</sup> Hazel McCallion, 5316.

A: Well, it was -- it was more focussed on that, you know, we'd signed up for the provision of a hotel. This seemed to be a proponent who wasn't able to -- to get that together, and, you know, we weren't really looking to make changes to the agreement we had.<sup>282</sup>

179. The Mayor agrees that she expressed her concern to Mr. Dal Bello that AIM was not supporting the WCD deal and not being a good corporate citizen.<sup>283</sup> She was seeking flexibility on the part of AIM to save the hotel project as it had been reported to her that AIM was the holdup in moving the project forward.<sup>284</sup> Mr. Dal Bello did not raise AIM's concerns around Peter's involvement during this phone call.<sup>285</sup>

180. Mr. Kitt requested a meeting on December 15, 2008 with the Mayor and Mr. DeCicco.<sup>286</sup> Mr. Kitt told Mr. DeCicco and the Mayor in no uncertain terms that the deal was going to die because there was no concrete evidence Mr. DeCicco had been able to attract a hotel.<sup>287</sup> Although the Mayor was not privy to all the details it became clear from listening to Mr. Kitt that Mr. DeCicco had failed to secure a hotel.<sup>288</sup> She therefore did not dispute Mr. Kitt's position that the deal was going to die.<sup>289</sup> The Mayor recalls Mr. DeCicco responding to the effect that he had something, perhaps a management agreement with an hotelier, and Mr. Kitt asking that he provide such evidence to the owners.<sup>290</sup>

181. The Mayor does not recall any discussion about Peter McCallion's involvement in the WCD deal during that meeting or Peter's name coming up at all.<sup>291</sup> In contrast to Mr. Kitt's recollection, the Mayor does not recall him raising this issue with her nor did she

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<sup>282</sup> Dal Bello, 2288-89.

<sup>283</sup> Hazel McCallion, 5338.

<sup>284</sup> Hazel McCallion, 5339.

<sup>285</sup> Hazel McCallion, 5404-06; Mr. Dal Bello, 2311.

<sup>286</sup> Hazel McCallion, 4951.

<sup>287</sup> Hazel McCallion, 4951-4952.

<sup>288</sup> Hazel McCallion, 4952.

<sup>289</sup> Hazel McCallion, 4952.

<sup>290</sup> Hazel McCallion, 4953.

<sup>291</sup> Hazel McCallion, 4954-4955.

inform him that “Peter was off the file”.<sup>292</sup> The Mayor does not know what “off the file” means, nor would she have been privy to such information.<sup>293</sup> However, a plausible explanation is that the deal at that point was dead and therefore Peter’s involvement in the deal was over.<sup>294</sup> Mr. DeCicco testified that he had had the conversation about Peter being off the file with Mr. Kitt while the Mayor was in the washroom.<sup>295</sup> We would submit that, at the end of the day, this difference in recollection with respect to who said Peter was “off the file” to Mr. Kitt is of little significance. There is no evidence that the actions of the owners’ actions turned on it and the deal died shortly thereafter.

182. After the December 15<sup>th</sup> meeting the Mayor did not attempt to convince the owners to change their minds about terminating the deal.<sup>296</sup> It was clear to her that the owners – the ones who were privy to all the information and details concerning the deal – did not feel they had been provided with concrete evidence that Mr. DeCicco could deliver a hotel.<sup>297</sup>

183. With respect to the numerous calls she received from Mr. DeCicco in November and December, 2008, the Mayor testified that they did not occur because of a special relationship between her and Mr. DeCicco.<sup>298</sup> The Mayor receives many calls from citizens, Councillors, and developers alike when a development plan is not going well.<sup>299</sup> Such phone calls are not unusual at all.<sup>300</sup> The Mayor also testified that she does not recall whether she returned all of his calls.<sup>301</sup>

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<sup>292</sup> Hazel McCallion, 4954.

<sup>293</sup> Hazel McCallion, 4954.

<sup>294</sup> Hazel McCallion, 5415-5421.

<sup>295</sup> DeCicco, 3735 and 3920-3922. See Kitt, 4064 et seq., wherein he states that he asked the Mayor, not DeCicco.

<sup>296</sup> Hazel McCallion, 4953; Dal Bello, 2350-51.

<sup>297</sup> Hazel McCallion, 4953.

<sup>298</sup> Hazel McCallion, 4960-61.

<sup>299</sup> Hazel McCallion, 4960-61.

<sup>300</sup> Hazel McCallion, 4960-61.

<sup>301</sup> Hazel McCallion, 5170-71.

## 5. 2009

184. On January 9, 2009 Mr. DeCicco left a message with the Mayor informing her that the deal had been terminated. The Mayor had accepted that this would inevitably occur.

185. On January 12, 2009, Messrs. Dal Bello, Coleman, Kitt and Filipetti met with the Mayor.<sup>302</sup> The Mayor expressed concern that they have a better relationship going forward.<sup>303</sup> The Mayor's intention in requesting a meeting with OMERS and AIM was to better understand the nature of their relationship and to ensure that they were on the same page with the City and would continue to retain the site for a hotel.<sup>304</sup> She did not ask the owners to consider resurrecting the WCD deal at this meeting.

186. After the WCD deal was terminated in January, 2009 neither Peter McCallion nor Mr. DeCicco communicated to the Mayor that they thought WCD had a continuing interest in or claim to the land.<sup>305</sup> The Mayor assumed that the deal was dead and OMERS had taken back the land.<sup>306</sup>

## 6. Concerns about the Mayor's involvement

187. Mayor McCallion, when asked whether care needs to be taken with respect to how one intervenes for the good of Mississauga, expressed the view that it is a judgment call to be made by the mayor or a member of council. The Mayor's interventions were made on behalf of the City of Mississauga. It was up to OMERS and AIM to determine whether they wanted to negotiate with a company that the Mayor's son was involved in.<sup>307</sup>

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<sup>302</sup> SOL.002.009.042.

<sup>303</sup> SOL.002.017.008.

<sup>304</sup> Hazel McCallion, 4945.

<sup>305</sup> Hazel McCallion, 5197 and 5208.

<sup>306</sup> Hazel McCallion, 5197.

<sup>307</sup> Hazel McCallion, 5186

188. While several witnesses testified that they had concerns for the Mayor's and/or Peter's involvement in the WCD project, these concerns were never raised directly with the Mayor. AIM's concerns, in particular, were never made known to the Mayor although she accepts that the position of AIM at the Inquiry is that her involvement and Peter's interest created unfavourable optics around the deal.<sup>308</sup>

189. The Mayor's position with respect to concerns for the appearance of the relationships involved is that they should have been raised with her directly:

**“Well, if they had [concerns], they should have mentioned it, for one (1) thing, because I'm straightforward in what I feel about something.** I think they should have mentioned it. And I don't see it. It's a business plan. OMERS sold the land to a company. ... are they concerned who they sell it to? It's a business deal. ... I don't see it any ... different than any other business deal that goes forward. So if they were concerned about it, they should have never entered into the agreement. ... I'm not sure they were aware right at the very beginning that Peter was involved. I don't know what Murray Cook told [them] when he met with OMERS, and cetera, but certainly very shortly after that it clearly was indicated that Peter was involved. ...If OMERS was concerned or AIM was concerned, I think they should have said so... .”<sup>309</sup>  
[Emphasis added.]

190. It is reasonable to conclude that, had the Mayor known her involvement made the owners uncomfortable, she would not have participated since to do so would clearly have impeded not facilitated the success of the project.

191. In terms of the nature of Peter's interest in WCD, the Mayor does not see how Peter's involvement as a principal or shareholder in WCD rather than as an agent made a difference to AIM because Peter would benefit financially either way.<sup>310</sup> While the Mayor understands that the position of AIM at this Inquiry is that there is (potentially) a difference in magnitude between an equity interest and an interest as agent, she notes that

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<sup>308</sup> Hazel McCallion, 4949, 4955, and 5186.

<sup>309</sup> Hazel McCallion, 4958.

<sup>310</sup> Hazel McCallion, 4958-59.

the owners had the opportunity to make inquiries into the nature of Peter McCallion's interest through due diligence but chose not to do so.<sup>311</sup>

192. The Mayor further notes that if AIM's concerns for Peter's involvement were raised by Mr. Kitt with Mr. DeCicco at the meeting on December 15, 2008, they were raised rather late in the game, since the owners knew of his involvement from early on.<sup>312</sup> Mr. Kitt held a similar view:

We knew -- we had relationships with the Mayor, I didn't personally, but we were well aware of the Mayor being active on files. And both co-owners knew of Peter McCallion's -- that Peter McCallion had some type of financial connection to this transaction. From our perspective, there was no new news starting on March 27th [2008] going forward. And **AIM specifically raising Peter McCallion late in the fall of '08 was curious to me, but I respected it, and I followed up on it, but it -- it seemed like a bit like putting your hand over your eyes and hoping that something isn't there when it really is.**<sup>313</sup>

193. With respect to the view expressed by Mr. Kitt to Mr. Nobrega in a December 14, 2008 e-mail that the buyer was using the Mayor in the process, the Mayor made the following comment about her perception of being "used" by many parties to the development process. For the mayor being asked to get involved in not unusual:

"Well, you know, as I look back over the thirty (30) years ... as Mayor, in regard to the development ... that has taken place in our City, and just a [monstrous] amount of development, ... **it's not unusual for the Mayor to get involved, being asked by the developer, or being asked by the staff, or being asked by the councillor to get involved ... in the process. And ... I followed the same procedure for this one, knowing full well that my son was involved and that ... any involvement with the City, in regard to the City, the planning process, the development process in the City, that I would not be involved, and I have not been involved.** And I think there's evidence as to that in which the staff has confirmed that I never got involved. The staff

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<sup>311</sup> Dal Bello, 2377; De Bever 4291-92, 4312.

<sup>312</sup> Hazel McCallion, 4955.

<sup>313</sup> Kitt, 4106.

knew of my conflict. The councillors knew that my son was involved. They knew of my conflict. And, therefore, anything to do with the planning process, or the development -- or the processing of the application of WCD, I did not get involved.”<sup>314</sup>

194. Mr. Nobrega testified that neither he nor his executives made any decisions contrary to OMERS’ interests in the WCD deal because of the Mayor’s or Mr. McCallion’s involvement.<sup>315</sup> Decisions made by OMERS and Oxford were all made pursuant to the interests of OMERS in this deal.

195. Mr. Kitt testified that when the Mayor spoke to him or Mr. Filipetti it was to pursue the concept of keeping the hotel deal alive.<sup>316</sup> He testified that not once did the Mayor suggest that the deal should be kept alive to allow for people to build condos.<sup>317</sup> The issue was the hotel. Mr. Kitt also testified that in his opinion the Mayor was not pushing Peter McCallion’s interests; rather, she was pushing the City’s interests constantly, and by associating WCD’s interests those were pushed along as well.<sup>318</sup>

#### **H. WCD Internal Affairs**

196. The Mayor had very little involvement in WCD internal affairs. She never read any of the internal corporate documentation, and was not aware of the relative financial interests of the various parties. She was not involved in the original concept, nor in recruiting those who did become involved in WCD. She had one meeting at her house with Mr. DeCicco and Mr. Cook, but did not otherwise become involved in any WCD internal disputes.

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<sup>314</sup> Exhibit 144; Hazel McCallion, 4957.

<sup>315</sup> Mr. Nobrega, 3350-52.

<sup>316</sup> Kitt, 4177.

<sup>317</sup> Kitt, 4177.

<sup>318</sup> Kitt, 4177.

## 1. Mr. Couprie

197. Mr. Couprie testified that it was Peter McCallion who approached him about becoming involved in WCD<sup>319</sup> and that he never discussed the WCD deal with the Mayor,<sup>320</sup> with the exception of the dinner in January 29, 2007 at which she witnessed his signature, and one meeting at her house in November 20, 2007.<sup>321</sup>

198. With respect to the November, 2007 meeting at the Mayor's house, the Mayor was concerned that two of the major players in the WCD project had differences of opinion which could effectively kill the project.<sup>322</sup> Mr. Couprie stated that Mr. McCallion had made a decision to replace Mr. Cook, and he wanted Mr. Couprie to give the Mayor Mr. Couprie's opinion of the transaction. Mr. Couprie told Mayor: "Look, I don't know Tony that well and I don't know Murray that well; that it be Peter's call what to do." The Mayor wanted Mr. Couprie's opinion and Mr. Couprie told her he couldn't really make that decision.<sup>323</sup>

199. Those two occasions were Mr. Couprie's only interactions with the Mayor with respect to WCD.<sup>324</sup> Mr. Couprie also testified that the Mayor wasn't involved in settling the litigation between WCD and Mr. Cook.<sup>325</sup>

## 2. Mr. Cook/Mr. DeCicco

200. Mr. Cook testified that he first became involved in the project when he got a phone call in late 2004 from Mr. McCallion.<sup>326</sup> Mr. Cook testified that the tenor of his

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<sup>319</sup> Couprie, 3404-08, see also Peter McCallion, 1819-21.

<sup>320</sup> Couprie, 3439-40.

<sup>321</sup> Exhibit 677; Hazel McCallion, 4903.

<sup>322</sup> Hazel McCallion, 4903-4904.

<sup>323</sup> Couprie, 3446.

<sup>324</sup> Couprie, 3508.

<sup>325</sup> Couprie, 3490.

<sup>326</sup> Cook, 4439.

meetings early on with Madam Mayor were that “this is great for the City. We want this hotel”.<sup>327</sup>

201. The Mayor became aware that differences had arisen between Mr. Cook and Mr. DeCicco regarding the speed that the project was moving ahead in 2007. Mr. DeCicco called the Mayor frequently and thought she could get them working together.<sup>328</sup> The Mayor's only real involvement in that dispute was one meeting at her house, attended by Mr. DeCicco, Mr. Cook and Peter McCallion.<sup>329</sup> She tried to get Mr. DeCicco and Mr. Cook to find a resolution, without getting into the details of the dispute. The Mayor wanted them to resolve their differences so that the dispute wouldn't interfere with the hotel project.

202. When Mr. DeCicco and Mr. Cook met with the Mayor at her house in November, 2007, she could see they had a difference of opinion as to how the project should move forward.<sup>330</sup> She attributed it to a personality difference.<sup>331</sup> Mr. DeCicco wanted to move faster than Mr. Cook.<sup>332</sup> The Mayor did not think it had anything to do with money.<sup>333</sup> The Mayor tried to help Mr. DeCicco and Mr. Cook come to a resolution without getting into the details of the dispute.<sup>334</sup> She made no other interventions.<sup>335</sup>

203. Mr. DeCicco testified that the Mayor had no role in bringing him into the WCD project.<sup>336</sup> Peter McCallion brought Mr. DeCicco in on project in summer of 2007.<sup>337</sup>

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<sup>327</sup> Cook, 4491.

<sup>328</sup> Hazel McCallion, 4898.

<sup>329</sup> DeCicco, 3951.

<sup>330</sup> Hazel McCallion, 4899-4900.

<sup>331</sup> Hazel McCallion, 4899-4900.

<sup>332</sup> Hazel McCallion, 4899-4890.

<sup>333</sup> Hazel McCallion, 4900-4901.

<sup>334</sup> DeCicco, 3951; Peter McCallion, 1838; and Cook, 4468.

<sup>335</sup> Hazel McCallion, 4901; DeCicco, 3952-3953.

<sup>336</sup> DeCicco, 3941.

<sup>337</sup> Peter McCallion, 1830 and 1956.

204. The Mayor did not respond to a number of Mr. DeCicco's phone calls with regard to Mr. Cook. Mr. DeCicco had no discussions with the Mayor regarding suing Mr. Cook for \$100M.<sup>338</sup>

205. Mr. DeCicco never sat down with the Mayor to review any documents pertaining to the dispute or settlement with Mr. Cook.<sup>339</sup> After the meeting at her house, the dispute was resolved through Mr. Cook's lawyer, Mr. Cohen. The Mayor neither had Mr. Cook sign any documents nor did she return many of Mr. DeCicco's messages. Mr. DeCicco testified that he had no discussions with the Mayor regarding suing Mr. Cook for \$100 million.<sup>340</sup> He further testified that the Mayor did not respond to a number of his phone calls regarding Mr. Cook.<sup>341</sup> The purpose of his voice messages was to make sure the Mayor knew he was being as fair as possible with Mr. Cook, whom he knew was a family friend of the Mayor's.<sup>342</sup>

206. Mr. DeCicco's lawyer, Mr. Bisceglia, faxed an unsigned shareholders resolution and transfer agreement to the Mayor on October 26, 2007.<sup>343</sup> The Mayor does not recall receiving or reviewing this fax.<sup>344</sup> According to the faxed agreement, Mr. Cook was to transfer his shares and resign as a director in exchange for certain monetary compensation.<sup>345</sup> Mr. DeCicco testified that he never reviewed the agreement with the Mayor.<sup>346</sup>

207. According to the Mayor's telephone logs, Mr. DeCicco left a message with her office on November 5, 2007, which asked whether the Mayor was able to or had considered getting Mr. Cook sign a termination agreement.<sup>347</sup> The Mayor has no memory

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<sup>338</sup> DeCicco, 3838.

<sup>339</sup> DeCicco, 3952.

<sup>340</sup> DeCicco, 3838.

<sup>341</sup> DeCicco, 3950-51.

<sup>342</sup> DeCicco, 3584-85, 3952-3953.

<sup>343</sup> Exhibit 629; Hazel McCallion, 4901.

<sup>344</sup> Hazel McCallion, 4901.

<sup>345</sup> Exhibit 629.

<sup>346</sup> DeCicco, 3952.

<sup>347</sup> Exhibit 236.

of this message and did not get in touch with Mr. Cook.<sup>348</sup> The Mayor was not involved in pushing Mr. Cook out of the project.<sup>349</sup> Mr. Cook testified that he never had a discussion with the Mayor with respect to the termination of the Put and Call Agreement or the deterioration of his relationship with Mr. DeCicco.<sup>350</sup> Other than the one meeting at the Mayor's house where she was encouraging Mr. Cook and Mr. DeCicco to work together for the benefit of the City, he does not recall any other discussion with the Mayor about his relationship with Mr. DeCicco.<sup>351</sup>

208. According to another entry in the Mayor's journal, there was lunch scheduled at Canyon Creek with Peter McCallion, Mr. DeCicco and John Di Poce on December 14, 2007.<sup>352</sup> The Mayor does not remember if she attended this lunch. Although the Mayor knows Mr. Di Poce personally, having fished at his property once or twice, she was not aware that Mr. Di Poce was an investor in WCD until this Inquiry.<sup>353</sup>

209. Mr. DeCicco testified that the Mayor and he were not necessarily going to meet with Mr. Di Poce to discuss WCD.<sup>354</sup> Nor does Mr. DeCicco recall meeting with the Mayor and Mr. Di Poce at any stage.

210. Mr. Di Poce confirmed this evidence. He testified that he never discussed WCD with the Mayor. He did not have any memory of a meal with the Mayor, Peter McCallion and Mr. DeCicco, and stated that it didn't happen.<sup>355</sup>

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<sup>348</sup> Hazel McCallion, 5134.

<sup>349</sup> Hazel McCallion, 5302-03.

<sup>350</sup> Cook, 4502-03, 4569, and 4573.

<sup>351</sup> Cook, 4502.

<sup>352</sup> Exhibit 678; Hazel McCallion, 4907.

<sup>353</sup> Hazel McCallion, 4908.

<sup>354</sup> DeCicco, 3593-94.

<sup>355</sup> Di Poce, 4406-4409.

## **I. WCD's Site Plan Application and Fees**

211. The WCD project was a unique development for City staff.<sup>356</sup> The handling of WCD's application fees was a technical exercise<sup>357</sup> that required a series of decisions made by staff against the backdrop of an evolving legislative context at the regional level. Without exception, these decisions were made without the involvement or knowledge of the Mayor.<sup>358</sup> Further, City planning staff were unanimous in their testimony that the involvement of Peter McCallion in the process did not lead to preferential treatment of the WCD application or the handling of the fees assessed.<sup>359</sup>

### **1. The Initial Site Plan Application**

212. The proposed WCD development was a large, complicated project that was to be built out over a long period of time.<sup>360</sup> As such, in the initial stages of the project, the planning department made the determination that a master site plan would be appropriate.<sup>361</sup> It did not seem reasonable to require a detailed site plan for a project that would be built out over a 10 or 15 year period, as the details would likely change in that time.<sup>362</sup>

213. When the WCD project first came in, Ms. Ball called the Mayor's office and asked them if she would want a briefing on it, and the response came back "no", without any explanation as to why.<sup>363</sup> Relatively soon thereafter, in or around February of 2007, Ms. Ball became aware that Peter McCallion was involved in the project.<sup>364</sup> It then made

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<sup>356</sup> Bench, 2579.

<sup>357</sup> Sajecki, 2782.

<sup>358</sup> Ball, 4253; Bench 2670; Sajecki, 2782, Baker, 4674.

<sup>359</sup> Sajecki, 2802 Ball, 4253.

<sup>360</sup> Ball, 4203; Sajecki, 2753.

<sup>361</sup> Ball, 4203.

<sup>362</sup> Ball, 4201-4203.

<sup>363</sup> Ball 4219.

<sup>364</sup> Ball, 4249.

sense to her that, given Mr. McCallion's involvement in the project, the Mayor did not want to be briefed by staff, as it was a conflict issue.<sup>365</sup>

214. Ms. Bench testified that the legal department was contacted by the planning department at this stage because the project raised issues concerning how to charge fees for the handling of a master site plan application as opposed to a concept plan with site plan applications for individual pockets as they were being developed.<sup>366</sup>

215. While there is no provision in the bylaw for fees at that level,<sup>367</sup> and fees are not normally charged for master site plan applications,<sup>368</sup> the planning department was aware of the large amount of work that could go into a master site plan.<sup>369</sup> Site plan application fees, in general, are charged on a cost-recovery basis.<sup>370</sup> Based on their past experiences, Mr. Sajecki and Ms. Ball felt that it was appropriate to charge WCD a fee of approximately \$52,000.00, based on 10% of what they calculated was the total fee for a complete site plan application.<sup>371</sup> This was paid by WCD to the City, in addition to a \$3,250.00 fee required to lift the 'H' designation.<sup>372</sup>

216. Ms. Bench testified that she had no discussion with the Mayor regarding the site fees that would be payable by WCD. When asked if this would be an issue that would be within the decision of staff, Ms. Bench confirmed that Council has delegated site plan control issues to the Commissioner of Planning.<sup>373</sup>

217. Mr. Sajecki testified that the Mayor never discussed the site plan application fees with him.<sup>374</sup> In fact, the Mayor never spoke to Mr. Sajecki about the application at all.<sup>375</sup>

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<sup>365</sup> Ball, 4249.

<sup>366</sup> Bench, 2579-2580.

<sup>367</sup> Sajecki, 2764.

<sup>368</sup> Ball, 4203.

<sup>369</sup> Ball, 4204; Sajecki, 2764.

<sup>370</sup> Sajecki, 2763.

<sup>371</sup> Sajecki, 2764.

<sup>372</sup> Ball, 4204.

<sup>373</sup> Bench, 2670.

<sup>374</sup> Sajecki, 2780

<sup>375</sup> Sajecki, 2780.

The only time the Mayor would have had involvement was before the application was filed when City Staff had arranged at least one meeting, possibly two, where Mr. Sajecki remembers the Mayor attending. The purpose of that meeting was to advise the members of council who sat on the Board of the Living Arts Centre that, in fact, the application was contemplating a direct connection into the Living Arts Centre. Mr. Sajecki believes the Mayor attended for at least part of that meeting and then left.<sup>376</sup> Ms. Ball also testified that there had been discussions early on with some members of council who actually sat on the board of the Living Arts Centre.<sup>377</sup> The Planning Department did not do any formal briefing for council on the project.<sup>378</sup>

218. In her testimony, Ms. Ball confirmed that the Mayor did not at any time contact her or her planning staff about the City's planning related issues regarding the WCD project.<sup>379</sup> Ms. Ball testified that all site plan fee decisions were made by City staff and that the Mayor had no input. Ms. Ball felt no interference by the Mayor in those decisions.<sup>380</sup>

## **2. WCD's Application Fees and Lack of Preferential Treatment**

219. In January of 2008, WCD indicated its desire and understanding that the master site plan could be characterized as a full site plan. The City planning department, with the help of the legal team, concluded that it was appropriate to classify the master site plan as a site plan application.<sup>381</sup>

220. Mr. John Zingaro, who was Assistant City Solicitor during the relevant period,<sup>382</sup> testified that in mid to late January, 2008, he was asked to determine whether the transition rules would apply to WCD or whether they would have to be levied under the

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<sup>376</sup> Sajecki, 2781.

<sup>377</sup> Ball, 4218.

<sup>378</sup> Ball, 4218.

<sup>379</sup> Ball, 4257.

<sup>380</sup> Ball, 4252-4253.

<sup>381</sup> Ball, 4208.

<sup>382</sup> Zingaro, 1760.

2007 bylaw, which was significantly higher.<sup>383</sup> There were three landmark dates relevant for the purposes of the transition provision, beginning with October 4, 2007, which was the date that an application for site plan approval that was complete would have to have been submitted. This was the only date that had passed by January, 2008. Mr. Zingaro's analysis was that in fact, an application that was complete had been submitted.<sup>384</sup> Ms. Bench testified that there was some "wobble room" with regard to grandfathering the master site plan in under the regional scheme, as the region's bylaw left room for differing interpretation of how a "complete" application was defined.<sup>385</sup> This would have the effect of allowing WCD to take advantage of grandfathering provisions in the regional development charge scheme.

221. During Ms. Bench's testimony, she was asked why City legal staff were exploring options that were favourable to the developer. She stated that city legal staff took the approach of trying to assist their client, in this case the planning department, in achieving the result that they were looking for while staying within the confines of the legislation. Thus, if there were several options and interpretations open, they needed to advise the client they could support them.<sup>386</sup>

222. Ms. Ball testified that throughout the internal City staff discussion regarding the development fees, she did not speak with the Mayor about the issue. She was not aware of any member of her staff having such conversations.<sup>387</sup>

223. Ms. Baker testified that the Mayor did not involve Ms. Baker in any discussions about development fees or site plan application fees.<sup>388</sup>

224. It was the strong feeling of Ms. Ball and the legal department that, if the master site plan was to be considered a site plan application, the full normal application fees

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<sup>383</sup> Zingaro, 1768-1769.

<sup>384</sup> Zingaro, 1771-1773.

<sup>385</sup> Bench, 2583-2584.

<sup>386</sup> Bench, 2584.

<sup>387</sup> Ball, 4255.

<sup>388</sup> Baker, 4674.

would come owing.<sup>389</sup> Ms. Ball wrote to Mr. Lyon on February 28, 2008 indicating that the site fees owed, which were \$440,670.00 dollars would be split into two tranches.<sup>390</sup> This was based on a purely mathematical calculation.<sup>391</sup> The fee was split into two instalments for two reasons. First, WCD was still filing at a fairly general level. Further, it was a large fee and it seemed reasonable to stage the payment. Ms. Ball would have discussed this with Mr. Sajecki, who would have approved it.<sup>392</sup>

225. In March, 2008 the Mayor and Mr. Sajecki were invited by Mr. DeCicco to tour the Marriott Residence Inn in Toronto, with its owner Steve Gupta.<sup>393</sup> It did not meet her four-or-five star hotel criteria.<sup>394</sup>

226. WCD did not pay the initial \$220,000.00 when it resubmitted its plan.<sup>395</sup> Mr. Sajecki and Ms. Ball discussed whether the plans should be circulated in advance of the April 28, 2008 City Council meeting which would discuss the lifting of the 'H' holding zone bylaw. There were three reasons why Mr. Sajecki decided to circulate the plans in the absence of the first instalment of the fees.<sup>396</sup> First, the City had commitment from well regarded development consultants that the fees were, in fact, coming. Second, the City was under tight timelines to meet the April City Council date for the lifting of the 'H' holding zone bylaw. They needed further information from the detailed site plans in order to finalize the development and servicing agreements, which were part of the 'H' lifting requirements, and for which WCD had already paid its fees. Third, Mr. Sajecki did not want a missed timeline for council agenda to be the result of staff dragging their feet.<sup>397</sup>

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<sup>389</sup> Exhibit 606; Ball, 4242.

<sup>390</sup> Sajecki, 2582.

<sup>391</sup> Sajecki, 2760.

<sup>392</sup> Sajecki, 2766-2767.

<sup>393</sup> Hazel McCallion, 4910.

<sup>394</sup> Hazel McCallion, 4910-4911.

<sup>395</sup> Sajecki, 2767.

<sup>396</sup> Sajecki, 2767.

<sup>397</sup> Sajecki, 2767-2768.

227. Mr. Sajecki wanted to protect the City from getting involved in any litigation. If the application did not make it through council, it would not be because of his staff. It would be because WCD had not met the necessary requirements, which were an executed servicing agreement and an executed development agreement, and the lifting of the 'H'.<sup>398</sup> Mr. Sajecki was not hugely concerned about the amount of extra staff resources that would potentially be expanded without reimbursement. The most amount of staff time that would have been spent was a week to ten days.<sup>399</sup>

228. Ms. Ball testified that she was concerned that planning's failure to circulate the site plan could get them into a situation where planning was not prepared to respond to the removal of the 'H' request at council.<sup>400</sup>

229. The plans were circulated several weeks afterwards. Ms. Ball suggested to Ben Phillips that he circulate the site plan application.<sup>401</sup> A report had been prepared for the agenda in anticipation of it potentially being on the agenda. The day before the April 23, 2008 council meeting, WCD asked that it be pulled of the agenda.<sup>402</sup> It was adjourned until April 30, 2008, when again WCD requested it be withdrawn. It was therefore not dealt with and there was no presentation.<sup>403</sup>

230. Ms. Ball testified that the Mayor was not involved in any way in the push to place it on the agenda, or in the circulation of the site plan application.<sup>404</sup> A report was sent to the City Manager, signed by the commissioners. Ms. Ball testified the Mayor had no participation in the preparation of that report, and did not direct Ms. Ball in any way as to what should go in that report.<sup>405</sup>

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<sup>398</sup> Sajecki, 2770.

<sup>399</sup> Sajecki, 2771.

<sup>400</sup> Ball, 4220.

<sup>401</sup> Ball, 4251.

<sup>402</sup> Ball, 4222.

<sup>403</sup> Ball, 4251.

<sup>404</sup> Ball, 4250.

<sup>405</sup> Ball, 4251-4252.

231. Ms. Baker testified that the Mayor did not involve her in any discussions about lifting the 'H' designation from the lands.<sup>406</sup>

232. In May of 2008, WCD made a request for a further submission to be circulated. Mr. Sajecki testified his staff simply said back to them, "you've got to be kidding" and that further, that they would not circulate anything until the fees were paid. They were unhappy with the fact that the commitment had been made to pay the fees was not followed through.<sup>407</sup>

233. Ms. Bench testified that when WCD had not paid its development or site plan approval fees, it became a serious matter for the legal department.<sup>408</sup> On April 29<sup>th</sup>, 2008, Ms. Bench wrote a letter to WCD's counsel setting out the City's position in terms of moving the project forward. Mr. Sajecki testified that Mr. Ben Phillips e-mail Scott Walker on or around May 7 to say that the City would not process the application until the fees were paid.<sup>409</sup>

234. Mr. DeCicco testified that he did not talk to the Mayor regarding meetings with City staff or any of his complaints with respect to difficulties they were raising with him.<sup>410</sup> He did not feel it was appropriate to involve her in any problems he had dealing with City staff given her conflict.<sup>411</sup>

235. The Mayor was not aware until the Inquiry that WCD had not paid the agreed site plan fees.<sup>412</sup> The Mayor had nothing to do with discussions relating to this or any items involving City staff and the processing of WCD's application. One of the things the

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<sup>406</sup> Baker, 4674.

<sup>407</sup> Sajecki, 2771.

<sup>408</sup> Bench, 2581-2582.

<sup>409</sup> Sajecki, 2772-2773.

<sup>410</sup> DeCicco, 3635.

<sup>411</sup> DeCicco, 3635.

<sup>412</sup> Hazel McCallion, 5217.

Mayor has championed is the idea that developers must pay their way; this is part of the success of Mississauga.<sup>413</sup>

236. City staff were clear in their testimony that the WCD proposal received no preferential treatment because of Peter McCallion's involvement. Mr. McCallion sat in on some of the meetings with the City. Ms. Ball testified that it was not uncommon to have a real estate agent involved or sitting in on meetings.<sup>414</sup> It was Mr. McCallion's testimony that he did not discuss with the Mayor what happened at those meetings.<sup>415</sup>

237. Ms. Ball testified that she didn't give WCD any preferential treatment due to Mr. McCallion involvement.<sup>416</sup> Ms. Ball stated that she did not have a sense that the WCD application was treated differently in her department or in the City as a whole because Mr. McCallion was involved. She never got any pressure from the Mayor's office to treat this application differently than any other one, nor did she receive any pressure from the Mayor personally, or from a member of council.<sup>417</sup>

238. Mr. Sajecki testified that he did not think there was anything inappropriate in Peter McCallion being involved in the WCD project and that he thought Peter was involved as a real estate agent. Mr. Sajecki knew that, as a result of this, Mayor McCallion declared a conflict of interest when the matter came before council in April of 2008.<sup>418</sup> Neither Mr. Sajecki nor his staff felt pressure to move this application forward because of the Mayor's interest in this matter.<sup>419</sup>

239. Mr. Sajecki considers Peter McCallion a business acquaintance. Peter McCallion never, at various meetings concerning WCD, asked Mr. Sajecki for any special treatment because of his relationship with the Mayor, nor did Peter ever suggest that Mr. Sajecki or

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<sup>413</sup> Hazel McCallion, 5220.

<sup>414</sup> Ball, 4230.

<sup>415</sup> Peter McCallion, 2167.

<sup>416</sup> Ball, 4253.

<sup>417</sup> Ball, 4229-4230.

<sup>418</sup> Sajecki, 2800-2801.

<sup>419</sup> Sajecki, 2782.

his department had to treat him or WCD differently because of his relationship with the Mayor. If that had occurred Mr. Sajecki would have dutifully reported that and recorded it appropriately.<sup>420</sup>

240. Mr. Sajecki was scrupulous in ensuring that no favouritism was shown to Mr. McCallion. He said to his staff to treat the file as they would any other application, and in fact to be especially careful because it was the Mayor's son and perception can be very important. Mr. Sajecki was concerned about optics and he wanted to ensure that Peter McCallion was treated like everybody else. As far as Mr. Sajecki is concerned, everyone in his department was scrupulous in ensuring that he was treated like everyone else. His staff are incredibly professional.<sup>421</sup>

241. Mr. Sajecki had a meeting with Mr. DeCicco and Mr. McCallion and others in November of 2007. They weren't asking in any way that Mr. Sajecki give them preferential treatment around development charges. They wanted to understand the process around filing the building permit application, what kind of time lines to expect, and what kind of fees would be involved.<sup>422</sup>

242. Mr. Sajecki knew that the City wanted a hotel and convention centre if it could happen. But there is a clear process that is set out in terms of statutory requirements that have to be satisfied. The lands are zoned so there was no question about the use, there was no question about the density. And the exercise that Mr. Sajecki and his staff were going through was a technical exercise that ties to, in most part, the payment of fees for public works that would be incorporated in development agreements and in servicing agreements. So Mr. Sajecki had no concerns.<sup>423</sup>

243. WCD did not get any preferential treatment from city staff around this project. Mr. Sajecki asked his staff directly whether or not they felt that there was any

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<sup>420</sup> Sajecki, 2789-2790.

<sup>421</sup> Sajecki, 2790.

<sup>422</sup> Sajecki, 2802-2803.

<sup>423</sup> Sajecki, 2782.

interference or influence that they felt. They said they did not feel in any way influenced. The Mayor never approached Mr. Sajecki to ask that they provide any special treatment to WCD<sup>424</sup>.

### 3. Peel Region Development Charges

244. Peel Region Council had been working on the Development Charges By-law Review since March 30, 2006.<sup>425</sup> The Development Charges By-Law Review was received by Peel Regional Council on March 8, 2007.<sup>426</sup> A public meeting was held on April 12, 2007.<sup>427</sup> There were numerous staff reports received, as well as delegations and communications. Many of the delegations and communications from the development industry focussed on the need for a fair transition period, the issue of grandfathering, and delayed implementation of the charges.<sup>428</sup>

245. In a Report to General Committee dated August 13, 2007,<sup>429</sup> Dan Labrecque, Chief Financial Officer of the Region of Peel, set out four basic options for consideration of transition periods by Council, noting that there were 171 applications with some status in the system as at July 5, 2007. The extended transition period option for non-residential development would require a site plan application by September 13, 2007; a building permit application by February 1, 2008, and building permit issuance by April 1, 2008. This would require a two month period between building permit application and issuance.

246. On September 6, 2007<sup>430</sup> the General Committee of the Region of Peel received the report from Mr. Labrecque, a presentation from Phil King on behalf of the Building Industry and Land Development Association (BILD), and a letter dated August 31, 2007 from Paula Tenuta, Director, Municipal and Government Relations, BILD. Under the

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<sup>424</sup> Sajecki, 2802.

<sup>425</sup> Exhibit 687; Exhibit 671.

<sup>426</sup> Exhibit 670.

<sup>427</sup> Exhibit 668; Exhibit 669.

<sup>428</sup> Exhibits 679-682 & 684.

<sup>429</sup> Exhibit 683.

<sup>430</sup> Exhibit 684.

proposed transition procedures, all applications submitted prior to October 4, 2007 would be grandfathered at the lower rate, as long as the building permit is issued by April 30, 2008. An amendment was moved to allow for a 90 day transition period between building permit application and building permit issuance for non-residential and apartment permits, rather than the sixty day period contained in Mr. Labreque's report. This extended the building permit issuance date from April 1, 2008 to May 1, 2008. The motion was carried at General Committee.<sup>431</sup>

247. On September 13, 2007 Peel Regional Council discussed the development charges as recommended by General Committee on September 6. Mayor Fennell requested reconsideration of the Development Charges By-Law resolution Number 2007-1050, which was moved by Councillor Thompson and seconded by Councillor Sanderson, and was carried by a 2/3 majority.<sup>432</sup>

248. Mayor Fennell moved the amendment that included moving the transition period to allow for a 90 day period between building permit application and building permit issuance, from February 1, 2008 to May 1, 2008. This motion was carried as a resolution (Resolution 2007-1130).

249. On September 24, 2007, Ms. Ball sent an email to Rob Elliot of Peel, explaining that WCD's application was a "master site plan" which illustrated the concept of the proposed development, and was intended to guide the preparation of detailed site plans in the future.<sup>433</sup> Ms. Ball stated that "approval by this Division of the master site plan will not be sufficient for the applicant to satisfy the condition for site plan approval to obtain a building permit for the hotel or any other buildings". Ms. Ball also advised that she did not expect WCD to file a site plan application for the hotel until spring of 2008. The Mayor did not see these e-mails at the time, and did not discuss any WCD-related issues with City or Regional Staff.

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<sup>431</sup> Exhibit 684.

<sup>432</sup> Exhibit 685.

<sup>433</sup> Exhibit 176.

250. The Development Charges By-Law came back to Peel Regional Council General Committee on September 27, 2007, and back to Peel Regional Council on October 4, 2007.

251. On October 4, 2007, on a motion by Councillor Whitehead seconded by Councillor Thompson, Council voted by a 2/3 majority to again re-open the Development Charges By-Law.<sup>434</sup>

252. There was a motion by Councillor Gibson, seconded by Councillor Palleschi, extending transition periods for development charges in Brampton, which passed. There was then a motion by Councillor Gibson, seconded by Councillor Palleschi, on the Resolution from September 13, 2007, which contained the 90 day transition period (building permit application by February 1, 2008 and issuance by May 1, 2008). This motion was carried unanimously as Resolution 2007-1233.

253. The motion to approve the Development Charges By-Law, as amended, was then moved by Councillor Gibson as seconded by Councillor Sprovieri, and carried.

254. The Mayor attended a number of Regional Council meetings where the Development Charges By-law was discussed. She did not declare a conflict or refrain from voting on the Peel Regional Development Charges By-law, because it was a by-law of general application.

255. The Mayor did not know how the Development Charges By-law would apply to the WCD project. She did not see a connection between the implementation of the by-law and the WCD project. She was not aware of any cost implications to WCD at the time, and had no discussions with City or Regional Staff or any WCD personnel on the development charges issues.

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<sup>434</sup> Exhibit 689.

256. Staff does the background research and recommended changes in developing the negotiations with the developers regarding changes in development fees. They notify the developers of any changes in the fees and the timing of changes. Developers can and do launch appeals. The staff brief Members of the Regional Council of the status of negotiations and changes. The Mayor did not engage in discussions with any staff or anyone else concerning the application of development fees to the WCD project.

257. The Mayor had no discussions with anyone from WCD, or with Peter McCallion, regarding development charges.<sup>435</sup>

#### **J. City Council Consideration of WCD Issues**

258. When the WCD matter first came before City Council for planning approvals on April 23, 2008, the Mayor declared a conflict of interest by virtue of her son representing an investor in the project, which was what she understood to be his interest. The WCD matter again came before Council at a special meeting on April 30, 2008. Although the Mayor was absent, the Acting Mayor twice reminded Council on April 30 that Mayor McCallion had previously declared a conflict of interest on the WCD matter. At a Council meeting on May 7, 2008, although the WCD matter was not on the agenda, when the minutes of the April 23 and 30 meetings came up for approval, the Mayor again referred to her previously declared conflict of interest. Thus, by May 7, the Mayor's conflict had been brought to Council's attention in three separate meetings. The WCD matter was on Council's agenda for May 21, 2008, although the matter was deferred at WCD's request. The Mayor inadvertently did not declare a conflict, although the minutes record a declaration of conflict. The evidence on this point is clear. The Mayor did not direct that the minutes be altered to record a conflict. The City Clerk staff member testified that the Mayor did not direct her to record a conflict in the minutes, and

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<sup>435</sup> Peter McCallion, 2169.

never asked her to change the minutes. The City Clerk staff member gave a reasonable explanation for why she did record a conflict.

259. The Mayor conducted herself throughout in accordance with her understanding of the rules regarding conflict of interest that applied to municipal politicians. The Mayor submits that the framework established under the MCIA – declare a conflict, recuse and abstain from voting – was reasonably understood by municipal politicians as the required standard of conduct.

260. The Mayor did not inform Councillors or City Staff that she was intervening with the landowners to facilitate the WCD Project. In fact, it would have been inappropriate for the Mayor to advise Council or Councillors of her interventions with OMERS and AIMCo given that the Mayor intended to and did declare a conflict of interest. Any information provided to Council could have been construed as an attempt to influence Council in its voting contrary to section 5 of the MCIA. Similarly, the Mayor did not get involved with City Staff or the planning process, given her conflict of interest, and her desire to respect the role of Staff in the planning process.

261. The WCD matter first came onto Council's agenda on April 23, 2008. City Staff prepared a Corporate Report dated April 9, 2008 for the April 23, 2008 Council meeting. The Report outlined the status of the WCD application, and advised that the hotel would include a conference centre and spa. The Report recommended the removal of the H designation.<sup>436</sup>

262. On April 23, 2008, the WCD matter was on the Council agenda, but the matter was deferred to a Special Council on April 30, 2008 upon the request of WCD. The Mayor declared a conflict of interest in the matter given Peter McCallion's involvement with WCD.<sup>437</sup> This declaration was recorded in the minutes.

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<sup>436</sup> Exhibit 391.

<sup>437</sup> Exhibits 278 and 280.

263. The Mayor was not present when the April 23, 2008 meeting commenced. When she arrived, and when Council moved on to a new matter on the agenda, she stated: “First of all, I would like to declare a conflict, Madam Clerk, on the World Com. My son represents one of the investors.”

264. Then again, approximately three and one half hours into the meeting, the DVD of the meeting records the Mayor saying: “Okay. We’ll go on with the next deputation – removal of the H-Holding zone World Class Developments of which I declared a conflict.” The Mayor then asked Councillor Saito to take over the meeting as Acting Mayor, and she left the meeting.

265. On April 30, 2008, there was a special meeting of Council. The Mayor was absent from this entire meeting. The DVD recording of the April 30, 2008 meeting reflects that at the commencement of the Meeting, Acting Mayor Saito stated: “Ladies and Gentlemen, I’m going to call to order the meeting of council. We have a special council meeting this morning. My understanding is that Mayor McCallion had declared last week a conflict of interest on this item, so as Acting Mayor, I will call the meeting to order and deal with this.” The DVD record shows that Acting Mayor Saito asked if there were any disclosures of direct or indirect pecuniary interests on items at the council meeting, and said again “We will accept the Mayor’s previously disclosed conflict of interest if she comes before the meeting is over.” A motion to refer the matter to the May 21, 2008 council meeting was carried.

266. There was a General Meeting of Council on May 7, 2008. The Minutes state that the Minutes of the previous Council meetings of April 23 and April 30 were adopted as presented. The DVD record of the May 7, 2008 meeting reflects that the Mayor was chairing the meeting, and asked for disclosure of direct or indirect pecuniary interest. The DVD shows that the Mayor asked for the minutes of the April 23 and April 30, 2008 meetings to be carried. At that time, the Mayor stated “April the 30th Session 8. Is that the special council meeting? I think I declared a conflict on the item that was dealt with.”

267. Thus, by May 7, 2008 the Mayor's conflict had been brought to the attention of Council in three separate meetings.

268. The WCD matter was on Council's agenda for May 21, 2008, although the matter was deferred again at WCD's request. Although the minutes of Council record that the Mayor declared a conflict of interest in the matter given her son's involvement in WCD, a review of the DVD does not indicate that she declared a conflict of interest. The Mayor was chairing the meeting, and the DVD records that she called Councillor Dale's motion to refer the matter to City Staff, but did not vote on the deferral.

269. The Mayor does not know why the Minutes of the May 21, 2008 Meeting reflect that she declared a conflict of interest, since she did not do so on this occasion.<sup>438</sup> The Minutes of the May 21, 2008 meeting were adopted as presented on June 4, 2008 and the approved Minutes were posted to the City's web page on June 4, 2008.<sup>439</sup>

270. The Mayor did not direct any staff or any person to record such a declaration. The Mayor did not notice that the minutes recorded that a conflict was declared.

271. The WCD matter was deferred, and there was no vote of substance. The Mayor acknowledged that she should have declared a conflict and she did not. Her failure to declare a conflict on the request to defer was an oversight, as she clearly recognized that there was a conflict and indeed had declared the conflict previously. If the matter had come to a substantive vote, she would have declared her conflict and absented herself from the vote as she did on the first occasion.

272. The Mayor testified that she knew Ms Alleluia to be a dedicated and professional public servant. The Mayor did not direct her to record a conflict.

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<sup>438</sup> Exhibit 290 and MIS.054.001.045.

<sup>439</sup> MIS.001.009.039.

273. Ms. Alleluia testified that the Mayor never directed her to record a conflict:<sup>440</sup>

Q: And just to be crystal clear -- crystal clear, at any time after that meeting, and before the minutes were approved, the Mayor, did she ask you to change the minutes in any way?

A: The Mayor has never asked me to change the minutes. I will also tell you that in -- previously if any of the -- any councillor -- and I'm going back in all the years that I've done, many years -- there was once a discussion that a -- somebody asked if something could be changed. Not negatively, but not done at -- in the proper way. And the Mayor stood up and said, The minutes are the clerk's office and they are -- they as -- and if they are to be changed, they must be done at council. So I know the Mayor's thinking on that.

274. Ms. Alleluia testified as follows, on the circumstances that may have led to the recording of a conflict on May 21, 2008:<sup>441</sup>

Q: Okay. And you -- you've had some time to consider how this error came about. And can you explain to the Commissioner how you think the minutes may have come to reflect that she declared a conflict when we know she didn't?

A: The Mayor had already declared it at previous meetings. Always on the morning of a council meeting, I always go into her office and update her book to make sure she can manage the meeting smoothly. In doing that, I take any -- she already has marked up her original agenda, which she had taken home on the Friday before and she makes notations on that agenda. I take -- the agenda, if you are familiar with it, has got the front portion of the agenda is a summary of what's attached.

So I make -- I produce a new set, what I call integrated pages, which includes the additional agenda information plus the original agenda. So, in other words, if there was an R8 on the additional agenda, it would -- the new pages would read R7, R8 and so on so it's fitted in nicely and she doesn't have to go through several

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<sup>440</sup> Alleluia, 2567.

<sup>441</sup> Alleluia, 2559.

pages. In doing that, I also, on the morning of the meeting, transfer any of her comments from one (1) -- from the original into this new document. And I -- and she does have a tendency to make notations, such as, "Ask Shawn for more information," or she does write "conflict of interest" to jog her memory.

Now it could have been that she had written in her book that she was doing that and, in my mind, I knew she was going to be doing that. And I also, on my own notes, make myself little notes to prod myself so I might have conveyed that information. The other thing is that the Mayor sometimes does ment[ion] -- if I bump into her in her office, she -- and while I'm doing what I'm doing she has on occasion said, "Oh, by the way, I've got to declare conflict of interest on..." And that could have happened.

The third -- the other -- the other thing is that I may have -- just I thought that she was going to do it and done it, and put them down there. And once it was in my minutes, I never saw that I was -- that -- I didn't pick it up. It's hard to say, because we're looking at now a year -- you know, when this was brought to my attention it was a year and a half later. I have to tell you that I'm very thorough with whatever I do and, you know, I'm particular. And what can I say?

275. The Mayor asks that the Commissioner find that the Mayor never directed Ms. Alleluia to change the minutes or record a conflict of interest with respect to the May 21, 2008 Council meeting. The Mayor further asks that the Commissioner find, having viewed the videotape and heard the evidence, that this was a result of the Mayor's inadvertence and that the matter was procedural only, not substantive.

### **K. The Sheridan Deal**

276. As early as September 2008, Mayor McCallion gave her full support to the expansion of Sheridan College into Mississauga.<sup>442</sup> In April, 2009, the Mayor wrote to Minister Tony Clement in support of Sheridan's initiative to move to Mississauga and

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<sup>442</sup> Exhibit 649; Hazel McCallion, 4963.

obtain federal Infrastructure Program funding.<sup>443</sup> A consensus had been reached after a meeting with the Mayor, Dr. Turner, AstraZeneca and businesses in the area that a business school would be a great asset for the City, and the Mayor was fully supportive of that view.<sup>444</sup> Once the commitment was made to Sheridan, the issue of the location of the College had to be determined.

277. Mr. Kitt arranged a meeting with the Mayor on April 23, 2009, at which time he gave her a copy of the Oxford proposal for the Sheridan College site.<sup>445</sup> While their recollections of the meeting differ, the Mayor submits that nothing turns on these differences. It appears that this is the first time the Mayor became aware that Oxford was going to propose the site beside the Living Arts Centre for Sheridan College, either from the proposal or through the discussions with Mr. Kitt on April 23, 2009.<sup>446</sup> The Mayor recalls advising Mr. Kitt that, with the hotel deal gone, Sheridan College was the second best deal, although she noted that Sheridan could have gone anywhere in the City core.<sup>447</sup> The Mayor recalls that Mr. Kitt was seeking her support for their bid, which the Mayor provided.<sup>448</sup> Mr. Kitt recalls that he was there to share Oxford's "keen interest" in the Sheridan Project.<sup>449</sup> While the Mayor thought it would be nice if the land adjacent to the Living Arts Centre could be retained for a hotel, she recognized that it was up to OMERS to decide what use to put the land to and did not try to persuade OMERS to sell other land to Sheridan:<sup>450</sup>

“...It would be nice if [the land] could be retained for a hotel, but that's OMERS' decision. We can't have too much influence over that.

Q: Did you make any effort to try to persuade him not to offer that land to the college?

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<sup>443</sup> Exhibit 652; Hazel McCallion, 4964.

<sup>444</sup> Hazel McCallion, 4964.

<sup>445</sup> Kitt, 4180.

<sup>446</sup> Hazel McCallion, 4965.

<sup>447</sup> Exhibit 652; Hazel McCallion, 4966.

<sup>448</sup> Hazel McCallion, 4968.

<sup>449</sup> Kitt, 4183-84.

<sup>450</sup> Hazel McCallion, 4968.

A: No, I didn't persuade him not to. I -- I felt that that was a decision OMERS had to make. It was disappointing to think that it was going to occupy the hotel property, but there was no deal on the hotel property, so why would I have tried to discourage them going on that site. We were anxious to get Sheridan College.”

278. On June 3, 2009, the Mayor attended a General Committee meeting of the City of Mississauga. Janice Baker, the City Manager, provided an update regarding the Sheridan deal.<sup>451</sup>

279. On June 4, 2009, Ms. Baker updated the Mayor via e-mail regarding a meeting held with Robert Turner.<sup>452</sup> Sheridan was requesting a non-binding but high level resolution from Council in support of the deal so as to demonstrate support to Minister Smitherman. The Mayor had previously called Minister Smitherman in April, 2009 to make sure the Province would be coming up with the funding required for Sheridan College.<sup>453</sup> It was her style as Mayor to do make contact with representatives of both the federal and provincial governments.<sup>454</sup> Sheridan was also looking for \$10 million from the City for the project.<sup>455</sup> Ms. Baker thought that it would be financially difficult, and proposed instead that the City buy the land on which the campus would be built.<sup>456</sup>

280. At the June 10, 2009 session of Council it was resolved that the City supported the Sheridan development.<sup>457</sup>

### **1. Memorandum of Understanding Regarding Sheridan College**

281. On June 10, 2009, pursuant to By-Law Number 0182-2009, Council authorized the execution of the Memorandum of Understanding [“MOU”] to further the development of the Sheridan Mississauga Campus. City staff were also authorized to

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<sup>451</sup> Exhibit 653.

<sup>452</sup> Exhibit 654.

<sup>453</sup> Hazel McCallion, 4970.

<sup>454</sup> Hazel McCallion, 4971.

<sup>455</sup> Hazel McCallion, 4971-4972.

<sup>456</sup> Hazel McCallion, 4972-4973.

<sup>457</sup> Exhibit 693; Hazel McCallion, 4974; MIS.001.010.552 and MIS.001.006.028.

negotiate and execute all necessary agreements to facilitate the development of the Sheridan Mississauga Campus.<sup>458</sup>

282. The City/Sheridan MOU stated that the City would acquire the land for not less than \$15 million and lease it to Sheridan for a nominal fee for 99 years.<sup>459</sup> The Agreement set out that Phase I would be a business school, and development would take place over 15 to 20 years. Section 1 of the MOU provides, in part, that the City would purchase the Property for a price not to exceed \$15 million for the purpose of developing the Sheridan Mississauga Campus and that the City would enter into a long term lease of the Property with Sheridan for nominal rent. Section 2 of the MOU provides, in part, an acknowledgement by the parties that significant funding for Phase One of the project would come from the Federal/Provincial Infrastructure Fund and that construction must begin as soon as possible to meet infrastructure funding timelines committed to by Sheridan. The parties agreed to work in partnership to expedite all necessary approvals for the construction of Phase One.<sup>460</sup>

## **2. Sheridan Negotiations and the Contamination Issue**

283. On or around June 11, 2009, the Mayor informed Ms. Bench that she wanted to be involved in the negotiation of the Sheridan site purchase price and that she would contact Mr. Nobrega.<sup>461</sup> In fact, the Mayor did not try to negotiate a reduced land price with Mr. Nobrega as she was convinced by two independent land appraisals that OMERS was requesting the market value for the land.<sup>462</sup>

284. From the Mayor's perspective, the Sheridan deal provided a clear benefit to the owners as having a college campus near Square One would be good for their retail operations.<sup>463</sup> In terms of revenue to the City, however, the hotel deal would have

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<sup>458</sup> See By-Law No. 0182-2009 and Council Minutes of June 10, 2009.

<sup>459</sup> MIS.001.006.029.

<sup>460</sup> see Memorandum of Understanding, Sections 1 and 2.

<sup>461</sup> Exhibit 322; Hazel McCallion, 4985.

<sup>462</sup> Hazel McCallion, 4985-88.

<sup>463</sup> Hazel McCallion, 4987.

brought millions more in revenue to the municipality compared to Sheridan College, as colleges receive a different tax treatment under the *Municipal Act* than other businesses.<sup>464</sup> Council approved the Sheridan project because it was part of the overall vision for the City core.<sup>465</sup>

285. Ms. Bench requested a half hour meeting with the Mayor and Bruce Carr on June 24, 2009.<sup>466</sup> According to the Mayor's journal entry, the meeting concerned Sheridan College and legal issues surrounding WCD. Ms. Bench had discovered a number of issues regarding the Sheridan deal, including the contamination of the land. Ms. Bench was also concerned that OMERS had not returned WCD's down payments on the land.<sup>467</sup> Prior to the June 24, 2009 meeting with Ms. Bench, the Mayor was not aware there were any outstanding issues between WCD and the land owners.<sup>468</sup>

286. Ms. Bench did not ask the Mayor to take any follow up steps with respect to issues with WCD and the Mayor understood that Ms. Bench would take care of it.<sup>469</sup> The Mayor understands that Ms. Bench subsequently tried to get clear title to the property, but the Mayor does not recall being briefed by either Ms. Bench or Ms. Baker about an indemnity agreement. The Mayor was not aware that the owners had brought a court application with respect to clearing the title of the land.

287. Although handwritten notes taken during a May 12, 2009 conference call between the owners and Mr. Costin, Mr. Smart and Mr. Kitt suggest that Mr. Kitt was going to tell the Mayor about amounts owing to WCD, Mr. Kitt did not in fact discuss these issues with the Mayor in May, 2009.<sup>470</sup> The Mayor did not have discussions with Mr. Kitt or anyone else on behalf of the co-owners regarding the settlement or repayment of the

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<sup>464</sup> The City does not get taxes based on an assessment basis.

<sup>465</sup> Hazel McCallion, 4988.

<sup>466</sup> Exhibit 228; Hazel McCallion, 4988.

<sup>467</sup> Hazel McCallion, 4988-4990.

<sup>468</sup> Hazel McCallion, 4990.

<sup>469</sup> Hazel McCallion, 4990-91.

<sup>470</sup> Exhibit 444; Hazel McCallion, 4991; Kitt, 4184-85.

deposits to WCD.<sup>471</sup> Mr. DeCicco did not discuss this matter or his litigation strategy with the Mayor.<sup>472</sup>

(a) Ms. Baker

288. Ms. Baker wrote a letter in support of Sheridan in September, 2008. She testified that she attended an announcement in the Spring of 2009 regarding the campus, and spoke with Dr. Turner the President of Sheridan. In or around this time, they discussed the land purchase idea.<sup>473</sup> Ms. Baker agreed to bring it to the attention of the Mayor and council, and indeed, received the support of council at the June 2<sup>nd</sup>, 2009 council meeting. Ms. Baker does not believe the Mayor was absent from that meeting.<sup>474</sup>

289. Ms. Baker was aware that getting Sheridan back to Mississauga had been a goal the Mayor had been trying to achieve for years.<sup>475</sup>

290. The Mayor initially informed Ms. Baker she wanted to be involved in the negotiations around price.<sup>476</sup> In the past, the Mayor had taken a personal interest in large transactions, as if there was a way that she could get a better deal on behalf of the City, she wanted to give it a shot. It was Ms. Baker's understanding that the Mayor did not eventually seek a reduction in price, as the price was already at fair market value.<sup>477</sup>

291. Ms. Baker agreed absolutely with Ms. Bench's testimony that from time to time staff would not be shy about going to the Mayor and involving her to reach out to people outside to help with issues.<sup>478</sup> As staff, they felt her relationship with Mr. Nobrega was assistance in the Sheridan transaction.<sup>479</sup> Ms. Baker would say that from time to time,

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<sup>471</sup> Hazel McCallion, 4991; Nobrega, 3193.

<sup>472</sup> Hazel McCallion, 4992.

<sup>473</sup> Baker, 4631.

<sup>474</sup> Baker, 4633.

<sup>475</sup> Baker, 4687.

<sup>476</sup> Baker, 4676.

<sup>477</sup> Baker, 4676.

<sup>478</sup> Baker, 4640-41.

<sup>479</sup> Baker, 4641.

staff would go to the Mayor and suggest that outside contact would be helpful.<sup>480</sup> While they would not run to the Mayor for help fixing every issue, because of the time constraints that were specific to the Sheridan deal, deadline, staff were more aggressive than normal in seeking the Mayor's assistance.<sup>481</sup>

292. In fact, the Mayor was requested at several junctures to step in to provide assistance. For example in Exhibit 397, Bruce Carr indicates to Ms. Baker that it is their "intent to involve the Mayor and Janice" in the discussion regarding the land contamination issue. Exhibit 321 is an e-mail from Ms. Bench to Ms. Baker, Mr. Carr and Ms. Pitt, which indicates a meeting was booked to discuss involving the Mayor to break political logjams in the negotiations with Oxford. Ms. Baker didn't think there was anything inappropriate about this.

293. It was Ms. Baker's evidence that, during the Sheridan transaction, there was no involvement of Peter McCallion at all.<sup>482</sup>

(b) Ms. Bench

294. Ms. Bench testified that the Mayor was involved and interested in the Sheridan project. She was involved on a number of issues to make sure Sheridan was going to happen and move forward.<sup>483</sup> The staff got the Mayor involved in certain issues and the Mayor asked to be involved in others.<sup>484</sup>

295. The Mayor volunteered to get involved in the purchase price issue. The Mayor thought it was a good deal, not only for the City, but also for OMERS, as having many

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<sup>480</sup> Baker, 4642.

<sup>481</sup> Baker, 4643.

<sup>482</sup> Baker, 4644-4645.

<sup>483</sup> Bench, 2600-2601.

<sup>484</sup> Bench, 2674-2675.

students right across from the shopping mall would be a benefit.<sup>485</sup> Ms. Bench testified that the staff certainly appreciated the Mayor's intervention.<sup>486</sup>

296. In the summer of 2009, there were concerns amongst the staff that the Sheridan deal was, in fact, going to go off the rails because of the various problems that arose and the tight time frames they had to deal with. It was a rather complex deal given that it involved the City, the landowners and Sheridan<sup>487</sup> Ms. Bench requested a meeting with the Mayor regarding the WCD settlement issue.<sup>488</sup>

297. Others issues that came up included the use of the property, parking, contamination, and the WCD deal. It was for some of those that Ms. Bench testified that Mississauga staff asked the Mayor to reach out to Oxford and Mr. Nobrega. The Mayor is an effective negotiator and Ms. Bench and her staff had no difficulty making that request of the Mayor.<sup>489</sup>

298. Exhibit 394 is an e-mail from Mr. Filipetti to Mr. Kitt, setting out a conversation that he had with Ms. Bench on July 10<sup>th</sup>, 2009 in which she expressed the view that negotiations are going backwards. Ms. Bench informed Mr. Filipetti that she needed the intervention of the Mayor. There was frustration that the co-owners were not in full agreement, and Mr. Filipetti agreed that it was going backwards.<sup>490</sup> The Mayor had already been involved, so it was a matter of updating her, and Ms. Bench was bringing this to Mr. Filipetti's attention.<sup>491</sup> The legal department was relying on the Mayor and her negotiating skills in assisting getting over a number of these hurdles that arose with respect to negotiations with OMERS/ Oxford. They were keeping the Mayor apprised and were involving her to the extent that she could assist.<sup>492</sup>

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<sup>485</sup> Bench, 2681.

<sup>486</sup> Bench, 2680.

<sup>487</sup> Bench, 2673.

<sup>488</sup> Bench, 2683.

<sup>489</sup> Bench, 2626.

<sup>490</sup> Bench, 2686.

<sup>491</sup> Bench, 2687.

<sup>492</sup> Bench, 2989.

299. The Mayor also assisted with the finalization of the new Agreement of Purchase and Sale.<sup>493</sup>

300. The soil contamination issue didn't arise until later in the negotiations. Again, the City staff suggested that the Mayor be brought in to resolve issues that had arisen in finalizing the deal with the owners. The Mayor has proven herself effective in resolving differences between parties.<sup>494</sup> The staff were not concerned. In fact, they thought it completely appropriate that the Mayor be involved in this way with the owners in trying to resolve stumbling blocks to the deal. There's nothing inconsistent with the appropriate role of the Mayor to be involved in this way in a hands-on way in these negotiations. Ms. Bench testified that the Mayor's involvement often avoided litigation for the City.<sup>495</sup>

301. Ms. Bench was aware that the Mayor did have some concerns about the details of the Sheridan deal.<sup>496</sup> Regarding the statement that the Mayor was "not that excited about the Sheridan deal", Ms. Bench's recollection was that this related to a number of issues with respect to the detail of the campus. The negotiations were not simple: the City had a vision for the City centre, and Sheridan had its own vision, and the two didn't quite mesh.<sup>497</sup> Ms. Bench's understanding of the comments was that it was the detail or the particulars of the Sheridan deal that the Mayor wasn't all that excited about; not that she wasn't excited about proceeding with the deal itself. It was Ms. Bench's testimony that she did not take from that that statement that the Mayor was still advocating for the WCD deal to go forward, or that she would have preferred the WCD deal to go forward over the Sheridan deal.<sup>498</sup>

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<sup>493</sup> Bench 2691.

<sup>494</sup> Bench, 2692.

<sup>495</sup> Bench, 2693.

<sup>496</sup> Bench, 2695.

<sup>497</sup> Bench, 2744-2745.

<sup>498</sup> Bench, 2744-2746.

### 3. Dave O'Brien – Summer 2009 and Sheridan

302. On July 7<sup>th</sup>, 2009, the Mayor believes she attended a TACC golf tournament although she does not recall.<sup>499</sup> The Mayor also believes that she could have discussed the Sheridan deal, the contamination issue and the outstanding land issues with Dave O'Brien at the tournament.<sup>500</sup> The Mayor does not recall raising the question of WCD.<sup>501</sup> At that point, the City was dealing with Sheridan College. The Mayor did not know all the concerns and suggested that Mr. O'Brien call Ms. Bench to get all the concerns in negotiations over clear title to the land.<sup>502</sup>

303. The Mayor did not ask Mr. O'Brien to get involved in the negotiation of a settlement between WCD and OMERS.<sup>503</sup> The Mayor does not recall any specific discussion between Mr. O'Brien and Peter McCallion wherein he suggested to Peter that they should meet so that Peter could explain the issues regarding WCD and Oxford to him.<sup>504</sup>

304. Mr. O'Brien testified that he attended the dinner for a Charity golf tournament, sponsored by TACC. There, he met Mayor McCallion, and they discussed the land deal. The Mayor mentioned the trouble with Oxford, most likely concerning the contamination that was found on the land, and who would bear the costs of remediation of the contamination. She was also concerned about WCD's continuing claim on the land because she wanted the deal with Sheridan to go through, and she was aware of the restrictions that were placed on the Sheridan infrastructure funding and its possible impact on the Sheridan deal.<sup>505</sup> Mr. O'Brien indicated that he was originally asked by the Mayor to bring himself up to speed on the issues, not to resolve the issues between

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<sup>499</sup> Exhibit 673; 4992.

<sup>500</sup> Hazel McCallion, 4993-94.

<sup>501</sup> Hazel McCallion, 5225.

<sup>502</sup> Hazel McCallion, 5225.

<sup>503</sup> Hazel McCallion, 4994.

<sup>504</sup> Hazel McCallion, 5228.

<sup>505</sup> O'Brien, 3030-32.

OMERS and WCD.<sup>506</sup> Mr. O'Brien testified that the Mayor was asking him to inform himself as an OMERS Board member so that he could ensure that OMERS executives, particularly Mr. Nobrega, really understood the issues, and knew enough that they could respond to the City's concerns, particularly over the contamination issues.<sup>507</sup>

305. Mr. O'Brien indicated to Peter that they could meet and discuss the issue. Mr. O'Brien knew that Peter McCallion was involved in a general way with WCD, but he did not know any of the specifics.<sup>508</sup>

306. Mr. O'Brien was generally aware that WCD asserted an interest in the land, but did not know the specifics of its relationship with the City. Mayor McCallion wanted OMERS to understand the issues she was having with Oxford primarily. She did not ask Mr. O'Brien to do anything with WCD. She did raise the fact that WCD was having issues with Oxford. One of her issues was that the City was engaged in trying to get Sheridan College on the site.<sup>509</sup> The WCD issue could have had an effect on this<sup>510</sup>

307. Mr. O'Brien subsequently met with Peter and Mr. DeCicco a week or a few days later. Mr. O'Brien did not know Mr. DeCicco. It was a breakfast meeting at the Sunset Grill, in Mississauga. The purpose of the meeting was for Mr. O'Brien to learn what Mr. DeCicco's position on the Oxford/WCD transaction was.<sup>511</sup> Peter did not speak much at that meeting. Mr. DeCicco felt that he had a valid offer of purchase and sale, and could deliver a four-star hotel along with Mr. Gupta. Mr. O'Brien did not know any of this in advance.<sup>512</sup> Mr. O'Brien responded that this was not the position of Oxford/OMERS. Mr. O'Brien did not know that they had severed their relationship or that there had been any legal action.

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<sup>506</sup> O'Brien, 2957.

<sup>507</sup> O'Brien, 3064-67.

<sup>508</sup> O'Brien, 2925.

<sup>509</sup> O'Brien, 2924.

<sup>510</sup> O'Brien, 2923-24.

<sup>511</sup> O'Brien, 2926, 2975-76.

<sup>512</sup> O'Brien, 2927.

308. Mr. O'Brien met with Peter and Mr. DeCicco to be helpful to the Mayor in his capacity on the OMERS board. He could be helpful by transmitting the issues to Mr. Nobrega.

309. Mr. O'Brien did not converse with the Mayor about the litigation between Oxford and OMERS at any time.<sup>513</sup>

310. The Mayor called Mr. O'Brien on the morning of July 10, 2009 in regards to the contamination issue.<sup>514</sup> The contamination issue was a grave concern to the Mayor because it came as a surprise to the City. OMERS had failed to report the soil contamination in its proposal to JJ Barnicke and again omitted it in its negotiations with the City.<sup>515</sup>

311. The Mayor knows Mr. O'Brien well as he was previously City Manager for Mississauga and they had worked together while he was President of Toronto Hydro.<sup>516</sup> They would meet from time to time and he is a member of the Mayor's Gala Committee. Mr. O'Brien is also one of four trustees on a family trust set up for the Mayor's estate planning purposes, along with the Mayor, an accountant and the Mayor's lawyer. Mayor McCallion's children chose him to be a trustee. The Mayor has had no further discussions with O'Brien about the trust.<sup>517</sup> The nature of their relationship is such that she values his advice.

312. When the Mayor and Mr. O'Brien spoke on the phone and at dinner on August 10, 2009, they would have discussed issues that were prominent on the Mayor's plate, including the Sheridan deal.<sup>518</sup> However, the Mayor does not recall discussing with Mr.

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<sup>513</sup> O'Brien, 2930.

<sup>514</sup> Exhibit 329.

<sup>515</sup> Hazel McCallion, 4995.

<sup>516</sup> Hazel McCallion, 4999-5000.

<sup>517</sup> Hazel McCallion, 5000-01.

<sup>518</sup> Hazel McCallion, 5001-02.

O'Brien at any time in July or August his meeting with Peter McCallion and Tony DeCicco, or that Mr. DeCicco had put a figure of \$10M on the table.<sup>519</sup>

313. Because of their close relationship and Mr. O'Brien's familiarity with the City and OMERS, the Mayor did not have to give chapter and verse instructions to Mr. O'Brien.<sup>520</sup> The Mayor simply told Mr. O'Brien to check out the details and to discuss them with Ms. Bench.<sup>521</sup> Mr. O'Brien never reported to the Mayor the details of his conversations with the various parties to the WCD litigation.<sup>522</sup>

314. The Mayor also called Mr. Nobrega about the contamination issue to communicate her surprise and concern. Staff had approached the Mayor and asked her to intervene by calling Mr. Nobrega about the contamination issue.<sup>523</sup> The Mayor does not recall discussing any other issue with Mr. Nobrega as her only concern at that time was the contamination. The Mayor was trying to figure out how the contamination could be eliminated and who would pay for it, which ought to be reflected in the purchase price of the land.<sup>524</sup> It was serious because the City staff were not aware of the degree of contamination. The staff did not ask her to get involved in any WCD litigation issues.<sup>525</sup>

315. In an e-mail to Mr. Kitt on July 11, 2009, Mr. Nobrega indicated that the Mayor had expressed to him her frustration with OMERS and her concern that the Sheridan opportunity was slipping away.<sup>526</sup> Mr. Nobrega also advised Mr. Kitt that Mississauga is a client that needs to perceive that senior people are at the negotiating table early on in the process. The Mayor recalls being concerned that the Sheridan project was facing a deadline from the Province, and there was a timeframe that had to be met for stimulus money. She was frustrated with delays that could jeopardize the deal and the City could

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<sup>519</sup> Hazel McCallion, 5233-5236.

<sup>520</sup> Hazel McCallion, 5429.

<sup>521</sup> Hazel McCallion, 5431.

<sup>522</sup> Hazel McCallion, 5432.

<sup>523</sup> Hazel McCallion, 4998-99.

<sup>524</sup> Hazel McCallion, 4996-97.

<sup>525</sup> Hazel McCallion, 4999.

<sup>526</sup> Exhibit 126; Hazel McCallion, 5003.

get stuck with the tab for projects running past March 2011.<sup>527</sup> The Mayor never spoke to Mr. Nobrega about the outstanding WCD issues, only about the contamination.<sup>528</sup>

316. The Mayor does not recall getting a call from Mr. Kitt regarding these concerns or having any discussions with him that summer.<sup>529</sup>

317. The Mayor reported back to City staff about her conversations with Mr. Nobrega, as indicated in an e-mail from Ms. Bench to Dominic Tudino.<sup>530</sup> In this e-mail Ms. Bench noted that the Mayor had requested Mr. Nobrega to intervene and make sure that Oxford did not kill the deal. Ms. Bench's e-mail also indicated that the Mayor was to meet with Mr. Kitt and have the deal signed before she left on her vacation. The City staff were relying on the Mayor to clear roadblocks with respect to the negotiations of the Sheridan deal.<sup>531</sup> The focus of the Mayor was on the contamination issue, not WCD litigation.<sup>532</sup>

#### **4. Sheridan Agreement of Purchase and Sale**

318. On July 20, 2009, the City and OMERS/156 executed the Agreement of Purchase and Sale for the City Centre lands with a closing date of September 17, 2009.<sup>533</sup> The purchase price was \$14,908,902.00 dollars. On July 22, 2009, the Mayor and other Members of Council were advised via e-mail that the Sheridan negotiations had been finalized.<sup>534</sup> The purchase price was the fair market value, and was not in anyway inflated by the WCD dispute which was ultimately settled several months later.<sup>535</sup>

319. In addition, OMERS, 156, the City and Sheridan executed an Indemnification and Hold Harmless Agreement.<sup>536</sup> Sheridan and the City also entered into a Release whereby

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<sup>527</sup> Hazel McCallion, 5003-5005, and 5425.

<sup>528</sup> Hazel McCallion, 5006.

<sup>529</sup> Hazel McCallion, 5005-06.

<sup>530</sup> Exhibit 657; Hazel McCallion, 5006. See also Exhibit 324.

<sup>531</sup> Hazel McCallion, 5006-07.

<sup>532</sup> Hazel McCallion, 5007.

<sup>533</sup> MIS.004.002.066 and MIS.003.004.186.

<sup>534</sup> Exhibit 658; Hazel McCallion, 5008-09.

<sup>535</sup> Hazel McCallion, 5435.

<sup>536</sup> Exhibit 129.

Sheridan released the City from any damages or losses arising from a failure to receive the anticipated infrastructure funding committed by the Federal and Provincial Governments.<sup>537</sup> The Mayor was briefed on the indemnity agreement by Ms. Bench and agreed with Ms. Bench's position that the City's interests were well protected.<sup>538</sup>

320. Toward the end of August City staff still had outstanding concerns with respect to the contamination issue. An internal e-mail among City staff outlined a strategy with respect to dealing with Oxford, which included involving the Mayor if matters were not resolved satisfactorily in a timely way.<sup>539</sup> It was not uncommon for staff to involve the Mayor when City staff were unable to settle a concern.

321. Mr. Nobrega left a phone message for the Mayor on September 2, 2009 stating that he had received the letter the Mayor had sent him from the City's legal department to Abraham Costin regarding the land sale to the City.<sup>540</sup> The letter, dated August 31, 2009 states that the City is dissatisfied with \$50,000 for clean up of the site.<sup>541</sup> The Mayor testified that she sent this to letter to Mr. Nobrega not because she got involved with the details, but because it was her role to ensure the consultant's advice went to the top, in order to get the matter settled.<sup>542</sup> The Mayor does not recall if she returned Mr. Nobrega's phone call. Nor does she recall speaking with Mr. Nobrega about anything else, including the WCD litigation, during that timeframe.<sup>543</sup>

322. The Mayor also made a phone call to Mr. O'Brien in late August. In an e-mail from Mr. O'Brien to Mr. Nobrega dated August 27, 2009, Mr. O'Brien indicated that the Mayor called him "about an Oxford issue in Mississauga" and that there "could be political issues".<sup>544</sup> The Mayor believes that she would have been calling because time was running for Sheridan to seal the deal and that it was a political issue because it would

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<sup>537</sup> MIS.002.003.165.

<sup>538</sup> Hazel McCallion, 5017.

<sup>539</sup> Exhibit 397; Hazel McCallion, 5010-11.

<sup>540</sup> Exhibit 467; Hazel McCallion, 5012.

<sup>541</sup> Exhibit 659; Hazel McCallion, 5012-13.

<sup>542</sup> Hazel McCallion, 5012-13

<sup>543</sup> Hazel McCallion, 5014.

<sup>544</sup> Exhibit 404; Hazel McCallion, 5014.

have been two big losses for the City in a row.<sup>545</sup> The Mayor agrees with Mr. Nobrega's testimony that she was "hopping mad" about the contamination issue. The Mayor did not think the issue should have come up at the last minute or that anyone should have negotiated a land deal without demonstrating any knowledge of the contamination.<sup>546</sup> The Mayor does not recall being concerned about Peter McCallion having sworn an affidavit stating that he was a principal of WCD.<sup>547</sup>

323. Mr. Nobrega testified that his sense of what the political issues could be was that the Mayor felt that the co-owners had been dishonest and had not disclosed the contamination issue in the RFP, and that this left very little wiggle room for Sheridan to find a replacement site and still be eligible for the infrastructure grants which were to expire in March, 2011. If the Sheridan campus didn't get built on that site, OMERS would lose the benefits that a campus usage would bring to the mall. As a large player in the infrastructure field, OMERS also had special relationships with the provincial and federal governments that it needed to protect.<sup>548</sup>

324. On September 8, 2009, the City Solicitor, Ms. Bench, prepared a Corporate Report for Council recommending that the City waive the condition in the APS respecting a potential claim by WCD and complete the transaction on September 17, 2009.<sup>549</sup> Ms. Bench advised Council of the status of negotiations and the fact that the vendors, City and Sheridan have entered into an Indemnification and Hold Harmless Agreement. In addition, the City and Sheridan have entered into a Release Agreement.

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<sup>545</sup> Hazel McCallion, 5015.

<sup>546</sup> Hazel McCallion, 5015-16.

<sup>547</sup> Hazel McCallion, 5237-39.

<sup>548</sup> Nobrega, 3145-46.

<sup>549</sup> MIS.002.005.201.

## **L. Settlement of WCD Litigation, Fall 2009**

### **1. Ms. Baker**

325. Upon becoming aware of the affidavit filed by Peter McCallion in September 2009, Ms. Baker testified she was surprised to learn that he was a principal of WCD.<sup>550</sup> Further, upon subsequently learning of Mr. O'Brien's involvement in the matter, she was bemused as she did not know he had involvement in the WCD, Sheridan or Oxford transactions.<sup>551</sup> Ms. Baker did not discuss the contents of Peter McCallion's affidavit with the Mayor or inform her that he had filed the affidavit.<sup>552</sup> Ms. Baker was not a party to the settlement with WCD.<sup>553</sup> The City had no role in the settlement.<sup>554</sup> To Ms. Baker's knowledge, the City paid fair market value for the land and there was no direct relationship between the transaction and the settlement transaction.<sup>555</sup>

### **2. Ms. Bench**

326. On September 3, 2009, Mr. O'Brien contacted Ms. Bench and indicated the concern that the WCD litigation might impact the Sheridan deal.<sup>556</sup> He also made several comments in respect of the Mayor's possible conflict situation.<sup>557</sup>

327. It didn't come as any surprise to Ms. Bench that Mayor was getting advice from Mr. O'Brien.<sup>558</sup> She testified that she thought the conversations between Mr. O'Brien and the Mayor were appropriate because her staff could not give her advice regarding conflicts, and Mr. O'Brien, having been a City Manager himself, would have been aware

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<sup>550</sup> Baker, 4637.

<sup>551</sup> Baker, 4637.

<sup>552</sup> Baker, 4688.

<sup>553</sup> Baker, 4692.

<sup>554</sup> Baker, 4692.

<sup>555</sup> Baker 4692.

<sup>556</sup> Bench, 2701.

<sup>557</sup> Bench, 2701-2702.

<sup>558</sup> Bench, 2704.

of that policy. If there was an issue of conflict with respect to what now was going to go before council in Ms. Bench's report, the Mayor would need some advice around that.<sup>559</sup>

328. Ms. Bench testified that she was never a party to the calls between the Mayor and Mr. O'Brien.<sup>560</sup> She could therefore not speak to the length of the calls.<sup>561</sup> She never spoke with the Mayor about any of the issues raised by Mr. O'Brien in his phone calls.<sup>562</sup>

329. Mr. O'Brien had suggested that Ms. Bench bring the Mayor up to speed before council. Because of the conflict situation, Ms. Bench couldn't do that.<sup>563</sup>

330. Ms. Bench's notes indicate contact with Mr. O'Brien on September 11, 2009, at which point she was apprised a settlement had been reached.<sup>564</sup> Ms. Bench testified that, to her knowledge, no-one on behalf of the City, with the exception of the City legal department getting and indemnity and trying to close it, exerted any pressure on OMERS or Oxford to settle the WCD matter.<sup>565</sup> These were commercial decisions that Oxford and its partner took on their own.

### 3. Signing of the Affidavits

331. The Mayor first learned that Peter McCallion was a principal of WCD from Ms. Bench in late August, 2009 as a result of an affidavit filed by WCD.<sup>566</sup> Mr. McCallion testified that he did not review his affidavit with the Mayor prior to signing.<sup>567</sup> The Mayor was surprised that Peter had signed an affidavit saying he was a principal because she had been led to believe that he was representing the investor, Mr. Couprie, as a real estate agent all along.<sup>568</sup> She phoned him and he told her he was not a principal.<sup>569</sup> The

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<sup>559</sup> Bench, 2704.

<sup>560</sup> Bench, 2702-2703.

<sup>561</sup> Bench, 2703.

<sup>562</sup> Bench, 2704.

<sup>563</sup> Bench, 2704.

<sup>564</sup> Exhibit 315, pg. 32; Bench, 2621.

<sup>565</sup> Bench, 2620-21.

<sup>566</sup> Hazel McCallion, 5020-21.

<sup>567</sup> Peter McCallion, 1861.

<sup>568</sup> Hazel McCallion, 5021.

Mayor asked if he got legal advice, and read the affidavit carefully.<sup>570</sup> Peter told her that Mr. Couprie owned the shares and that his (Peter's) name was not on any of the documents.<sup>571</sup> The Mayor told Peter that he had better get the affidavit corrected if that was the case and advised him to seek legal advice.<sup>572</sup>

332. Whether Peter was a principal or an agent made no difference for the purposes of the MCIA.<sup>573</sup> The Mayor's concern was that Peter never told her he was a principal.<sup>574</sup> If the Mayor had known Peter was principal back in 2008 she would have reported his status differently to council.<sup>575</sup>

333. Peter eventually informed the Mayor that the matter had been corrected and a signed copy had been provided to Ms. Bench and the City.<sup>576</sup> The Mayor did not see this corrected affidavit and she does not recall advising Peter that he need to get more clarity on his second affidavit.<sup>577</sup> The Mayor was not aware of a third affidavit.<sup>578</sup>

334. The Mayor was also not aware that Peter McCallion had gone to her lawyer, Mr. Schwartz.<sup>579</sup> Other than the affidavit, the Mayor had no discussion with Peter regarding the settlement discussions between WCD and OMERS. She assumed he would not be aware of it.<sup>580</sup>

335. Mr. DeCicco did not consult with the Mayor regarding the litigation, other than one phone call he made to her in August to say that they would be filing court documents and that her name would appear in them.<sup>581</sup> The Mayor told Mr. DeCicco "to do what he

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<sup>569</sup> Hazel McCallion 5021-22.

<sup>570</sup> Hazel McCallion 5021-22.

<sup>571</sup> Hazel McCallion 5022.

<sup>572</sup> Hazel McCallion 5022.

<sup>573</sup> Hazel McCallion 5241.

<sup>574</sup> Hazel McCallion 5241-44.

<sup>575</sup> Hazel McCallion 5022-23.

<sup>576</sup> Hazel McCallion, 5023.

<sup>577</sup> Hazel McCallion, 5023-24.

<sup>578</sup> Hazel McCallion, 5024.

<sup>579</sup> Hazel McCallion, 5024.

<sup>580</sup> Hazel McCallion, 5024-25.

<sup>581</sup> Hazel McCallion, 5018-19.

had to do”.<sup>582</sup> She did not tell him that he should settle his dispute for the benefit of the City. She was assured by Ms. Bench that the indemnity clause would protect the City's interest.<sup>583</sup>

#### **4. Mayor Not Involved in Settlement WCD/OMERS Litigation**

336. With respect to the WCD litigation, Mr. DeCicco testified that he gave the Mayor a courtesy call to tell her that there was litigation and that information would become public. He told her that her name would appear in some of the affidavits. He had no other conversations with her regarding the responding materials or WCD's litigation strategy. Mr. DeCicco received one phone call from the Mayor during settlement when she called to ask if they could get a settlement because the Sheridan College deal would be great for Mississauga.<sup>584</sup>

337. Mr. DeCicco never discussed the settlement with the Mayor.<sup>585</sup>

338. Mr. McCallion testified that he never discussed the terms of the settlement with the Mayor.<sup>586</sup> Nor did he discuss the details of the two meetings between him, Mr. DeCicco and Mr. O'Brien with the Mayor.<sup>587</sup>

339. Mr. Nobrega testified that he never had any direct or indirect contact with the Mayor about settling the WCD matter.<sup>588</sup>

#### **5. Discussions with O'Brien on September 3 & 5**

340. In early September the Mayor called Mr. O'Brien and suggested he speak with Ms. Bench. The Mayor expressed concern that the Sheridan deal could come off the

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<sup>582</sup> Hazel McCallion, 5019.

<sup>583</sup> Hazel McCallion, 5019.

<sup>584</sup> DeCicco, 3962, 3695-3696.

<sup>585</sup> DeCicco, 3802.

<sup>586</sup> Peter McCallion, 2171.

<sup>587</sup> Peter McCallion, 2172.

<sup>588</sup> Nobrega, 3193.

rails.<sup>589</sup> The Mayor recalls telling Mr. O'Brien that there were many complications and that Ms. Bench was aware of all the issues.<sup>590</sup> Ms. Bench had briefed the Mayor that, even though she had obtained an indemnity on the land, there were problems getting clear title, including very serious contamination issues and litigation involving WCD and OMERS.<sup>591</sup> The Mayor was very concerned that the Sheridan deal was going down the drain since all these issues were causing delays which would mean that the City would never get clear title to the land in time to meet the deadline with the federal government.<sup>592</sup>

341. The Mayor requested that Mr. O'Brien meet with Mr. DeCicco and Peter McCallion to get informed regarding WCD's position because Ms. Bench had told her that the deposits had not been returned.<sup>593</sup>

342. The Mayor wanted Mr. O'Brien to be familiar with the details of all the problems associated with the Sheridan deal. As a member of the board of OMERS, a former City Manager, and a former Chairman of the Board of Sheridan who was interested in getting Sheridan to Mississauga, the Mayor felt that he was a good person to get involved to see what information he could obtain to pass on to OMERS.<sup>594</sup> When talking to Mr. O'Brien during this timeframe, the Mayor saw him as a former City manager who had made major contributions to the City's development. She thought he might be concerned that if the project failed, OMERS would be identified as a reason because of the delay and problems.<sup>595</sup> The Mayor did not ask Mr. O'Brien to do anything specifically about the problems.<sup>596</sup> Nor did the Mayor discuss concerns about Peter McCallion's affidavit with Mr. O'Brien.<sup>597</sup>

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<sup>589</sup> Exhibit 315; Hazel McCallion, 5025.

<sup>590</sup> Hazel McCallion, 5025-26.

<sup>591</sup> Hazel McCallion, 5232-5233.

<sup>592</sup> Hazel McCallion, 5227.

<sup>593</sup> Hazel McCallion, 5232, 5350.

<sup>594</sup> Hazel McCallion, 5250.

<sup>595</sup> Hazel McCallion, 5027-28.

<sup>596</sup> Hazel McCallion, 5028.

<sup>597</sup> Hazel McCallion, 5240.

343. Although the Mayor met with Mr. O'Brien on September 5, 2009 she does not recall spending two and half hours with him.<sup>598</sup> She testified that this meeting was about the Sheridan deal and her concern that it was going to be derailed. The Mayor was in favour of the Sheridan deal although she was concerned about setting aside the land, holding it for ten years, and the dollar-a-year lease charge.<sup>599</sup> The Mayor would have mentioned these concerns to Mr. O'Brien and asked for his comments. The Mayor does not recall having discussions with Mr. O'Brien about conflict of interest although she knew all along that she would have had a conflict with respect to the WCD transaction if it had come before Council.<sup>600</sup>

344. Ms. Bench prepared a Corporate Report for the Mayor and Members of Council on September 8, 2009 concerning the Sheridan deal.<sup>601</sup> Ms. Bench recommended that she be instructed to waive the condition in the Agreement of Purchase and Sale respecting the WCD claim. The report also summarized WCD's legal position and references in the WCD affidavits to meetings with the Mayor and City staff regarding the hotel. The Mayor does not recall if she was briefed on this report beforehand.<sup>602</sup> Ms. Bench did not advise the Mayor with regard to any conflicts or potential conflicts and the Mayor does not recall having any conversations with her about whether the litigation caused any conflicts.<sup>603</sup>

## **6. No Continuing Record of Conflict Declarations**

345. Ms. Bench testified that she had forgotten that the Mayor had declared a conflict of interest all the way along with respect to the WCD deal.<sup>604</sup> The Mayor suggests that the Commissioner should recommend that the City Clerk's office should maintain a

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<sup>598</sup> Hazel McCallion, 5028-29.

<sup>599</sup> Hazel McCallion, 5029.

<sup>600</sup> Hazel McCallion, 5030-32.

<sup>601</sup> Exhibit 660.

<sup>602</sup> Hazel McCallion, 5033-34.

<sup>603</sup> Hazel McCallion, 5034-35.

<sup>604</sup> Bench, 2700-2701.

searchable electronic conflicts registry, to assist in the goal of ensuring that conflict of interest declarations are publicly accessible, and to remind City staff of prior declarations.

346. Because she forgot about the Mayor's 2008 declaration of conflict, Peter McCallion's affidavit caused Ms. Bench some concern. This was because firstly, WCD had launched the counter claim, and secondly, Peter McCallion had a financial interest in WCD. When WCD came before Council on April 23rd, 2008, Ms. Bench was present at that council meeting. This was the council meeting at which the WCD project and the lifting of the holding designation was put forward. Mayor McCallion declared a conflict of interest at that meeting because of her son Peter's involvement in the deal. Ms. Bench was therefore aware that Peter McCallion was involved in the WCD project back in 2008, although she didn't know what his role was in the deal.

347. When Ms. Bench testified that it first came to her attention that Peter McCallion had an involvement with WCD in getting the phone call from Mr. O'Brien in September of 2009, she in fact would have already known that Mr. McCallion had a financial interest due to the April, 2008 council meeting, if she had put the pieces together. Ms. Bench doesn't remember drawing that connection in April, 2008. The matter wasn't discussed, it wasn't debated, and conflict was dealt with at a different part of the meeting when the substantive matters are dealt with.<sup>605</sup>

348. Ms. Bench's normal practice would be to record who declares a conflict. The focus in April was on lifting the hold and dealing with the regional DC issue. And in September, 2009, Ms. Bench wasn't thinking back to what happened in April of 2008. But she was at the meeting and would have heard her declare a conflict if she declared a conflict at that meeting. Ms. Bench would have made a note of it on her agenda, as she always does.<sup>606</sup> She did not draw the connection between April, 2008 and September 2009. The Mayor makes recommendations in Part III designed to ensure that City Staff and the public can have better access to conflict of interest declaration information.

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<sup>605</sup> Bench, 2668-2669.

<sup>606</sup> Bench, 2669.

## 7. O'Brien Negotiated with DeCicco September 10

349. The evidence is that Mr. O'Brien conducted settlement negotiations on behalf of OMERS directly with Mr. DeCicco, who was accompanied by Peter McCallion, on September 10, 2009. Mr. Nobrega gave Mr. O'Brien that authority either that morning, or the day before or the evening before.<sup>607</sup>

350. The Sheridan indemnity agreement was signed on July 20, 2009. Mr. O'Brien did not meet with Mr. DeCicco or Mr. McCallion between the July breakfast meeting and the September 10, 2009 meeting.<sup>608</sup>

351. Mr. Latimer testified that negotiations for the sale of the land to Sheridan began with the idea of a direct sale. Then, following discussions between Sheridan and the Federal government regarding infrastructure financing, there was a proposal to sell the lands to the City, which would then lease them to Sheridan.<sup>609</sup> Federal infrastructure funds were necessary to actually build the college. The timeline associated with the funding was that the college had to be substantially completed by March, 2011, which meant that the deal had to be expedited. Mr. Latimer is not sure whether there was a commencement deadline for the construction.<sup>610</sup>

352. OMERS commenced litigation with WCD to get a declaration with respect to the rights to the property in July of 2009.<sup>611</sup> Many factors contributed to the eventual settlement with WCD. July, 2009 was a busy month, as Oxford was entering into the APS with the City and Sheridan had timing pressure related to the infrastructure grant. In July, WCD offered to settle the litigation by the payment of \$3.8 million. There was also

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<sup>607</sup> O'Brien, 2942.

<sup>608</sup> O'Brien, 2978-9.

<sup>609</sup> Latimer, 2212-13.

<sup>610</sup> Latimer, 2213.

<sup>611</sup> Latimer, 2213-14.

a conditional APS executed with the City with a proposed closing date of September 17, 2009 following a scheduled Council meeting on September 16.<sup>612</sup>

353. In order to protect the City, there were conditions relating to environmental and soil conditions and an indemnity regarding WCD.<sup>613</sup> Around August 28, 2009 Mr. Latimer had a discussion with Mr. Nobrega about Sheridan, the infrastructure grants, the City agreement, soil conditions, Oxford's ability to deliver, and the indemnity.<sup>614</sup> This was part of normal course reporting. The litigation with WCD was an important part of this discussion.

354. Mr. Latimer testified that he was inclined to settle the litigation so that Oxford would be in a position where it could deliver title to the City and avoid the risk of losing Sheridan and ending up in protracted litigation.<sup>615</sup>

355. On September 9 or 10, 2009 before an OMERS AC Investment Committee meeting, Mr. Nobrega indicated to Mr. O'Brien that he had concerns with the indemnity agreement between Oxford and the City, and that it would be a good idea to settle with WCD. Mr. O'Brien testified that Mr. Nobrega asked him to approach WCD on behalf of OMERS to see if he could arrive at a settlement number.<sup>616</sup> Mr. O'Brien indicated it is common for Mr. Nobrega to ask board members to represent OMERS in similar situations.<sup>617</sup> Mr. O'Brien stated that when he assumed this responsibility regarding negotiations, he did that in his fiduciary responsibility as a member of the OMERS Board.<sup>618</sup>

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<sup>612</sup> Latimer, 2215.

<sup>613</sup> Latimer, 2216.

<sup>614</sup> Latimer, 2217.

<sup>615</sup> Latimer, 2218.

<sup>616</sup> O'Brien, 2942 -2943.

<sup>617</sup> O'Brien, 2947-2948.

<sup>618</sup> O'Brien, 3057.

356. Mr. O'Brien did not tell the Mayor that he would be meeting with Mr. DeCicco and Peter McCallion to try to settle the WCD litigation.<sup>619</sup>

357. Mr. O'Brien met with Peter McCallion and Mr. DeCicco around 4pm on September 10<sup>th</sup>. Peter arranged the meeting, but did not say a word. From the numbers in Mr. DeCicco's affidavit, Mr. O'Brien's mind was stuck on \$3 million. This was his own feeling, without direction from Mr. Nobrega or anybody.<sup>620</sup> There was some back and forth. The meeting ended around 6 or 6:30pm, and Mr. DeCicco called around 7 or 7:30pm and offered \$5 million. They ultimately agreed on \$4 million, subject to Mr. DeCicco checking with his partner, and Mr. O'Brien receiving approval from Mr. Nobrega.<sup>621</sup>

358. During the meeting of September 10, Mr. DeCicco excused himself to receive some personal calls. He called his brother, his wife and Mr. Bisceglia regarding the discussions. He told Mr. O'Brien he was calling his partners (i.e. his brother and wife). Peter McCallion did not participate in these discussions.<sup>622</sup>

359. Mr. O'Brien took the \$4 million figure to Mr. Nobrega, indicating that it was the best he could do, and leaving it up to Mr. Nobrega and the OMERS Officials.<sup>623</sup> Mr. O'Brien called Mr. DeCicco that evening to say that he didn't have final approval and he wanted Mr. DeCicco to fax an offer to settle on behalf of WCD to Mr. Latimer of Oxford.<sup>624</sup> Mr. DeCicco instructed Mr. Bisceglia to do this. After that, Mr. O'Brien had nothing to do with the matter. He did expect that it would be resolved.

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<sup>619</sup> O'Brien, 3015.

<sup>620</sup> O'Brien, 2950.

<sup>621</sup> O'Brien, 2945-2950.

<sup>622</sup> DeCicco, 3687- 3693.

<sup>623</sup> O'Brien, 3045-46.

<sup>624</sup> DeCicco, 3693.

360. Mr. O'Brien had the authority to try to get a number, but he did not have the authority to settle.<sup>625</sup>

361. Mr. O'Brien was aware that the settlement did not cost the City a dime, because it was a settlement between WCD and Oxford.

362. The Mayor was not involved in the settlement discussions between WCD and Oxford. The Mayor did not ask Mr. O'Brien to become involved in the negotiations; rather, it was Mr. Nobrega who made that request.<sup>626</sup> The Mayor did not know the amount of the settlement at that time.<sup>627</sup> Nor was she advised of the numbers thrown around.<sup>628</sup>

363. The Mayor was not aware that Peter McCallion was involved in any settlement negotiations, nor would she have understood why he would have been involved.<sup>629</sup> The Mayor thought he was an agent on behalf of Mr. Couprie. Her understanding was that his involvement was finished as the deal had been dead since January, 2009.<sup>630</sup>

364. Mr. O'Brien does not recall speaking to the Mayor on September 10.<sup>631</sup> Peter McCallion never discussed the terms of the settlement with the Mayor,<sup>632</sup> nor did Peter McCallion discuss with the Mayor the details of the two meetings attended by Mr. DeCicco, Mr. O'Brien and Mr. McCallion.<sup>633</sup>

365. Tony DeCicco never discussed the settlement with the Mayor.<sup>634</sup>

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<sup>625</sup> O'Brien, 3073-74.

<sup>626</sup> Hazel McCallion, 5018.

<sup>627</sup> Hazel McCallion, 5018.

<sup>628</sup> Hazel McCallion, 5018.

<sup>629</sup> Hazel McCallion, 5019-20.

<sup>630</sup> Hazel McCallion, 5020.

<sup>631</sup> O'Brien, 2956.

<sup>632</sup> Peter McCallion, 2171.

<sup>633</sup> Peter McCallion, 2172.

<sup>634</sup> DeCicco, 3802.

366. Mr. Latimer agreed that the imminent closure of the Sheridan deal gave Mr. DeCicco more leverage. Mr. Latimer took Mr. DeCicco's offer of \$3.8 million as an indication of the ceiling of the range of settlement. When Mr. Latimer learned that the litigation had been settled for \$4 million, he thought it was an appropriate solution in light of the discussion he'd had with Mr. Nobrega on August 28. He viewed it as protecting against the downside risk of losing the Sheridan deal and being involved in protracted litigation. Another half a million or \$1 million to settle the litigation would have been fine.<sup>635</sup>

367. On September 11, 2009 Oxford decided to settle for \$4 million, which represented a return of \$1.6 million of refundable and non-refundable deposits, and a further \$2.4 million. Oxford advised AIM that they had settled and would fund the entire amount, and determine an appropriate contribution from AIM at a later date.<sup>636</sup>

368. On September 11, Mr. O'Brien called Ms. Bench to inform her that he negotiated a deal the previous night. Ms. Bench's notes indicate he informed her that both sides were to withdraw their applications, that Oxford would be asked to provide a verifying letter so she can do a supplemental report, and that Peter was sitting in on negotiations with Mr. DeCicco.<sup>637</sup>

## **8. Council Proceedings – Sheridan and WCD**

369. On September 16, 2009, Council held an *in camera* meeting concerning the Sheridan and WCD matters.<sup>638</sup> Minutes from the meeting state that Mayor McCallion declared a conflict of interest with respect to the matters by virtue of her son's involvement in the land acquisition. The Mayor was not present for the discussion of these matters.

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<sup>635</sup> Latimer, 2220-21.

<sup>636</sup> SOL.001.001.205.

<sup>637</sup> Exhibit 315.

<sup>638</sup> Exhibit 398; Hazel McCallion, 5035.

370. On September 24, 2009, Ms. Bench prepared a Corporate Report addressing the issues raised by Council regarding the closing.<sup>639</sup> The Report attaches the opinion of McLean & Kerr regarding whether the Mayor was in a conflict of interest by failing to declare her connection to WCD;<sup>640</sup> a McLean & Kerr real estate opinion regarding the APS<sup>641</sup> and the environmental report of Golder Associates regarding contamination. The report also provided details regarding the costs to the City to date and attempts to get details about the confidential settlement with WCD.

371. The City also retained the law firm of Cassels, Brock to provide an outside legal opinion on conflict of interest issues. On September 25, 2009, Cassels Brock provided an opinion to the City Solicitor about the conflict of interest question, and concluded that there was no conflict of interest by Mayor, Council or staff.<sup>642</sup> Cassels Brock clarified these views in a further letter on September 29, 2009.<sup>643</sup>

372. On September 28, 2009, a Corporate Report regarding the May 21, 2008 Council Minutes recommended that Council amend the meeting to delete a reference to a declaration of conflict of interest by Mayor McCallion as the video recording reveals that no such declaration was made.<sup>644</sup> The Report noted that a procedure has now been established in the City Clerk's office, effective immediately, to require that when a declaration of conflict of interest is recorded in the Minutes, the City Clerk or Deputy Clerk review the draft Minutes and the video recording to verify the declaration of conflict reported in the Minutes of the meeting. Report also notes that the Office of the City Clerk will conduct a comprehensive review of its minute-taking practices.

373. Also on September 28, 2009, Ms. Bench issued a Corporate Report for the *in camera* session of Council regarding the revival of the APS.<sup>645</sup> The Report set out that

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<sup>639</sup> MIS.002.005.178.

<sup>640</sup> MIS.001.009.070.

<sup>641</sup> MIS.001.011.180.

<sup>642</sup> MIS.001.009.041.

<sup>643</sup> MIS.001.009.031.

<sup>644</sup> MIS.001.009.036.

<sup>645</sup> MIS.002.005.018.

the parties had resolved all outstanding differences and, subject to Council approval, wished to establish a new closing date of October 1, 2009 through the Revival and Amending Agreement. The Report referred to documents distributed to members of Council on September 17, 2009, including copies of the Mutual Release and release documents of September 15, 2009. The Report also attached the releases and Revival Agreement as appendices.

374. On September 30, Council passed the by-law necessary to approve the Revival and Amending Agreement<sup>646</sup> and the resolution authorizing the City Manger and City Clerk to proceed with the October 1 closing.<sup>647</sup> The City directed that funds be paid to McCarthy Tétrault to close the transaction.<sup>648</sup>

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<sup>646</sup> MIS.013.002.323.

<sup>647</sup> MIS.001.009.021.

<sup>648</sup> OMR.002.001.269.

## **Part II: Position on Phase II Issues List**

### **A. Question 1. The City and the Hotel/Convention Centre**

#### **1. What were City Council's expectations and wishes with respect to a five-star hotel in downtown Mississauga?**

375. The City of Mississauga's long term vision for the City Centre is set out in the Official Plan. The City's vision, and the Mayor's "dream", encompassed a hotel and convention centre in the downtown core adjacent to the Living Arts Centre, to bring tourists into the downtown and make the City attractive to conferences and conventions.<sup>649</sup>

376. The Official Plan of the City specifically recognizes a hotel/convention centre as an approved use in the downtown core.<sup>650</sup> While there was no direct evidence regarding City Council's expectations other than the City's plan, it is reasonable to assume that the expectation of Council would be that all City staff and officials would work to achieve this goal.

377. In June, 2005, the Mississauga Economic Development Office contacted over 30 developers and hoteliers, promoting a hotel development opportunity in the City core and seeking expressions of interest.<sup>651</sup> The Economic Development Office's efforts had no results in terms of finding somebody to invest in a major hotel in the City core. The City clearly authorized this attempt to encourage the development of a major hotel in the City core.

378. Mr. Sajecki, the City's Commissioner of Planning and Building, testified that if the project had been completed, it would have been good for the City, as it would have enhanced the use of the Living Arts Centre and generated substantial property tax

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<sup>649</sup> Exhibit 591; SOL.001.003.374; Sajecki, 2795.

<sup>650</sup> OMR.002.002.895; SOL.001.003.374; Sajecki, 1386-87, 2795.

<sup>651</sup> Hazel McCallion, 4822; Exhibit 182.

revenue for the City.<sup>652</sup> The WCD project would likely have generated between \$650,000.00 and \$1,000,000.00 per year.<sup>653</sup>

379. City Manager Janice Baker told the inquiry that the Hotel/Convention centre fed into the vision of the downtown being active mixed use. Mississauga has some significant commercial and residential development, and they understand that successful downtowns have a variety of uses that generate traffic at different parts of the day, and create an environment where you'll get street front restaurants and cafes, which will attract people to come out and do business in that particular area. To Ms. Baker, these were the concepts that were important to the City.<sup>654</sup>

## **B. Questions 2 and 3: Mayor's Efforts and WCD**

**2. What steps did the Mayor take to assist WCD in its efforts to build a hotel in downtown Mississauga?**

**3. Was it appropriate for the Mayor to take these steps?**

380. It is submitted that it was reasonable and appropriate for the Mayor to take the steps described below. The Hotel/Convention Centre development was consistent with the City's vision. City staff testified that it was consistent with the City's development of a vibrant urban core, and would have brought significantly increased property tax revenue to the City. The Mayor, pursuant to the MCIA, declared a conflict of interest at Council, did not vote on WCD issues at Council, did not seek to influence Councillors, nor did she interfere with City staff concerning the WCD project. There was no Code of Conduct applicable to the Mayor at the time, and no Integrity Commissioner in Mississauga. The Mayor would not have benefitted financially; the MCIA issue related to the deemed pecuniary interest of her adult, non-dependent child. Her interventions were solely with the two sophisticated companies which owned significant lands in the City Core. OMERS and AIM witnesses testified that it would have been a complementary

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<sup>652</sup> Sajecki, 2798.

<sup>653</sup> Sajecki, 2800.

<sup>654</sup> Baker, 4614 -4615.

economic use to their existing Square One investment, and there were no other competing uses for the lands at the time. The experts concurred that on a similar hypothetical, there were no legal concerns.<sup>655</sup>

381. When WCD first shared the vision with the Mayor, the Mayor supported the hotel/conventional centre project, because it was consistent with the City's vision. At no time did she involve herself in the condominium aspect of the project. From the outset the Mayor made it clear that she would declare a conflict of interest at Council, and would not interfere with City planning or Council processes related to the development.

382. The Mayor viewed her limited role in the project as facilitating the acquisition of the lands adjacent to the Living Arts Centre for the hotel and convention centre. From the Mayor's point of view, she was representing the City's interests. The Mayor's interventions were directed to the private landowners, OMERS and AIMCo, two sophisticated institutional investors which are among the largest pension plans in Canada. The Mayor attempted to persuade the landowners to cooperate with the sale of lands, as she had on many prior occasions with other land owners and developers, because it was consistent with the City's vision.

383. The Mayor did not intervene in the City's role – the planning function – either at the staff level, with Councillors, or at Council meetings. The evidence is that the Mayor did not interfere with City planning staff's treatment of the project, and there was no preferential treatment by City staff of the WCD project. Certainly the Mayor never sought preferential treatment by City staff. The Mayor never used any municipal governance tools in relation to the landowners. She phoned and met with the private parties to urge them to cooperate and facilitate the sale of the lands to assist in the public vision for the growth of the City. The testimony is clear that her motivation throughout was to achieve the City's long standing objective of a hotel/convention centre in the City Core.

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<sup>655</sup> Expert testimony, 6033-6043

384. The evidence is that the landowners had no other projects, bids or plans for the City Centre lands under consideration at the time. There was no other proposal or group pursuing the lands at the time. The evidence is that all decisions made by OMERS and AIM with respect to the development were made in the best interests of the companies, and they were acting in their own financial interests.

385. The Mayor conducted herself throughout in accordance with her understanding of the rules regarding conflict of interest that applied to municipal politicians. The Mayor submits that the framework established under the MCIA – declare a conflict, recuse and abstain from voting – was reasonably understood by municipal politicians as the required standard of conduct.

386. The WCD project would have been a significant benefit to the City. Mr. Sajecki, the City's Commissioner of Planning and Building, testified that if the project had been completed, it would have enhanced the use of the Living Arts Centre and generated substantial property tax revenue for the City. The WCD project would likely have generated between \$650,000.00 and \$1,000,000.00 per year, significantly more than the existing property tax revenue. City Manager Janice Baker testified that the hotel/Convention centre project supported the City's long-term vision of a mixed-use, active downtown.

### **C. Question 4: Due Diligence**

#### **4. Did the Mayor conduct due diligence regarding WCD prior to taking steps to assist it? Should more due diligence have been done?**

387. The Mayor did not conduct due diligence. She assumed that the vendors would conduct their own due diligence. She does not have the resources to conduct due diligence. More importantly, the City does not do due diligence on any developers who come forward with a project. The City's interest is in encouraging development that is consistent with the City's official plan, its long term vision for the City Core, from a planning perspective. The commercial aspects of development are left to the private

sector. The evidence is that the landowners – OMERS and AIMCo – did not rely and would not have relied on the Mayor, but conducted their own due diligence.

388. There was evidence of some due diligence by the vendors, and the Agreement of Purchase and Sale by OMERS/AIMCo with WCD was negotiated over a period of eight months, with lawyers on both sides of the transaction. The Mayor was not involved in this aspect of the WCD Project. The Mayor notes that the Agreement of Purchase and Sale did not contain a change of control clause.

**D. Question 5: Should Mayor have advised Council?**

**5. Did the Mayor advise Council about the steps she was taking? If not, should she have done so given that the hotel/conference centre was a public purpose?**

389. The Mayor did not advise Council about the steps she was taking. It would have been inappropriate for the Mayor to advise Council given that the Mayor intended to and did declare a conflict of interest. The Mayor understood from the outset that because of Peter McCallion’s involvement, she would be declaring a conflict of interest. Any information provided to Council could have been construed as an attempt to influence Council in its voting contrary to section 5 of the MCIA.

390. The MCIA regulates pecuniary conflicts of interest for members of municipal council. The MCIA provides a declare-recuse-abstain system for councillors. Thus, section 5 of the MCIA imposes a duty on councillors to declare a pecuniary interest prior to a “meeting” “at which the matter is the subject of consideration,” to not take part in discussion, vote, or attempt before, during or after the meeting to influence a vote. Section 5 provides:<sup>656</sup>

When present at a meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest,

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<sup>656</sup> *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M.50, s. 5 (“MCIA”)

direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. ...

**E. Question 6: Hotel and Conference Centre – Achievable and Economic?**

**6. To what extent did Oxford/156 (AIMCO) agree to enter into a transaction with WCD in order to support Mayor McCallion in her desire to see a hotel/conference centre built in Mississauga rather than for ordinary commercial considerations?**

**7. Did Oxford/AIM believe that a four-star hotel and conference centre was an achievable project in City Centre?**

391. All parties believed that the hotel/conference centre was a desirable and economically feasible project at its inception. OMERS/AIM at all times made decisions in their economic interest, taking into account all ordinary commercial considerations.

392. This evidence is set out in section C, “City Core Development”, above.

**F. Question 8: Knowledge by Councillors/Officials**

**8. Were Councillors or officials aware that the Mayor was seeking concessions on behalf of WCD from OMERS?**

393. The Mayor did not inform Councillors or City Staff that she was intervening with the landowners to facilitate the WCD Project. In fact, it would have been inappropriate

for the Mayor to advise Council or staff of her interventions with OMERS and AIMCo given that the Mayor intended to and did declare a conflict of interest. The Mayor understood from the outset that because of Peter McCallion's involvement, she would be declaring a conflict of interest, and she did declare a conflict of interest. Any information provided to Council could have been construed as an attempt to influence Council in its voting contrary to section 5 of the MCIA.

394. Similarly, the Mayor did not get involved with City Staff or the planning process, given her conflict of interest, and her desire to respect Staff's role in the planning process.

395. The Mayor's involvement was directed to the private vendors, to assist in the building of a Hotel/Convention Centre that fulfilled the City's vision for the downtown core.

#### **G. Question 9: Role of Mayor re WCD Internal Affairs**

**9. What role, if any, did the Mayor play in WCD's internal affairs? For example, did the Mayor suggest that Tony DeCicco or others become involved? Was the Mayor involved in the settlement that WCD reached with Mr. Cook?**

396. The Mayor had a very limited role in the internal affairs of WCD.

397. The Mayor was not involved in the original concept nor in recruiting those who became involved in WCD. She had no role in recruiting Murray Cook or Tony DeCicco. She was informed of their involvement in a general way, but was not provided with specific information as to the nature and extent of their interests, or the internal financial matters.

398. Mr. DeCicco left a number of messages for the Mayor asking for her involvement in settling the dispute between Murray Cook and himself, and the Mayor was involved in one meeting between them at her house at which issues were discussed but not resolved. She was not involved thereafter in any settlement and did not review the settlement

document which was faxed to her house. These issues are set out in sections D “The WCD Hotel Project”; F “Agreement of Purchase and Sale”; H “WCD Internal Affairs”; L “Settlement of WCD Litigation, Fall 2009”.

#### **H. Question 10: Knowledge of Peter’s Financial Interests**

**10. When did the Mayor become aware that Peter had a financial interest in the project (whether as a broker or otherwise)? What was her understanding of the nature and extent of that interest, and did she understand that his financial interest was contingent on the successful completion of the project?**

399. The Mayor understood from the outset that Peter McCallion had a “pecuniary interest” in the WCD Project within the meaning of the MCIA. This formed the basis for her declaration of conflict of interest at Council. From the Mayor’s perspective, the exact nature of Peter McCallion’s interest did not affect her obligation— to declare a conflict of interest at Council, which she did. The MCIA does not distinguish between pecuniary interest as an agent or a principal. The words used to describe the nature of Peter McCallion’s interest may have been modified, but the effect – declare, recuse, abstain – remained the same.

400. The Mayor understood Peter McCallion’s role to be a representative of Mr. Couprie.<sup>657</sup> This understanding was based on information Peter provided to the Mayor and did not change between 2006 and 2008.<sup>658</sup> The Mayor also assumed that Peter would get a commission from someone, perhaps the investor, when a deal was consummated.<sup>659</sup> Peter never advised the Mayor that there was no such commission arrangement,<sup>660</sup> nor did he advise the Mayor that he hoped to be the listing agent on the subsequent sale of condos.<sup>661</sup>

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<sup>657</sup> Hazel McCallion, 4828-4829.

<sup>658</sup> Hazel McCallion, 4829.

<sup>659</sup> Hazel McCallion, 4829.

<sup>660</sup> Hazel McCallion, 4830.

<sup>661</sup> Hazel McCallion, 4830.

401. The Mayor was not advised at any time by Peter McCallion or by anyone else that Peter had an equitable interest in WCD.<sup>662</sup> She did not know he had loaned money to WCD and she was not aware that he was involved as a principal of WCD prior to the Inquiry.<sup>663</sup> Indeed, the Mayor testified that it would have come as a complete surprise to her that Peter had the resources to invest in WCD.<sup>664</sup>

402. Mr. Couprie testified that he never had a discussion with the Mayor about his role in WCD, nor did he ever inform her he was holding shares in trust for Peter McCallion.<sup>665</sup>

403. Mr. Cook testified that he never had any discussions with the Mayor about the nature of Peter McCallion's interest in WCD.<sup>666</sup>

404. Mr. McCallion testified that he hoped to gain from the deal in the long-term, on the sale of the condos. He had initially hoped to get a commission on the sale of the land, but in the end it was apparent OMERS was not willing to pay.<sup>667</sup> He further testified that the Mayor did not realize that he was anything other than a real estate agent in the deal, until relatively recently. In fact, even though Peter McCallion as a matter of law may be the beneficial owner of shares of WCD, he himself did not have that understanding through 2007 and 2008.<sup>668</sup>

405. Mr. McCallion testified that the Mayor understood throughout, up until the inquiry, that it was Mr. Couprie who was the investor in the project. Peter McCallion didn't ever tell her anything that would make her think any differently than that. Peter McCallion informed the Mayor that his role was as agent and representative of Mr.

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<sup>662</sup> Hazel McCallion, 4843.

<sup>663</sup> Hazel McCallion, 4843.

<sup>664</sup> Hazel McCallion, 4843.

<sup>665</sup> Couprie, 3447-48.

<sup>666</sup> Cook, 4493-94.

<sup>667</sup> Peter McCallion, 1807.

<sup>668</sup> Peter McCallion, 1890-91.

Coupric. This made sense to the Mayor because the only job he ever had was as a real estate agent – he'd never worked as a developer or investor.<sup>669</sup>

406. Peter McCallion led the Mayor to believe that Mr. Coupric was the investor throughout and he did not advise her otherwise. The Mayor did not see the incorporation documents of WCD. Peter McCallion agreed that the Mayor never thought PM was a shareholder, director, owner, in any way of WCD -- consistent with Peter McCallion's understanding of his role.<sup>670</sup>

407. Mr. McCallion testified that the Mayor understood he was going to be compensated in some way, but didn't discuss how or when. Peter McCallion didn't get into the specifics of the commission arrangements, if there were any, in fact.<sup>671</sup>

408. Mr. DeCicco never discussed Peter McCallion's role in WCD with the Mayor. He did not discuss Peter McCallion's financial arrangements or any other equity interests in WCD with the Mayor. She showed no interest in WCD's financial arrangements, but was single-mindedly focused on the 5-star hotel she wanted.<sup>672</sup>

409. There are significant issues for municipal politicians in determining the financial interests of adult, non-dependent children in a system where there is no obligation to disclose, and financial matters are difficult for adult children to discuss with parents. As a result, the Mayor suggests that the deemed pecuniary interest of adult, non-dependent children should be eliminated from the MCIA.

## **I. Question 11: Conflict Declarations – Other?**

**11. Aside from declaring a conflict at City Council meetings, should the Mayor have refrained from being involved in the WCD matter?**

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<sup>669</sup> Peter McCallion, 2148.

<sup>670</sup> Peter McCallion, 2151-2.

<sup>671</sup> Peter McCallion, 2183-4.

<sup>672</sup> DeCicco, 3944-45, 3953.

410. As set out in response to Question 3, above, it is submitted that it was reasonable and appropriate for the Mayor to become involved as she did. Municipal politicians must be able to be engaged in furthering the City's interests, which is an important part of their role.

411. The Hotel/Convention Centre development was consistent with the City's vision. City staff testified that it was consistent with the City's development of a vibrant urban core, and would have brought significantly increased property tax revenue to the City. The Mayor, pursuant to the MCI A, declared a conflict of interest at Council, did not vote on WCD issues at Council, did not seek to influence Councillors, nor did she interfere with City staff concerning the WCD project. There was no Code of Conduct applicable to the Mayor at the time, and no Integrity Commissioner in Mississauga. The Mayor would not have benefitted financially; the MCI A issue related to the deemed pecuniary interest of her adult, non-dependent child. Her interventions were solely with the two sophisticated companies which owned significant lands in the City Core. OMERS and AIM witnesses testified that it would have been a complementary economic use to their existing Square One investment, and there were no other competing uses for the lands at the time. The experts concurred that on a similar hypothetical, there were no legal concerns.<sup>673</sup>

#### **J. Question 12: May 21, 2008 Minutes of Council**

##### **12. How did the May 21, 2008 minutes come to reflect that the Mayor declared a conflict?**

412. The Mayor asks that the Commissioner find that the Mayor never directed Ms. Alleluia to change the minutes or record a conflict of interest with respect to the May 21, 2008 Council meeting. The Mayor further asks that the Commissioner to find, having

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<sup>673</sup> Expert testimony, p. 6033-43.

viewed the videotape and heard the evidence, that this was a result of the Mayor's inadvertence and that the matter was procedural only, not substantive.

413. When the WCD matter first came before City Council for planning approvals on April 23, 2008, the Mayor declared a conflict of interest by virtue of her son representing an investor in the project, which was what she understood to be his interest. The WCD matter again came before Council at a special meeting on April 30, 2008. Although the Mayor was absent, the Acting Mayor twice reminded Council on April 30 that Mayor McCallion had previously declared a conflict of interest on the WCD matter. At a Council meeting on May 7, 2008, although the WCD matter was not on the agenda, when the minutes of the April 23 and 30 meetings came up for approval, the Mayor again referred to her previously declared conflict of interest. Thus, by May 7, the Mayor's conflict had been brought to Council's attention in three separate meetings.

414. The WCD matter was on Council's agenda for May 21, 2008, although the matter was deferred at WCD's request. The Mayor inadvertently did not declare a conflict, although the minutes record a declaration of conflict. The evidence on this point is clear. The Mayor did not direct that the minutes be altered to record a conflict. The City Clerk staff member testified that the Mayor did not direct her to record a conflict in the minutes, and never asked her to change the minutes. The City Clerk staff member gave a reasonable explanation for why she did record a conflict.

#### **K. Question 13: OMERS and WCD**

##### **13. Did the Mayor endorse WCD, Tony DeCicco or others to OMERS?**

415. The vendors did not rely on the Mayor to conduct due diligence on WCD or its principals. While the Mayor made some positive statements, she at all times understood that this was a business deal, and expected the sophisticated vendors to act in a commercially appropriate manner.

416. The vendor private parties understood that the Mayor was supporting her vision of the City, but this was a business transaction in which their business considerations were of prime importance. The vendors retained counsel, and through counsel negotiated a commercial contract with WCD. The vendors conducted their own due diligence. The vendors chose not to insert a change of control clause in the Agreement of Purchase and Sale. The vendors chose to amend their agreement by way of the July 31, 2008 Amending Agreement. The vendors ultimately exercised their contractual rights to terminate the agreement.

**L. Question 14: City Staff and Site Plan Approval Fees**

**14. Was the Mayor briefed on the issues surrounding the timing and quantum of site plan approval fees to be paid by WCD? Did she communicate with any City official on the subject?**

417. These issues are addressed in section I “WCD’s Site Plan Application and Fees”, above. The Mayor was not briefed on issues surrounding the timing and quantum of site plan approval fees. When Marilyn Ball called the Mayor’s office to suggest a briefing, as is the normal course, the Mayor’s office declined the briefing. The Mayor did not communicate with any City official on the subject of WCD.

**M. Question 15: Witness to Signatures**

**15. Why did the Mayor witness loan, guarantee, and declaration of trust documents involving WCD, Peter and others? Did the Mayor read any portion of these documents? If so, what was her understanding of the legal import of these documents?**

418. This evidence is set out in section E, “Witness to Signatures”, above. The Mayor did not read the documents, but merely witnessed the signatures at the request of Peter McCallion and Mr. Couprie, who informed her that the documents were being executed for estate planning purposes prior to a trip to Asia. The Mayor has witnessed many signatures, and her understanding is that her role is to attest to the signatures, not the content of the documents. The Mayor was never informed and never knew or believed that Mr. McCallion was an equity owner of WCD.

**N. Question 16: Court Application**

**16. What knowledge and involvement, if any, did the Mayor have in the Application and subsequent negotiations between WCD and OMERS?**

419. The Mayor understood the WCD deal failed in December, 2008. She was not informed of any ongoing dispute until June 24, 2009 when Mary Ellen Bench informed her that WCD deposits had not been returned. She had no knowledge of or involvement in the Court Application, other than the fact that Mr. DeCicco called the Mayor to inform her that WCD was commencing litigation. The Mayor informed him, do what you have to do.

420. The Mayor had no involvement in the negotiations between WCD and OMERS in the settlement of the litigation. The evidence on this point is set out in section L, “Settlement of WCD Litigation, Fall, 2009”, above.

**O. Questions 17 – 21: OMERS/AIM Questions**

**17. What did OMERS understand about Peter McCallion’s involvement in WCD? What did 156 understand about Peter McCallion’s involvement in WCD?**

**18. Ought senior executives of Oxford/OMERS to have expressed concern to the Mayor about her contacts seeking concessions on the part of WCD?**

**19. Ought Oxford/OMERS to have facilitated a meeting or meetings with Peter McCallion on behalf of WCD when the request to have such a meeting came from the Mayor?**

**20. Did Oxford/OMERS officials act in a way which perhaps unintentionally obscured the true role of Peter McCallion in WCD from its development partner AIMCO? Did this in any way lead to the termination of the Agreement of Purchase and Sale?**

**21. When did AIMCO (as opposed to Oxford) become aware of Peter McCallion’s actual role in WCD, and how did that affect AIMCO’s thinking about the Mayor’s participation?**

421. Questions 17-21 are directed to AIMCo and OMERS, and the Mayor takes no position. The Mayor notes, however, that during this Inquiry, certain representatives of

the landowners expressed discomfort with the Mayor's involvement due to Peter McCallion's role in the WCD project. This was not brought to the Mayor's attention, and she had no opportunity to address these issues at the time.

422. Moreover, Mr. McCallion's involvement was known to the landowners prior to the signing of the Agreement of Purchase and Sale, and prior to the July 31, 2008 Amending Agreement.

**P. Question 22: Staff and WCD – Application Fees**

**22. Did WCD receive special treatment with respect to paying application fees owed to the City? If so, how was that decision made? By whom? What were the factors considered?**

423. The Mayor had no involvement in the site plan application fees and City Staff, as set out in section I, "WCD's Site Plan Application and Fees", above. The evidence is that WCD did not receive special treatment with respect to paying application fees owed to the City.

**Q. Question 23: WCD Investments**

**23. Investment in WCD:**

a. What was Murray Cook's investment in WCD? Does WCD owe any money to Mr. Cook?

b. What was Peter McCallion's investment in WCD? Does WCD owe any money to Mr. McCallion?

c. What was Tony DeCicco's investment in WCD? Does WCD owe any money to Mr. DeCicco?

d. What was Leo Couprie's investment in WCD? Does WCD owe any money to Mr. Couprie?

e. What was John Di Poce's investment in WCD? Does WCD owe any money to Mr. DiPoce?

424. The Mayor had no information about investment in WCD, and makes no submissions on this question.

**R. Question 24: Mr. Gupta's Commitment**

**24. What was Mr. Gupta's commitment with respect to the hotel project in downtown Mississauga?**

425. The Mayor had no information about Mr. Gupta's involvement, and makes no submissions on this question.

**S. Questions 25-29 : Mr. O'Brien**

**25. What was Mr. O'Brien's role with respect to the settlement between WCD and OMERS/156? On whose behalf was Mr. O'Brien acting?**

**26. To the extent that Mr. O'Brien acted for OMERS/Oxford, at what point did he begin acting? From whom did he derive his authority?**

**27. Did Mr. O'Brien act in conflict of interest in acting, negotiating or communicating in the period July to October 2009 while wearing different hats?**

**28. To what extent was the City, Oxford/OMERS or AIM aware of Mr. O'Brien's activities, and was any concern expressed?**

**29. What did the Mayor know about Mr. O'Brien's role in the dispute between WCD and OMERS/156?**

426. At all times the Mayor understood that Mr. O'Brien was acting for OMERS. When she asked him in July, 2009 at the golf tournament to inform himself about the WCD matter, she was asking him in his capacity as an OMERS Board member.

427. The Mayor wanted Mr. O'Brien to be familiar with the details of all the problems associated with the Sheridan deal. As a member of the board of OMERS, a former City Manager, and a former Chairman of the Board of Sheridan who was interested in getting Sheridan to Mississauga, the Mayor felt that he was a good person to get involved to see

was information he could obtain to pass on to OMERS.<sup>674</sup> When talking to Mr. O'Brien during this timeframe, the Mayor saw him as a former City manager who had made major contributions to the City's development. She thought he might be concerned that if the project failed, OMERS would be identified as a reason because of the delay and problems.<sup>675</sup> The Mayor did not ask Mr. O'Brien to do anything specifically about the problems.<sup>676</sup>

428. Mr. O'Brien received any authority to negotiate from Mr. Nobrega at OMERS. Mr. Nobrega indicated that he was a good choice to find out information because he knew the players. Mr. O'Brien did not have authority to finalize a settlement; he simply took the proposed settlement to Mr. Nobrega for a final decision.

#### **T. Question 30: Mayor's Gala**

**30. Having regard to the evidence about the purchase of tickets by development interests including WCD to the Mayor's gala, ought there to be rules creating greater transparency surrounding donations to galas which are associated with the Mayor or senior City officials?**

429. There are concerns with respect to creating rules which would lead to public disclosure of names. From the City's perspective, there are privacy obligations under the *Municipal Freedom of Information and Protection of Privacy Act* which would create significant issues in respect of publicizing names of donors. This would also create significant administrative costs, thereby reducing the amounts available for charitable distribution. There may be other issues relating to the law of charities and non-profits which this Inquiry has not examined.

430. This Inquiry is concerned with municipal governance issues. If the concern is future benefits that might be tied to donations, the Mayor submits that these issues are

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<sup>674</sup> Hazel McCallion, 5026-27 and 5250.

<sup>675</sup> Hazel McCallion, 5027-28.

<sup>676</sup> Hazel McCallion, 5028.

better addressed through an Integrity Commissioner and Lobbyist Registry, discussed in Part III of these submissions.

## **Part III: Law and Recommendations**

### **U. Principles**

431. The Mayor submits that in considering recommendations, and in assessing the facts, the Commissioner should be guided by certain principles. First, the Commissioner should search for recommendations that will provide mayors and councillors with a consistent, predictable and procedurally fair system for dealing with conflicts of interest. It is important that the recommendations do not create such an onerous system that it dissuades individuals from running for municipal office. Legal fees for individual politicians, in terms of compliance, should not be unduly burdensome.

432. Given the importance of clarity, predictability and cost, the Mayor submits that the protective aspect of the MCIA system for pecuniary conflicts is important: the system whereby a politician may declare a conflict, recuse herself, and refrain from voting is a bright line system which protects individual politicians, and provides transparency at council.

433. If an integrity commissioner is adopted for conflict issues, it is important that the integrity commissioner be empowered to give advice relating to a code of conduct, and that municipal politicians be entitled to rely on that advice. This too will provide a consistent, predictable and procedurally fair system. Binding advice given by an integrity commissioner is an important protection for councillors or the mayor.

434. Municipal politicians must be able to predict and act in accordance with requirements. There are significant concerns with suggestions of proscribing “apparent” conflicts, or a broad “improper use of influence” standard.

435. The Mayor submits that in order to provide a consistent, predictable and procedurally fair system, any code of conduct must be clearly tied to official acts and official powers or duties under the *Municipal Act, 2001*.

436. Clarity and predictability of conflict of interest rules is also important for the municipality as a whole, as well as third parties. As Dean Sossin noted, many commercial firms put a premium on fees or provide stiff exit ramps from commercial arrangements when dealing with municipalities, precisely because of uncertainty. What are required is reasonable and commercially viable mechanisms, that are not unduly burdensome on either municipal councillors, mayors, staff or private parties.<sup>677</sup>

437. There is a significant concern that any expansion of the concept of conflict of interest by municipal politicians must be carefully balanced, so that politicians understand the conduct subject to censure. Historically, conflict of interest has been regulated in two realms. The first is the role of councillors in their adjudicative or quasi-judicial decision-making capacity, which has been subject to traditional administrative law principles of reasonable apprehension of bias. The second is the legislative role of councillors – voting – to which the proscriptions of the MCIA have applied. Both of these sources of law provide clear guidance to councillors. When making a decision to which procedural fairness applies, the rule against bias indicates a decision-maker should recuse herself if subject to a reasonable apprehension of bias; the decision may otherwise be set aside on judicial review. Under the MCIA, there is an obligation to declare, recuse and not vote where a pecuniary conflict exists. These two mechanisms are well-identified. The introduction of “apparent” conflict or “improper influence”, however, is not as clear, and creates significant ambiguity and risk for municipal mayors and councillors.

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<sup>677</sup> Sossin, p. 5989, l. 10 – 5990, l. 16.

## V. The Municipal Act: The Statutory Scheme

438. It is important to understand the statutory scheme under the *Municipal Act, 2001*<sup>678</sup> with respect to the roles of Council, the Mayor, and staff. Any recommendations should be situated within the context of the existing statutory framework, and be directed to future changes to better guide municipal politicians.

### 9. Background: Municipal Governance

439. Ontario has a “weak Mayor/strong Council” system of municipal governance, as described by Commissioner Bellamy in the Toronto Computer Leasing Inquiry Research Paper on Municipal Governance.<sup>679</sup> Generally, executive and legislative powers rest with full Council. The only additional independent duties given to the Mayor, as compared with any other councillor, arise from her role as head of Council.

440. The key defining feature of municipal governance in Ontario is that municipal power and authority is generally exercised by Council, and the Mayor has very little formal authority outside chairing Council meetings. As Commissioner Bellamy states:<sup>680</sup>

The most important ground rule is that Council is the source/primary locus of almost all authority with relatively few exceptions, including all legislative authority. Council makes the decisions with respect to whether and to what extent to delegate this authority to others, including the Mayor, various standing or other committees, and the administrative staff. The statutory authority of the Mayor/head of Council is actually quite limited, with a strong emphasis on the responsibility to chair Council meetings.

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<sup>678</sup> *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

<sup>679</sup> Toronto Computer Leasing Inquiry Research Paper, Municipal Governance, Volume 1: Overview of Approaches, November, 2003, at p. 44.

<sup>680</sup> *Ibid.*, p. 44.

## 10. The Role of Council

441. Section 5(1) of the *Municipal Act, 2001* provides: “**The powers of a municipality shall be exercised by its council.**”<sup>681</sup> Section 5(3) provides that “**A municipal power**, including a municipality’s capacity, rights, powers and privileges under section 9, **shall be exercised by by-law** unless the municipality is specifically authorized to do otherwise.”<sup>682</sup> Council decisions may be recorded in the form of a resolution, which is “simply an expression of a decision or wish of council.”<sup>683</sup>

442. The role of council was first separately described in the 2001 Act, and revised in the 2006 amendments to clearly place controllership and accountability policies and practice under the responsibility of council.<sup>684</sup>

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<sup>681</sup> *Municipal Act, 2001*, S.O. 2001, c. 25, s. 5(1).

<sup>682</sup> *Municipal Act, 2001*, S.O. 2001, c. 25, as s. 5(3);

By-laws must be signed by both the head of council or presiding officer at the meeting where the by-law was passed and the clerk, and under the seal of the corporation.

<sup>683</sup> Exhibit 722, *The Municipal Councillor’s Guide*, Ministry of Municipal Affairs and Housing, Queen’s Printer for Ontario, 2007, also available on the internet at [www.mah.gov.on.ca](http://www.mah.gov.on.ca).

<sup>684</sup> See Exhibit 718.

Municipal Act, 2001	2006 Amendments <sup>685</sup>
<p>224. It is the role of council,</p> <p>(a) to represent the public and to consider the well-being and interests of the municipality;</p> <p>(b) to develop and evaluate the policies and programs of the municipality;</p> <p>(c) to determine which services the municipality provides;</p> <p>(d) to ensure that administrative practices and procedures are in place to implement the decisions of council;</p> <p>(e) to maintain the financial integrity of the municipality; and</p> <p>(f) to carry out the duties of council under this or any other Act.</p>	<p>224. It is the role of council,</p> <p>(a) to represent the public and to consider the well-being and interests of the municipality;</p> <p>(b) to develop and evaluate the policies and programs of the municipality;</p> <p>(c) to determine which services the municipality provides;</p> <p>(d) to ensure that administrative policies, practices and procedures <u>and</u> <u>controllership policies, practices and procedures</u> are in place to implement the decisions of council;</p> <p>(d.1) <u>to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;</u></p> <p>(e) to maintain the financial integrity of the municipality; and</p> <p>(f) to carry out the duties of council under this or any other Act.</p>

443. In 2006, Council was vested with the role of ensuring that controllership policies, practices and procedures were in place to implement the decisions of council. These include financial accounting for the expenditures of the municipality, and financial controls.<sup>686</sup> Council's role in ensuring the accountability and activities of the municipality, including senior management such as the CAO, City Clerk, City Solicitor and senior division heads was also included in the 2006 amendments, to ensure that Council has a closer role in monitoring the civic administration.<sup>687</sup>

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<sup>685</sup> 2006 Amendments are underlined.

<sup>686</sup> Levine, p. 5842-43.

<sup>687</sup> Levine, p. 5843-44.

## 11. The Role of the Mayor as Head of Council

444. The Ministry of Municipal Affairs and Housing describes the role of the Mayor as follows: “[D]ecisions of the municipality are made by council as a whole. The head of council does not have any more power than any other member of council to make decisions on behalf of the municipality.”<sup>688</sup> The Mayor does have certain very limited responsibilities as head of Council, under the *Municipal Act, 2001*.

445. The evolution of the role of a mayor in Ontario is set out in Exhibit 718. Under the prior *Municipal Act*, which was replaced by the *Municipal Act, 2001*, a mayor had “duties” as head of council. In 2006, both the roles of Council and the role of the Mayor were amended. The differences between the original, 2001 and 2006 statutes, are set out below, with changes underlined:<sup>689</sup>

Municipal Act	Municipal Act, 2001	2006 Amendments
<p><b>Duties of head of council</b></p> <p>70. It is the duty of the head of the council,</p> <p>(a) to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed;</p> <p>(b) to oversee the conduct of all subordinate officers in the government of it and, as far as practicable, cause all negligence, carelessness</p>	<p><b><u>Role</u> of head of council</b></p> <p>225. It is the <u>role</u> of the head of council</p> <p>(a) to act as chief executive officer of the municipality;</p> <p>(b) to preside over council meetings;</p> <p>(c) to provide leadership to</p>	<p><b>Role of head of council</b></p> <p>225. It is the role of the head of council,</p> <p>(a) to act as chief executive officer of the municipality;</p> <p>(b) to preside over council meetings <u>so that its business can be carried out efficiently and effectively;</u></p> <p>(c) to provide leadership to the council;</p>

<sup>688</sup> Exhibit 722, The Municipal Councillor’s Guide, Ministry of Municipal Affairs and Housing, Queen’s Printer for Ontario, 2007, also available on the internet at [www.mah.gov.on.ca](http://www.mah.gov.on.ca).

<sup>689</sup> See Exhibit 718.

<p>and violation of duty to be prosecuted and punished; and</p> <p>(c) to communicate to the council from time to time such information and recommend to it such measures as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality.</p>	<p>the council;</p> <p>(d) to represent the municipality at official functions; and</p> <p>(e) to carry out the duties of the head of council under this or any other Act. 2001, c. 25, s. 225.</p>	<p><u>(c.1) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.1);</u></p> <p>(d) to represent the municipality at official functions; and</p> <p>(e) to carry out the duties of the head of council under this or any other Act. 2001, c. 25, s. 225; 2006, c. 32, Sched. A, s. 100.</p> <p><b><u>Head of council as chief executive officer</u></b></p> <p><u>226.1 As chief executive officer of a municipality, the head of council shall,</u></p> <p><u>(a) uphold and promote the purposes of the municipality;</u></p> <p><u>(b) promote public involvement in the municipality's activities;</u></p> <p><u>(c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and</u></p> <p><u>(d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents. 2006, c. 32, Sched. A, s. 101.</u></p>
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446. The Mayor's role with respect to both the controllership and accountability responsibilities of Council was amended in 2006, to provide that she may provide "information and recommendations" to Council on these issues, in her role as head of council in section 225(c.1). This is not a discretionary unilateral authority, but an information and recommendation role.

447. Commissioner Bellamy considered the significance of the changes from a mayor's "duties" to "role" between the *Municipal Act*, and the *Municipal Act, 2001*, commenting that:<sup>690</sup>

The role of head of Council/Mayor as chief executive officer is not spelled out in detail in the legislation but is viewed in the literature as relating to that individual's role to supervise the senior administrative staff. This is further clarified in the Act with respect to the discussion of roles of officers and employees and their accountability to Council, thus making it clearer that the Mayor's supervisory role is on behalf of Council (although not necessarily to the exclusion of Council or its committees from providing direction to staff)...

448. However, in 2006, the legislature made it clear that council's mandate extended to supervision of senior staff, through sections 224(d) and (d.1), and this was not the Mayor's jurisdiction except as a member of Council.

449. The Mayor submits that the 2006 amendments with respect to the CEO role of the mayor in fact emphasized the political role of the mayor, taking it out of the fiduciary analysis.

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<sup>690</sup> Bellamy Report, Exhibit 717, p. 69.

450. There is little analysis in the literature of a mayor's role as "CEO" under the legislation. However, in testimony before the legislative committee considering the 2006 amendments, a delegate from the Ontario Municipal Administrators' Association, representing nearly 200 chief administrative officers and city managers testified that:<sup>691</sup>

While many of our members would prefer to see the term "chief executive officer" in reference to the head of council eliminated from the act because it has been a source of confusion and sometimes conflicts for councils, we are pleased to see that in retaining it, **the bill clarifies that it signifies a political leadership role rather than an administrative one.**

451. The Mayor submits that the Mayor's role as Chief Executive Officer does not vest her with unilateral discretion or authority to affect individual and practical interests; it is rather, an outreach and leadership role.

452. While a Council may delegate powers and duties under section 23.1 of the *Municipal Act, 2001* to a person by by-law, subject to certain restrictions, there is no evidence that the Mississauga Council delegated any such powers or duties to Mayor McCallion. Any speculation about powers that might have been delegated to Mayor McCallion has no foundation.

453. While Cabinet ministers have a certain amount of discretionary authority, in contrast to members of Parliament or legislatures, a mayor does not.<sup>692</sup>

454. Commissioner Bellamy noted that while the governance model is "weak Mayor/strong Council", it is possible to have a "strong" Mayor in practice, **although without the statutory chief executive powers provided under the U.S. strong Mayor model.** Commissioner Bellamy noted that a more powerful mayor in the Ontario model

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<sup>691</sup> Exhibit 719, Bill 130 Debates Excerpt.

<sup>692</sup> Sossin, pp. 5861-5863.

can be achieved through the individual characteristics/capabilities of the mayor him or herself, such as:<sup>693</sup>

- Leadership abilities and force of personality.
- Political will and ability to negotiate/build consensus and capacity to create coalitions within Council.
- The ability to communicate with the public.
- Political/public popularity.
- Understanding of the role of Mayor, Council, and the administrative staff, including their respect for the latter's professional role.
- Capacity to create a compelling vision for the City and to market that vision to the public and Council.
- Personal approach to building a positive Council culture, establishing and maintaining decorum and professional conduct, etc.

455. Commissioner Bellamy noted that the “most commonly referred to example in our interviews of a strong Mayor along these lines was Hazel McCallion of the City of Mississauga. Mayor McCallion is perceived to be very effective in all of the categories identified above and as a result is seen as being a very powerful Mayor, notwithstanding the relatively weak powers conferred upon her by the *Municipal Act, 2001*.”<sup>694</sup>

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<sup>693</sup> Toronto Computer Leasing Inquiry Research Paper, Municipal Governance, Volume 1: Overview of Approaches, November, 2003, at p. 57, Mayor's Authorities, Tab 3.

<sup>694</sup> Toronto Computer Leasing Inquiry Research Paper, Municipal Governance, Volume 1: Overview of Approaches, November, 2003, at p. 57, Mayor's Authorities, Tab 3.

456. What is important to note is that while a Mayor such as Mayor McCallion may be perceived as strong, and may provide leadership and vision, she does not have independent executive powers or legislative powers as those are assigned to Council. This is important in assessing the Mayor's conduct, and making recommendations for the future.

### **W. Conflict of Interest – Existing Scheme**

457. Any conflict of interest regulation must, as Prof. Mullan states, “be tempered with a sense of balance and practicality”, and the “reality of the challenges faced by not just mayors and councillors, but by the whole edifice of what makes cities run.”<sup>695</sup>

458. The *Municipal Conflict of Interest Act* regulates pecuniary conflicts of interest for members of municipal council. The MCIA provides a declare-recuse-abstain system for councillors. Thus, section 5 of the MCIA imposes a duty on councillors to declare a pecuniary interest prior to a “meeting” “at which the matter is the subject of consideration,” to not take part in discussion, vote, or attempt before, during or after the meeting to influence a vote. Section 5 provides:<sup>696</sup>

When present at a meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

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<sup>695</sup> Mullan, p. 5585.

<sup>696</sup> MCIA, *supra*.

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. ...

459. Section 3 deems the pecuniary interest of a spouse or child to be that of a member. It provides:<sup>697</sup>

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member

460. Section 6(1) of the MCIA provides that a member's declaration is to be recorded in the public minutes: "Every declaration of interest and the general nature thereof made under section 5 shall, where the meeting is open to the public, be recorded in the minutes of the meeting by the clerk of the municipality or secretary of the committee or local board, as the case may be."<sup>698</sup>

461. The enforcement scheme is unique. An elector may apply to a judge, within six weeks of the facts coming to his or her knowledge, for a declaration that a member has contravened section 5 of the MCIA. If a judge finds such contravention, then unless the contravention is a result of inadvertence or an error in judgment, the judge shall declare the member's seat vacant, and may impose an additional period of disqualification from running for office, as well as an order for restitution.<sup>699</sup>

462. Section 13 of the MCIA provides:

Other procedures prohibited

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<sup>697</sup> MCIA, s. 3.

<sup>698</sup> MCIA, s. 6(1).

<sup>699</sup> MCIA, ss. 8-10.

13. Proceedings to declare a seat vacant or to disqualify a member or former member for conflict of interest, or to require a member or former member to make restitution where a contravention has resulted in personal financial gain, shall be had and taken only under this Act

463. Section 15 of the MCI A provides:

Conflict with other Acts

15. In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails.

464. Part V.1 of the *Municipal Act, 2001* is entitled “Accountability and Transparency.” This part of the Act was introduced following the Bellamy Inquiry, and provides that municipalities may choose to appoint accountability officers, as well as establishing codes of conduct for members of council.

465. Section 223.2 governs codes of conduct, and provides that:

Code of conduct

223.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to establish codes of conduct for members of the council of the municipality and of local boards of the municipality.

No offence

(2) A by-law cannot provide that a member who contravenes a code of conduct is guilty of an offence.

466. A council may appoint an integrity commissioner pursuant to section 223.3, which provides in part:

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b).

467. Municipalities may choose to establish a lobbyist registry, and may choose to appoint a lobbyist registrar.<sup>700</sup> Municipalities may also choose to appoint an ombudsman<sup>701</sup> and an auditor general.<sup>702</sup> These are “accountability officers.”

## 12. MCIA vs. Code of Conduct

468. The scope of the application of common law conflict of interest in light of the MCIA is not clear.<sup>703</sup> There is value in codification of these issues, with a values-based approach, in part because of the “hammer” of the existing MCIA remedy.<sup>704</sup> The Mayor submits that given the gravity of the MCIA remedy of disqualification, there should be no expansion of existing prohibited categories and relationships. Rather, the Code of Conduct approach, implemented in the context of an integrity commissioner with advice and education powers, is a preferable response.<sup>705</sup>

**Recommendation #1: Given the gravity of the MCIA remedy of disqualification, there should be no**

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<sup>700</sup> Municipal Act, 2001, s. 223.9 and 223.11.

<sup>701</sup> Municipal Act, 2001, s. 223.13.

<sup>702</sup> Municipal Act, 2001, s. 223.19.

<sup>703</sup> Mullan, p. 5590-91.

<sup>704</sup> Mullan, p. 5613-14.

<sup>705</sup> Concurred in by Sossin and Mullan, p. 5798 l. 1 – 5799, l. 13.

**expansion of existing prohibited categories and relationships in the MCIA.**

469. The MCIA is quite narrow, and applies only to pecuniary conflicts of interest, and the deliberative and legislative work of councils. Further, the enforcement mechanism is limited since it requires a citizen to commence an onerous and complicated proceeding.<sup>706</sup> The real issue for the Commissioner's recommendations will be whether the answer is to amend the MCIA, or emphasize the accountability mechanisms available through integrity commissioners.

470. Prof. Mullan was quite clear that the MCIA route is "entirely an unrealistic option for electors who perceive that there's been a failure to observe the provisions of the Act."<sup>707</sup> Prof. Levine agreed, that because of the cost issues, it is unrealistic to expect electors to police the Council by the MCIA route. He agreed that the integrity commissioner system is a speciality ombudsman system that focuses on reporting.<sup>708</sup>

471. Dean Sossin was quite clear that a values-based approach is ultimately more effective than a rules-based approach in a municipal accountability regime.<sup>709</sup> Prof. Mullan agreed that the Court should retain its role with respect to disqualification under the MCIA, perhaps on a broader basis, with individual municipalities drafting their own principles-based codes of conduct in the context of an integrity commissioner system.<sup>710</sup> Dean Sossin emphasized that rules should not get in the way of councillors being able to serve their public function role.<sup>711</sup> He noted that "the integrity commissioner ought to be able to make that call transparently, consistently and over time through the accretion of fact-based decisions provide much more clarity and guidance than these rules ever do."<sup>712</sup>

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<sup>706</sup> Mullan, p. 5686 l. 7 – 5687 l. 15.

<sup>707</sup> Mullan, p. 5664.

<sup>708</sup> Levine, p. 5664.

<sup>709</sup> Sossin, p. 5598-5599.

<sup>710</sup> Mullan, p. 5601.

<sup>711</sup> Sossin, p. 5604.

<sup>712</sup> Sossin, p. 5606.

472. Dean Sossin was quite strong in his view that the main function of an integrity commissioner is bringing transparency and consistency to the accountability regime. As a result, he viewed the reporting function as the most significant consequence, particularly in the environment of electoral politics where reputation and credibility with the public has dramatic consequences.<sup>713</sup> Prof. Mullan agreed that the most important function is the reporting function, but that there should be sanctions available, albeit only in extreme circumstances.<sup>714</sup>

473. At the present time, there is a general concern that the existence of the MCIA precludes municipalities from dealing with conflicts of interest in codes of conduct. Although the Mississauga code attempts to deal with conflicts of interest through the code of conduct, Prof. Mullan is not aware of any other municipal codes that deal with conflict of interest.<sup>715</sup> Even where municipal codes deal with conflict of interest, those provisions need to be subservient to the MCIA, particularly where there is a complaint under the MCIA.<sup>716</sup> Prof. Levine noted that as integrity commissioner under both the Kitchener and West Lincoln codes, he was prohibited from dealing with pecuniary conflicts of interest.<sup>717</sup> Prof. Mullan agreed that as City of Toronto Integrity Commissioner, he was not permitted to deal with pecuniary interests save under an amendment that allowed him to give general, non-binding advice.<sup>718</sup>

**Recommendation #2: The legislature should clarify the scope for municipal codes to address pecuniary conflicts of interest.**

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<sup>713</sup> Sossin p. 5654

<sup>714</sup> Mullan, p. 5666.

<sup>715</sup> Mullan, p. 5694 lines 11-25.

<sup>716</sup> Mullan p. 5695 l. 1 – p. 5696, l. 21.

<sup>717</sup> Levine, p. 5706 l. 6-13.

<sup>718</sup> Mullan, p. 5706 l. 22 – p. 5707, l. 5.

### **13. Reasonable Politician: MCIA Covers Field for Pecuniary Conflicts of Interest**

474. The Mayor submits that a reasonable municipal politician prior to this Inquiry could reasonably have believed that insofar as pecuniary conflicts of interest, MCIA compliance met the politician's legal obligations.

475. As Justice Feldman stated, as recently as July, 2010 in *Ruffolo v. Jackson*, that:<sup>719</sup>

The MCIA provides a complete code for dealing with the possibility of conflict of interest by municipal politicians, including providing full procedural rights. Section 13 of the Act prohibits any disqualification proceedings other than under the Act, and s. 15 makes the Act prevail in the case of conflict with any other act. The appeal provided by s. 11 is the only appeal right under the Act.

476. When Prof. Mullan served as Integrity Commissioner of the City of Toronto, the City Solicitor was of the view that as a matter of law, the MCIA had occupied the field on pecuniary conflict of interest.<sup>720</sup> Similarly, the City Solicitor for the City of Mississauga, Mary Ellen Bench, expressed the view prior to the Inquiry that a code of conduct could not address pecuniary conflict of interest, because the field was occupied by the MCIA<sup>721</sup>

477. The Ministry of Municipal Affairs and Housing publishes a document on its website, called the Municipal Councillor's Guide. On page 26 of the document, under the heading "Conflict of Interest", the government advises councillors that: "If you or any member of council has an indirect or direct pecuniary interest in a matter before council, the interest and the general nature of that interest must be disclosed. You, or the affected member, must not discuss or vote on any question in respect of the matter and must not attempt to influence the vote in any way before, during or after the meeting." This

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<sup>719</sup> *Ruffolo v. Jackson*, 2010 ONCA 475, Exhibit 721.

<sup>720</sup> Mullan, p. 5927, ll. 17-23.

<sup>721</sup> Exhibit 94.

summarizes the MCIA obligation, and does not refer to any other realm of common law interest which might bring with it other obligations.<sup>722</sup>

478. In his report Prof. Mullan relies on mid-19<sup>th</sup> and early 20<sup>th</sup> century common law decisions for the proposition that a common law of conflict of interest exists outside of the MCIA. Prof. Mullan refers to two Ontario cases in particular: *City of Toronto v. Bowes*<sup>723</sup> and *L'Abbé v. Blind River (Village)*.<sup>724</sup> Both cases concerned conduct which is now covered by the MCIA or the common law of reasonable apprehension of bias. In *Toronto v. Bowes*, the Privy Council of the U.K. in 1858 ordered the Mayor of Toronto to account for profits he had made from secretly trading in the City's debentures. The Mayor had also actively participated in passing a bylaw which authorized the issuance of the City's debentures. Such activities are now covered by the MCIA.<sup>725</sup> The broader statement of principles in this case reflect the Mayor's secret appropriation of profits acquired through the purchase of the debentures by his private firm and not through the exercise of his office.

479. *L'Abbé v. Blind River*, on the other hand, concerned the quashing, in 1904, of a municipal by-law which reduced the number of liquor licences in the municipality from three to two. The by-law was nullified on the basis that the deciding vote was cast by the reeve, whose brother held one of the two existing tavern licences and who, himself, held the land mortgage on the other tavern. Influencing or participating in the vote of a matter in which a councillor has a direct or indirect pecuniary interest is today covered by the MCIA and the common law of reasonable apprehension of bias.

480. It is submitted that the common law principles from the Ontario cases relied on by Prof. Mullan have been supplanted by or incorporated into the MCIA and the common

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<sup>722</sup> Exhibit 722.

<sup>723</sup> (1854), 4 Gr. 489 (UCCC), aff'd (1856) 6 Gr. 1 (UCCE&A), aff'd 11 Moo. PCC 463.

<sup>724</sup> (1904), 7 O.L.R. 230 (Div. Ct.).

<sup>725</sup> The MCIA has made a policy choice to exclude the purchasing and owning of a debenture of the municipality as a deemed pecuniary interest for the purposes of the Act. In other words, councillors and mayors are not required by the MCIA to declare a conflict of interest and can participate in the discussion and voting on a matter in which they have a direct or indirect pecuniary interest by reason of their purchase or ownership of a debenture of the municipality: *MCIA*, s. 4 (c).

law of reasonable apprehension of bias. Neither of these decisions can be said to impose additional common law duties on the Mayor in the circumstances of this case, beyond that which was required of her by the MCIA and administrative law principles of bias.

481. Moreover, Prof. Levine and Dean Sossin agreed that, having declared a conflict in accordance with the MCIA, it was reasonable for a mayor to believe in a non-legislative, non-voting context that MCIA compliance was sufficient.<sup>726</sup> Prof. Mullan conceded that in some cases, non-pecuniary conflicts of interest “existing outside the MCIA” do not have a common law remedy associated with them, or an immediate cause of action. When asked where the councillor does not personally profit but there is a deemed interest, by virtue of a family relationship, Prof. Mullan conceded that there may well be no common law cause of action.<sup>727</sup> There is certainly no freestanding conflict of interest cause of action.<sup>728</sup>

#### **14. Mayor as Chief Executive Officer Under Municipal Act**

482. The Mayor submits that Prof. Mullan is incorrect in asserting that the specific legislative designation of the mayor as chief executive officer of the municipality implicitly incorporates the principles and rules that exist at common law regarding the conduct of chief executive officers of corporations. For CEO’s of corporations, those principles relating to conflict of interest emerge from the law of fiduciary duty. They are also expressed both federally and provincially in statutes.

483. The Mayor submits that as mayor, in the context of the issues in this Inquiry, she exercised no unilateral discretionary authority that would affect the legal or practical interests of others. She did not owe a fiduciary duty, and the duties of corporate CEO’s do not apply. Rather, the CEO model established under the *Municipal Act, 2001* as described above is one where the “CEO” role is a political or leadership role, which does not carry with it any powers or official duties sufficient to give rise to a fiduciary duty.

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<sup>726</sup> P. 5937, l. 19 – p. 5938, l. 18.

<sup>727</sup> Mullan, p. 5941.

<sup>728</sup> Mullan, p. 5943.

484. The OBCA sets out a statutory standard of care in section 134(1) which provides.<sup>729</sup>

134. (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,

(a) act honestly and in good faith with a view to the best interests of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

485. The scheme for regulating corporate director and officer conflicts of interest is similar to the MCIA regime, requiring disclosure of a material interest (s. 132(2)); a director shall not vote (s. 132(5)); and the effect of such disclosure is set out in s. 132(7):

(7) Where a material contract is made or a material transaction is entered into between a corporation and a director or officer of the corporation, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he or she has a material interest,

(a) the director or officer is not accountable to the corporation or its shareholders for any profit or gain realized from the contract or transaction; and

(b) the contract or transaction is neither void nor voidable,

by reason only of that relationship or by reason only that the director is present at or is counted to determine the presence of a quorum at the meeting of directors that authorized the contract or transaction, if the director or officer disclosed his or her interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract or transaction was reasonable and fair to the corporation at the time it was so approved

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<sup>729</sup> *Business Corporations Act*, R.S.O. 1990, c. B.16, s. 134(1), Ex. 714.

486. Where the material interest is not disclosed, the shareholders may vote to confirm the contract or transaction; otherwise, a court may order that the director or officer account to the corporation for profit, and the contract or transaction be set aside:

137 (8) Despite anything in this section, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit or gain realized from any such contract or transaction by reason only of his or her holding the office of director or officer, and the contract or transaction, if it was reasonable and fair to the corporation at the time it was approved, is not by reason only of the director's or officer's interest therein void or voidable, where,

(a) the contract or transaction is confirmed or approved by special resolution at a meeting of the shareholders duly called for that purpose; and

(b) the nature and extent of the director's or officer's interest in the contract or transaction are disclosed in reasonable detail in the notice calling the meeting or in the information circular required by section 112.

137 (9) Subject to subsections (7) and (8), where a director or officer of a corporation fails to disclose his or her interest in a material contract or transaction in accordance with this section or otherwise fails to comply with this section, the corporation or a shareholder of the corporation, or, in the case of an offering corporation, the Commission may apply to the court for an order setting aside the contract or transaction and directing that the director or officer account to the corporation for any profit or gain realized and upon such application the court may so order or make such other order as it thinks fit.

487. There is a very similar disclosure regime, and identical duty of care, set out in the *Canada Business Corporations Act*,<sup>730</sup> with similar remedy to account to the corporation for profit.

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<sup>730</sup> *Canada Business Corporations Act*, R.S.C. 1985, c. 44, Ex. 715.

488. A senior corporate officer, including a CEO, has a fiduciary duty to the corporation because that officer has a discretion that she can exercise unilaterally to affect the interests of the corporation. Fundamental to the existence of a fiduciary obligation is a discretionary power to affect another's legal or practical interest.<sup>731</sup>

489. A fiduciary duty only arises if a person has discretionary power to affect the beneficiary's legal or practical interests. In *Galambos v. Perez*, Cromwell J. held at paras. 83-84.<sup>732</sup>

[83] It is fundamental to the existence of any fiduciary obligation that the fiduciary has a discretionary power to affect the other party's legal or practical interests. In *Guerin*, Dickson J. spoke of this discretionary power as "the hallmark of any fiduciary relationship" (p. 387) and, while making no comment on whether it was broad enough to embrace all fiduciary obligations, he endorsed Professor Weinrib's description of a fiduciary relationship as one in which "the principal's interests can be affected by, and are therefore dependent on, the manner in which the fiduciary uses the discretion which has been delegated to him" (p. 384). The influential guidelines set out by Wilson J. in *Frame*, at p. 136, for identifying new categories of fiduciary relationships included that the fiduciary have scope for the exercise of some discretion or power, the exercise of which affects the beneficiary's legal or practical interests. In *Norberg*, McLachlin J. noted that a fiduciary must be entrusted with such power in order to perform his or her functions (p. 275).

[84] The nature of this discretionary power to affect the beneficiary's legal or practical interests may, depending on the circumstances, be quite broadly defined. It may arise from power conferred by statute, agreement, perhaps from a unilateral undertaking or, in particular situations such as the professional advisory relationship addressed in *Hodgkinson*, by the beneficiary entrusting the fiduciary with information or seeking advice in circumstances that confer a source of power: see, e.g., *Lac Minerals* and *Hodgkinson*. While what is sufficient to constitute power in the hands of the fiduciary may be controversial in some cases, the requirement for the existence of such power in the

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<sup>731</sup> *Galambos v. Perez*, 2009 SCC 48.

<sup>732</sup> *Galambos v. Perez*, 2009 SCC 48 at paras. 83-84, emphasis added.

fiduciary's hands is not. **The presence of this sort of power will not necessarily on its own support the existence of an ad hoc fiduciary duty; its absence, however, negates the existence of such a duty.**

490. Ontario has a weak mayor/strong council system of municipal government, as set out above. The Mayor submits that the *Municipal Act, 2001* does not enumerate any discretionary powers in the Mayor that can be unilaterally exercised by her to affect the legal or practical interests of anyone else. Only Council has the power to make decisions that bind the City. Through section 226.1, she does not have additional powers – for example, the Mayor does not set the City's budget, nor is she authorized to sign a contract unilaterally without council authority. This must be contrasted with the types of powers of corporate CEO's that may put their corporation at risk. The Mayor submits that these sections express the political role and leadership role of the Mayor, but do not confer additional discretionary powers on the Mayor.

**Recommendation #3: The Municipal Act be amended to delete the reference to Mayor as “Chief Executive Officer”, or the role be clarified.**

## **15. Apparent Conflict of Interest**

491. There was significant debate on the expert panel about “apparent” conflicts of interest, using Justice Parker's definition that an apparent conflict arises “where a reasonable person could reasonably conclude, as a result of the surrounding circumstances, that the public official must have known about the connection of his or her involvement to a matter of private interest.”<sup>733</sup>

492. The Mayor submits that the Commissioner should not recommend the implementation of an “apparent” conflict of interest standard. It is too dangerous and susceptible to abuse in a political system. As stated by the Honourable Gregory T. Evans

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<sup>733</sup> Justice Parker, cited by Commission Counsel at p. 5625-5626.

in a report delivered while Acting Integrity Commissioner Legislative Assembly of Ontario:<sup>734</sup>

The perception standard of morality which some suggest should be the test applied to politicians would require that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. **The problem with such an “appearance standard” is that there are few, if any, reasonable, fully-informed persons.**

**One person’s perception of another’s conduct is a purely subjective assessment influenced by many factors including the interest of the individual making the assessment. It is not the proper criteria by which the conduct of a legislator should be measured.**

493. The Special Select Conflicts of Interest Act Review Committee of the Legislative Assembly of Alberta considered a recommendation in the Tupper Report that the Alberta legislation be revised to incorporate the idea of apparent conflict of interest. The Report notes that the Office of the Ethics Commissioner for Alberta had originally supported the inclusion of the apparent conflict of interest, but over time, the Ethics Commissioner was persuaded against the concept for the reasons expressed by the Honourable Gregory Evans, set out above. The Legislative Assembly recommended against an apparent conflict of interest standard and concluded:<sup>735</sup>

The Committee noted that the appearance of conflict of interest is a subjective concern with the potential to lead to a multiplicity of complaints being brought before the Ethics Commissioner that are vexatious and frivolous and could have the opportunity to hurt Members who are, in fact, quite innocent of doing anything other than carrying out their duties.

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<sup>734</sup> Exhibit 709, Legislative Assembly of Ontario, Report by the Honourable Gregory T. Evans, pp. 10-11 (emphasis added).

<sup>735</sup> Exhibit 710, Select Special Conflicts of Interest Act Review Committee Final report, page 38.

494. Prof. Mullan conceded that the “apparent conflict” is an area of controversy. When serving as Acting Integrity Commissioner for the City of Toronto, Prof. Mullan recommended to the City of Toronto that they should include an apparent conflict of interest provision in the Toronto Code. He stated that the City of Toronto had rejected that concept for reasons of the kind set out in the Evans Report and the Alberta Committee Report.<sup>736</sup> In describing the rejection of Council in his 2007 report, Prof. Mullan wrote that: “there was obviously little sympathy for an apparent conflict of interest provision; too nebulous, too productive of unmeritorious and reputationally harmful complaints.”<sup>737</sup>

495. Prof. Mullan also conceded that “talking about a reasonable apprehension of a conflict of interest” is problematic, because conflict is a “state of fact, not a state of mind.”<sup>738</sup> He explained that historically, when we talked about bias we talked about two categories of bias, pecuniary bias or a reasonable apprehension of bias. Pecuniary bias had to be proved on the facts, and is objectively determinable on the evidence. When it got to the mind, that's when we had to have a reasonable apprehension of bias. He stated that “there's no particular reason I think in conflict of interest to think that you need to go to a standard of a reasonable apprehension of a conflict of interest because you're not dealing with a state of mind, you're dealing with facts.”<sup>739</sup>

496. The Toronto City Solicitor was of the view that the apparent conflict of interest standard should not be implemented:<sup>740</sup>

The City Solicitor also advised that the standard of “an apparent conflict of interest” is a very high one. While it may be appropriate for government employees who are to act impartially, it is not a standard that is easily applied to any legislator including members of Council. Members of Council have an advocacy role (i.e., they advocate positions on what public policy should be) and

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<sup>736</sup> Mullan, p. 5779, ll. 5-25.

<sup>737</sup> Exhibit 711, Municipal Integrity Commissioners and Conflict of Interest, Mullan 2007 Paper.

<sup>738</sup> Mullan, p. 6095, ll. 5-10.

<sup>739</sup> Mullan, p. 6095-96.

<sup>740</sup> Exhibit 712, Report by David Mullan, Integrity Commissioner, re Amendments to Code of Conduct for Members of Council, p. 11 and evidence, p. 5787.

make policy decisions in the public interest that in some cases operate to the special benefit of private individuals (e.g., site specific zoning amendments).

497. Dean Sossin situated the value of an apparent conflict of interest standard in achieving the overarching goal of public confidence.<sup>741</sup> He testified that any such approach must be context specific – it is not a standard that is full of absolutes and black and white lines.<sup>742</sup> Further, it is not the appearance in and of itself that is proscribed, but the actions taken in light of the real or apparent conflict that is the gravamen of municipal accountability.<sup>743</sup> Prof. Levine noted that both the Kitchener and West Lincoln Codes deal with real and apparent conflicts of interest.<sup>744</sup>

498. The only provincial statute that proscribes an “apparent” conflict of interest for members as well as Ministers of the Crown is the B.C. *Members’ Conflict of Interest Act*, which provides the following definition of “apparent” conflict in section 2(2):<sup>745</sup>

2 (2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the **member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.**

499. The B.C. Act clearly confines this to exercise of an official power or the performance of an official duty or function, and sets the standard of “must have been affected.”

500. Dean Sossin cautioned that one of the issues relating to an “apparent” conflict standard is that city councillors often move seamlessly between purely legislative and other kinds of functions in the course of their conduct; unlike the provincial or federal

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<sup>741</sup> Sossin, p. 5626.

<sup>742</sup> Sossin, p. 5629.

<sup>743</sup> Sossin, p. 5630.

<sup>744</sup> P. 5706 l. 1-4.

<sup>745</sup> *Members’ Conflict of Interest Act*, R.S.B.C. 1996, c. 287, s. 2(2); Saskatchewan and the Yukon have apparent conflict provisions for former Ministers, but not members.

sphere, there is a not a clear delineation between executive (ministerial) and legislative functions.<sup>746</sup>

**Recommendation #4: An “apparent” conflict of interest standard should not be adopted for municipal councillors and mayors.**

**16. Improper Use of Influence**

501. The Mayor submits that an “improper use of influence” standard is too vague, unless it is appropriately limited to the discharge of official powers and duties. In crafting ethical rules dealing with improper use of influence, municipalities should be concerned that they don’t overly restrict the ability of councillors to engage in the proper use of influence, including private transactions and relationships. (TW’s Q, p. 5684). The experts agreed that the answers are contextual.<sup>747</sup>

502. Prof. Sossin stated that improper use of influence is not limited to situations where a real or apparent conflict has been identified. He stated that it could encompass other kinds of private benefits, including pecuniary and non-pecuniary forms of a private benefit. It appears to be a very broad and vague standard that in Dean Sossin’s words “captures actions taken in the face of an identified real or apparent conflict, and also covers further areas which don’t trench on the conflict area at all.”<sup>748</sup> Prof. Levine stated that it involved the exercise of power – inducing someone “to either give consideration to doing something or acting [o]n a basis other than on the merits of the case.”<sup>749</sup> Prof. Mullan agreed that improper use of influence does not always involve a conflict of interest.<sup>750</sup>

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<sup>746</sup> Sossin, p. 5776, ll. 3-11.

<sup>747</sup> P. 5685 l. 2 – 5682 l. 6.

<sup>748</sup> Sossin, p. 5680 l. 14- p. 5681 l. 22.

<sup>749</sup> Levine, p. 5683 l. 2-12.

<sup>750</sup> Mullan, p. 5684, l. 1-9.

503. Professor Sossin agreed that there is a “risk associated with apparent conflict standards, or improper use of influence standards, especially where undefined in the instruments.”<sup>751</sup>

504. In dealing with the concept of improper use of influence distinct from conflict of interest, there is a real issue with respect to the facts of politics – what is an example of an improper use of influence where there isn’t a conflict of interest (Commissioner asks this question at p. 5710). Prof. Mullan and Prof. Sossin seemed to indicate that the use of political influence in adjudicative or enforcement proceedings would be an example of such an area.<sup>752</sup> Thus, Prof. Sossin indicated that a councillor should not be involved in brokering a deal with the city and a particular grocery chain to start operating in a food desert.<sup>753</sup> Prof. Levine identified the area of conduct related to staff – trying to influence staff to do certain things when it is not their job.<sup>754</sup>

505. Dean Sossin agreed that when moving beyond the traditional legislative and quasi-judicial roles of councillors, to new notions such as improper influence outside of these roles, that this is a different undertaking, outside the normal jurisprudence, which conceives of accountability through outreach, education, annual report commentaries, and guidance by integrity commissioners.<sup>755</sup>

506. Prof. Mullan agreed that one does not find much guidance in the case law, but referred to the expertise of the Provincial Integrity Commissioner in dealing with members of the legislative assembly as a source for understanding the concept of improper use of influence.<sup>756</sup> However, it is important to note that section 4 of the

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<sup>751</sup> Sossin, p. 5796, ll. 4-7.

<sup>752</sup> Sossin and Mullan, pp. 5709 l. 20 – 5711 l. 25.

<sup>753</sup> Sossin, p. 5714-15.

<sup>754</sup> Levine, p. 5716 ll. 2-12.

<sup>755</sup> Sossin, p. 5743 l. 20 – p. 5744, l. 23.

<sup>756</sup> Mullan, p. 5746, l. 4-5747, l. 5.

*Member's Integrity Act* is specifically directed to influence, and the provincial Integrity Commissioner provides oversight. Section 4 provides:<sup>757</sup>

#### Influence

4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest.

507. There is no equivalent to section 4 of the *Member's Integrity Act* contained in either the *Municipal Act, 2001* or the MCI. The Mayor submits that a local mayor or councillor would not be likely to follow jurisprudence of the Provincial Integrity Commissioner under the *Member's Integrity Act*, and that a councillor in one of the 440 existing Ontario municipalities would have been reasonable in believing that conduct was to be guided by the MCI, not the provincial *Member's Integrity Act*.

508. Dean Sossin agreed that if a new notion such as improper use of influence is to be adopted, it will require a transition period, encompassing factors such as education and advice-giving, so that people can guide their conduct. He agreed it is a moving bar.<sup>758</sup>

509. Prof. Levine originally defined improper influence as the "exercise of power when inducing someone to give consideration or act other than on the merits of the case, to sway for other reasons". In his discussion, however, he did not restrict the concept to voting in Council, which is how the *Municipal Act, 2001* identifies the power of Council and councillors. Prof. Levine spoke of a councillor having "personal power by nature of being a councillor", and trying to influence staff and persons outside council.<sup>759</sup> He stated of councillors that even with respect to third parties, "it's the possibility that they will exercise the powers that allows them to have the influence."<sup>760</sup> When asked whether the fact that a councillor had declared a conflict of interest, and specifically stated that

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<sup>757</sup> Member's Integrity Act, 1994, S.O. 1994, c. 38, s. 4.

<sup>758</sup> Sossin, p. 5750 l. 23 – p. 5751, l. 19.

<sup>759</sup> Levine, p. 5752 l. 17 – p. 5753, l. 19.

<sup>760</sup> Levine, p. 5755 l. 22-5756, l. 1.

they will not vote on an issue, Prof. Levine indicated there could still be improper influence, either through control of or access to staff, or in exercising powers such as the alleged powers of a mayor as CEO.<sup>761</sup>

510. Prof. Mullan noted councillors may cross the line by intervening with City staff, in exercising what he referred to as *de facto*, if not formal, legal power. He stated that we have to conceive of power as exercised by municipal councillors as not just the power of voting, or formally delegated statutory powers, but the power to interfere with City Staff. These may involve the expenditure of municipal resources, such as interference in staffing or procurement processes.<sup>762</sup>

511. Dean Sossin referred to this as the “grey zone” – not the legislative role, but the representative role of trying to aid constituents, a ward, or the City. Dean Sossin noted that there is political accountability for such a role, which is a “complicating factor” in an accountability regime that is about votes in council, or participation in the legislative function. Whereas federally and provincially there is a division between legislative and executive (Cabinet) roles, “the city combines this in a way that makes every councillor in a sense both legislator and cabinet minister.”<sup>763</sup> As he states, “the simple being a catalyst for commercial activity does not strike me in and of itself as being improper”, although the issue has to be evaluated contextually.<sup>764</sup>

512. Dean Sossin agreed that building in accordance with the City’s vision is something that councillors regard as being important to their representative role, their political role in a city.<sup>765</sup>

513. The Mayor submits that democratic principles, the ability of councillors and mayors to discharge their representative roles and act in accordance with Council’s vision, is critical when considering recommendations that may unduly restrict the

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<sup>761</sup> Levine, p. 5756, ll. 2-19.

<sup>762</sup> Mullan, p. 5757, l. 21 – 5759, l. 17.

<sup>763</sup> Sossin, p. 5759 l. 19 – p. 5762, l. 11.

<sup>764</sup> Sossin, p. 5764 l. 7-20.

<sup>765</sup> Sossin, p. 5764 o. 21 – 5765, l. 3.

political roles of municipal politicians. As Dean Sossin states, politics is a positive dimension, and there must be a balance between political realities and the aspirations for an accountable structure, and the need for predictable, consistent and coherent boundaries to be drawn.<sup>766</sup>

514. Effective municipal leaders are often those with strong ties and relationships in a community. When talking about apparent or potential conflict of interest, or improper influence, it is important for democratic accountability that this Commission does not make recommendations that unduly circumscribe the role for elected representatives to get things done for the good of the city. Prof. Mullan agreed that the principles of undue influence cannot be completely divorced from the political reality of municipal politics.<sup>767</sup> Dean Sossin suggested there is a sphere for proper use of influence, and flagged the danger of the usurping of accountability functions simply as politics or partisanship by other means.<sup>768</sup>

**Recommendation #5: An “improper influence” standard should not be adopted. If it is adopted, it must be carefully confined to official powers conferred on mayors and councillors under the Municipal Act, 2001.**

## **17. Friends and Family Members**

515. The Mayor submits that the Code of Conduct should not be extended to “close personal friends” and business partners, as Prof. Mullan suggested.<sup>769</sup> As Prof. Mullan conceded, “there is the danger that municipal politicians will become scared of actually functioning in the way that we expect them to function if we circumscribe the range of people that they can interact with on a friendship basis too greatly.”<sup>770</sup>

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<sup>766</sup> Sossin, p. 5765 ll. 10-22, and p. 5766, ll. 10-14.

<sup>767</sup> Mullan, p. 5770, ll. 2-12.

<sup>768</sup> Sossin, p. 5770, l. 13 – 5771, l. 17.

<sup>769</sup> Mullan, p. 5699 l. 19 – 5700 l. 15.

<sup>770</sup> Mullan, p. 5801, ll. 2-9.

516. By contrast, Dean Sossin indicated that the categories should not be limited by a definition of familial and personal relationships, but rather a purposive approach - is it a relationship of the kind that could lead a reasonable person to conclude a lack of impartiality that would otherwise be appropriate in the context.<sup>771</sup> Dean Sossin also indicated that even in the case of a family relationship, there might be a presumption that could be rebutted on the facts of a particular case.<sup>772</sup> He noted that the real concern is that private interests, which may be motivated by a range of relationships and connections, may overtake the exercise of a legitimate public authority.<sup>773</sup> He suggested that: “the more you leave it to a principle that is clear and consistent the better, the more you leave it to fixed categories in that rule-like way the more I think you’re going to create inadvertent loopholes and gaps that – that ultimately won’t get to the outcome you’re seeking.”<sup>774</sup>

517. Prof. Mullan agreed that it is “extremely difficult” to define a “friend” for the purposes of a Code of Conduct, but took the position that it is “somewhat peculiar” to focus on a councillor’s family members as personal interest, and to ignore the reality that certain relationships with other people, whether business partners or friends, are often much more significant than family relationships.<sup>775</sup>

518. The Mayor submits that there is a real danger if contacts with a proscribed category of “friends” are introduced, that councillors will be knocked out of the democratic arena. This is a particular danger for long-serving councillors with broad connections in a community. There is no single accepted definition of “friend.” This would be a suggestion that is not predictable, not consistent, and open to partisan abuse. The MCIA should not be amended to include a category of “friends”, given the seriousness of the remedy and the concerns identified.

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<sup>771</sup> Sossin, p. 5700 l. 24 – 5701 l. 23.

<sup>772</sup> Sossin, p. 5703 l. 1 – 5704 l. 4.

<sup>773</sup> Sossin, p. 5794, ll. 13-22.

<sup>774</sup> Sossin, p. 5985, ll. 6-11.

<sup>775</sup> Mullan, Op. 5793, ll. 6-25.

**Recommendation #6: The MCIA and the Mississauga Code of Conduct should not be extended to the categories of “close personal friends” and business partners.**

**18. Deemed Interest of Non-Dependent Children**

519. The MCIA deems a parent to have a pecuniary interest by virtue of his or her adult, non-dependent children. The Mayor submits this approach is not suited to the realities of the 21<sup>st</sup> century, and unduly constrains municipal politicians. A particular danger is that there is no regime that compels adult children to tell their political parents what they are doing, with whom and how. There are no financial disclosure requirements by adult children, either to their parents or to any financial disclosure oversight organization.<sup>776</sup>

520. A better model is the Federal *Conflict of Interest Code for members of the House of Commons*.<sup>777</sup> There is no deemed interest in the Federal system for adult non-dependent children. Family members are defined as follows, in section 3(4):

The following are the members of a Member’s family for the purposes of this Code:

- (a) the Member’s spouse or common-law partner; and
- (b) The son or daughter of the Member, or a son or daughter of the Member’s spouse or common-law partner, who has not reached the age of 18 years or who has reached that age but is primarily dependent on the Member or Member’s spouse or common-law partner for financial support.

521. Lawyer Stanley Makuch, in his advice to the Mississauga Council, expressed the same purposive concern. He stated in his opinion letter that:<sup>778</sup>

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<sup>776</sup> Levine, p. 5812-5813.

<sup>777</sup> Exhibit 713.

<sup>778</sup> Stan Makuch Opinion, Exhibit 84, p. 6.

Given the purpose of the legislation, which is to prevent members from serving two masters – the public and their children – “child” should be interpreted, in my view, to mean son or daughter who has a financial relationship with or dependency on the parent. To conclude, even though the legislation is to be “interpreted harshly” that the interest of any child no matter: the age, the relationship, the residence, or the dependency, is the interest of the member, is inappropriate given the previous Act and the purpose of the amendment.

522. Adult non-dependent children may not wish to share intimate financial information with their parents. Indeed, we often strive not to tell our parents how much we make, or lose, or how. There are significant privacy, as well as trade secret or competitive commercial concerns, associated with a system where financial disclosure by adult non-dependent children to parents or a municipality would be required.<sup>779</sup>

523. Prof. Sossin ultimately agreed that “it would seem to make sense given the pecuniary definition that you would take into consideration dependency”, presumed if under eighteen and a question to be addressed in a particular circumstance if over eighteen.<sup>780</sup>

**Recommendation #7: The MCIA should be amended to eliminate the deemed conflict of interest involving adult, non-dependent children.**

## **19. Recording Conflict Declarations at Council**

524. The MCIA requires that politicians declare a conflict, which is to be recorded in the Minutes of Council meetings. Conflicts of interest are not otherwise recorded on a conflicts registry; citizens will not become aware of conflicts unless they review the minutes of meetings. More importantly, there is evidence in this Inquiry that even City Staff who were present at meetings forgot about the Mayor’s declaration of conflict of interest, while the Mayor presumed that her City Solicitor would have remembered her

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<sup>779</sup> Levine, p. 5981-2.

<sup>780</sup> Sossin, p. 5811, ll. 9-23.

declared conflict. The Mayor submits that the Commissioner should recommend that a conflict registry should be kept, and be publicized in an easily accessible manner, such as a municipal website. This should be the responsibility of the City Clerk's office.<sup>781</sup>

**Recommendation #8: The City Clerk's office should maintain a registry of conflict of interest declarations which is electronically searchable, and which is accessible on a municipality's website.**

## **X. Municipal Accountability Tools**

### **20. Integrity Commissioners – Recommendations**

#### **(a) Advice Giving vs. Complaint Based**

525. Not all integrity commissioners have an advice giving function. Dean Sossin testified that an advisory function can be more effective than a complaints function: it makes the integrity commissioner better able to clarify standards and communicate them to the officials involved. This ultimately allows transparency, a clear set of principles that guides behaviour, and is in the interests of the city, its officials, and third parties involved in commercial transactions with the City.<sup>782</sup>

526. Prof. Levine noted that a number of integrity commissioners, such as the City of Kitchener and West Lincoln, are solely complaints based.<sup>783</sup> West Lincoln, for example, has an education function but not an advisory function.<sup>784</sup> Prof. Levine stated that the educational and advisory functions were very important. He noted that the B.C. Conflict of Interest Commissioner believed the advisory role was the most important function: rather than being punitive, it helps people get things done.<sup>785</sup>

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<sup>781</sup> Sossin and Mullan, p. 5788.

<sup>782</sup> Sossin, p. 5635-36.

<sup>783</sup> Levine, p. 5895-96.

<sup>784</sup> Levine, p. 5672.

<sup>785</sup> Levine, p. 5896-97.

527. There continues to be confusion as to whether integrity commissioners have the ability to investigate or become involved in pecuniary conflict of interest situations/allegations. Prof. Levine indicated that because of the confusion, most municipal codes require that integrity commissioners stay out of pecuniary conflict of interest investigations, and suggested that the MCIA should be amended to at least recognize the investigative role of municipal integrity commissioners.<sup>786</sup> However as Prof. Mullan points out, the integrity commissioner cannot give binding advice or opinions in respect of the MCIA; he or she cannot assure a councillor that if she votes, there wont be a later MCIA complaint.<sup>787</sup>

(b) Independence and Impartiality

528. Another important issue is the independence and impartiality of municipal integrity commissioners. Administrative law independence and impartiality is supported through objective and structural guarantees lacking in many integrity commissioner arrangements. Dean Sossin indicated that in his view, the tenure of an integrity commissioner should be a reasonably long, fixed term, and non-renewable, as presently reflected in the City of Toronto by-law.<sup>788</sup>

**Recommendation #9: The independence and impartiality of Integrity Commissioners are critical. Municipalities should carefully consider the form and length of tenure when designing a position.**

529. Dean Sossin and Prof. Mullan indicated their concern, however, with the fact that in Toronto, the accountability officers are city employees in a technical sense, with the City Clerk's office providing administrative support. Dean Sossin noted that "The problem really is that these are legislative officers at a level of government that really has no legislative infrastructure," and no ability to create the equivalent of an "officer of

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<sup>786</sup> Levine, p. 5992, l. 20 – 5994, l. 2.

<sup>787</sup> Mullan, p. 5998.

<sup>788</sup> Sossin, p. 5667-69.

parliament.”<sup>789</sup> Dean Sossin noted that under the present *Municipal Act, 2001*, there is no ability to effect structural separation as guarantees of independence through the separate officer of parliament/legislature structure. However, Mayor McCallion submits that the Commissioner should recommend that the legislature amend the Act to provide a more desirable level of independence for municipal accountability officers, by creating independent officers of Council.<sup>790</sup>

**Recommendation #10: The legislature should consider amendments to the Municipal Act, 2001 that will provide effective guarantees of independence for Integrity Commissioners, including the creation of independent officers of Council.**

530. Prof. Mullan also suggested that the integrity commissioner should also have the ability to seek independent legal advice, and to have the cost of that covered by the municipality.<sup>791</sup>

531. Prof. Levine noted that there are approximately 18 existing integrity commissioner positions in Ontario, and the majority model is a one year contract which in his view was insufficient.

532. There is a further concern for part-time integrity commissioners, who are paid on an hourly basis – being in the position of knowing that more complaints will lead to more remuneration.<sup>792</sup> The same concern arises with respect to the education and advice-giving functions.<sup>793</sup>

533. Mayor McCallion in her evidence proposed a panel of retired judges or experts, on a centralized basis, who could form a roster of integrity commissioners.<sup>794</sup> Prof.

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<sup>789</sup> Sossin, p. 5668.

<sup>790</sup> Sossin, p. 5864, l. 19 – p. 5866, l. 3.

<sup>791</sup> Mullan, p. 6011, ll. 19-25.

<sup>792</sup> Sossin, p. 5731, ll. 13-22.

<sup>793</sup> Sossin, p. 5733, ll. 3-10.

<sup>794</sup> Hazel McCallion, p. 5074-75.

Mullan stated that for smaller municipalities this might be extremely valuable, and would replicate the UK/Wales situation where there are regional integrity commissioners for councillors. He agreed that for smaller municipalities, having a central or regional integrity commissioner is a suggestion worth pursuing.<sup>795</sup> This is analogous to the open meeting commissioner legislation. Thus, in this case, the three lower-tier municipalities (Brampton, Caledon and Mississauga) and perhaps the Regional Municipality of Peel could share an integrity commissioner.<sup>796</sup>

**Recommendation #11: AMO should consider establishing a central or regional integrity commissioner system, and Mississauga should consider whether the three lower-tier municipalities, as well as the Regional Municipality of Peel, should share a common Integrity Commissioner.**

## **21. Mississauga Code of Conduct**

534. Prof. Mullan suggested that it is not clear whether the Mississauga Code adequately encompassed the education and advice functions of an integrity commissioner. Dean Sossin noted that there should be a proactive education role and he this did not appear to be expressly dealt with in the Code.<sup>797</sup> Given their importance, the Mayor submits the Commissioner should consider this issue and make recommendations.<sup>798</sup>

535. Dean Sossin recommended entrenching the Code as a by-law rather than as an administrative arrangement. He suggested it should deal with security of tenure and the administrative autonomy of the office.<sup>799</sup>

**Recommendation #12: The Mississauga Code should be enacted as a by-law. The Integrity Commissioner**

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<sup>795</sup> Mullan, p. 27.

<sup>796</sup> Mullan, p. 5894 l. 15 – p. 5985, l. 9.

<sup>797</sup> Sossin, p. 5900.

<sup>798</sup> Mullan, p. 5898.

<sup>799</sup> Sossin, p. 5899.

**should be empowered to provide both education and advice. Municipal mayors and councillors should be entitled to rely on this advice.**

536. Another important issue is the application of the *Municipal Freedom of Information and Protection of Privacy Act*, since the municipality is the “institution” for the purposes of that Act. While investigative documents are protected, the identity of the municipality as the institution making disclosure and editing decisions is troubling from an independence perspective.<sup>800</sup> While there may be reasons to ensure that the administrative records are subject to the MFIPPA system, the MFIPPA should be amended to ensure that the accountability officers are institutions for the purposes of MFIPPA, rather than the corporate municipality.<sup>801</sup>

537. Even independent (non-employee) integrity commissioners may be at legal risk as a consultant, for a finding that the records are in the care, custody and control of the municipality such that the municipality is the institution for purposes of MFIPPA.<sup>802</sup>

**Recommendation #13: The legislature should amend the *Municipal Freedom of Information and Protection of Privacy Act* to ensure that municipal accountability officers are institutions for the purposes of MFIPPA, rather than the corporate municipality.**

538. The present scheme places a duty on the integrity commissioner to perform his or her duties “in an independent manner”, without the appropriate structures within which to do so. Thus, Section 223.3 of the *Municipal Act, 2001* provides:

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and **who is responsible for performing in an independent manner the functions assigned by the municipality** with respect to,

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<sup>800</sup> Sossin, p. 5899-5900.

<sup>801</sup> See discussion, p. 5907.

<sup>802</sup> Discussion, pp. 5907-08.

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b).

539. Issues of concern for an integrity commissioner remain: security of tenure, control of records, indemnification and insurance. Rather than engaging in negotiations with councils, which in themselves may compromise the appearance of impartiality, the Commissioner should consider recommending whether adding minimal protections and a minimal independence structure within the *Municipal Act, 2001* would ensure greater autonomy and independence for accountability officers, without eroding accountability and transparency.<sup>803</sup>

**Recommendation #14: The legislature should add minimal protections and a minimal independence structure for municipal accountability officers in the *Municipal Act, 2001* to ensure greater autonomy and independence for accountability officers, without eroding accountability and transparency**

540. The Commissioner should consider recommending that the City of Mississauga adopt a complaint protocol, which can be as important as the Code of Conduct in establishing a procedural basis for the integrity commissioner to act.<sup>804</sup>

## **22. Lobbyist Registration/Lobbyist Code of Conduct**

541. Good municipal governance in the 21<sup>st</sup> century involving considering the range of accountability officers available, and deciding which ones are appropriate to a local community. The City of Toronto, for example, has five accountability officers – Integrity

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<sup>803</sup> Discussion, pp. 5908-5912.

<sup>804</sup> Prof. Mullan, pp. 5921-22.

Commissioner, Conflict of Interest Commissioner, Auditor General, Lobbyist Registrar and Ombudsman. One issue the Commissioner should consider is whether to make recommendations about other municipal accountability officers. Given the nature of the issues raised in this Inquiry, most attention has been paid to the question of the lobbyist registry and the lobbyist registrar.

542. Lobbyist registries provide transparency, and also provide protections to municipal politicians.<sup>805</sup> All of the factual witnesses who had participated in Federal, provincial and municipal lobbyist registration systems testified that compliance costs were not an issue. They further agreed that a transparent lobbyist registration system brings transparency to contacts, serves the community's interests, and protects politicians.<sup>806</sup> Barry Lyons agreed with the Lobbyist Registrar, City of Toronto statement that: "Lobbying is one way stakeholders can help public office holders make informed decisions. When transparent to the public, and in accordance with the by-law, lobbying public office holders of the City of Toronto is a legitimate and potentially helpful activity."<sup>807</sup>

543. Prof. Mullan expressed concern about the cost of the City of Toronto registry, while acknowledging that in Toronto, the prior system of voluntary disclosure had not worked because of lack of buy-in.<sup>808</sup> He agreed that given the initial IT investment in implementing the Toronto registry, it is possible that at relatively low marginal cost, other municipalities might be able to work with the City of Toronto to implement a registry.<sup>809</sup>

544. Prof. Levine noted that there are two different types of lobbyist registry. One is a registry system, and the other is a disclosure system. There are also single issue lobbyist registries. Surrey, B.C. for example has a development-oriented lobbyist registry.<sup>810</sup>

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<sup>805</sup> Mullan and Sossin, p. 5948 l. 18 – 5949, l. 7.

<sup>806</sup> Lyons, p. 2497-98; Nobrega, p. 3377-78.

<sup>807</sup> Lyons, p. 2492, l. 23 – 2493, l. 13.

<sup>808</sup> Mullan, p. 5638-39.

<sup>809</sup> Mullan, p. 5949, ll. 2-23.

<sup>810</sup> Levine, p. 5641.

Thus, a municipality has a range of options when deciding what issues should be addressed.<sup>811</sup>

545. Dean Sossin suggested that a lobbyist code of conduct is an important addition to the accountability framework, and indeed, the nature of a lobbyist's interests is an important element in making determinations about the use of influence. He was of the view that a lobbyist code of conduct is important.<sup>812</sup>

546. Dean Sossin suggested that combining a lobbyist registrar function with a municipal integrity commissioner may create some institutional coherence as well as infrastructure savings around cost. The combined lobbyist registry/integrity commissioner is the provincial model. Another issue is whether the registrar has investigative and reporting functions to deal with compliance with the lobbyist code of conduct.<sup>813</sup>

January 24, 2011

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

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ELIZABETH McINTYRE

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FREYA KRISTJANSON

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ADRIENNE TELFORD

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<sup>811</sup> Levine, p. 5951-2.

<sup>812</sup> Sossin, p. 5736 l. 6 – 5737, l. 18.

<sup>813</sup> Sossin, pp. 5953-5954.

## **Schedule “A” – Recommendations**

**Recommendation #1:** Given the gravity of the MCIA remedy of disqualification, there should be no expansion of existing prohibited categories and relationships in the MCIA.

**Recommendation #2:** The legislature should clarify the scope for municipal codes of conduct to address pecuniary conflicts of interest, through amendments to either the MCIA or the Municipal Act, 2001.

**Recommendation #3:** The legislature should amend the *Municipal Act, 2001* to delete the reference to Mayor as “Chief Executive Officer”, or the role should be clarified.

**Recommendation #4:** An “apparent” conflict of interest standard should not be adopted for municipal councillors and mayors.

**Recommendation #5:** An “improper influence” standard should not be adopted. If it is adopted, it must be carefully confined to official powers conferred on mayors and councillors under the *Municipal Act, 2001*.

**Recommendation #6:** The MCIA and the Mississauga Code of Conduct should not be extended to the categories of “close personal friends” and business partners.

**Recommendation #7:** The MCIA should be amended to eliminate the deemed conflict of interest involving adult, non-dependent children.

**Recommendation #8:** The City Clerk’s office should maintain a registry of conflict of interest declarations which is electronically searchable, and which is accessible on a municipality’s website.

**Recommendation #9:** The independence and impartiality of Integrity Commissioners are critical. Municipalities should carefully consider the form and length of tenure when designing a position.

**Recommendation #10:** The legislature should consider amendments to the *Municipal Act, 2001* that will provide effective guarantees of independence for Integrity Commissioners, including the creation of independent officers of Council.

**Recommendation #11:** AMO should consider establishing a central or regional integrity commissioner system, and Mississauga should consider whether the three lower-tier municipalities, as well as the Regional Municipality of Peel, should share a common Integrity Commissioner.

**Recommendation #12:** The Mississauga Code should be enacted as a by-law. The Integrity Commissioner should be empowered to provide both education and advice. Municipal mayors and councillors should be entitled to rely on this advice.

**Recommendation #13:** The legislature should amend the *Municipal Freedom of Information and Protection of Privacy Act* to ensure that municipal accountability officers are institutions for the purposes of MFIPPA, rather than the corporate municipality.

**Recommendation #14:** The legislature should add minimal protections and a minimal independence structure for municipal accountability officers in the *Municipal Act, 2001* to ensure greater autonomy and independence for accountability officers, without eroding accountability and transparency.