



# Corporate Report

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**DATE:** October 13, 2009

**TO:** Mayor and Members of Council  
Meeting Date: October 28, 2009

**FROM:** Mary Ellen Bench, BA, LLB, CS  
City Solicitor

**SUBJECT:** **Judicial Inquiry**

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- RECOMMENDATION:**
1. That appropriate City officials be authorized and directed to take the necessary action to give effect to Council's Resolution No. 0222-2009 requesting a judicial inquiry in respect of the matters discussed in the City Solicitor's report dated September 24, 2009 and other related matters.
  2. That the City Solicitor be instructed to report back on funding for legal representation for parties, Members of Council and current City employees who will be called as witnesses at the Inquiry, setting out the principles for such funding applications.
  3. That Council authorize the allocation of funding for the Inquiry itself, should an inquiry be initiated.

**BACKGROUND:** City Council at its meeting of September 30, 2009 considered the Report of the City Solicitor dated September 24, 2009 entitled "Response to Issues Raised by Council – Proposed or Pending Acquisition or Disposition by the Municipality or Local Board – Agreement of Purchase and Sale – Lands Within the City Centre". Attached to that report were two opinions obtained from the law firm McLean & Kerr, with the first opinion concerning any conflicts of interest on the part of the Mayor, Members of Council or City Staff

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relating to the City Purchase Agreement and/or WCD's involvement with the property, and the second legal opinion related to whether City Staff acted appropriately in respect of negotiating the relevant Agreement of Purchase and Sale, to properly protect the City's interests. Regarding the conflict of interest, the report concluded that only Mayor McCallion had contravened the *Municipal Conflict of Interest Act*, however the opinion also advised that the contravention, which occurred on May 21, 2008, "may have been committed through inadvertence or by reason of an error in judgment" as contemplated by Section 10(2) of the *Municipal Conflict of Interest Act*. Regarding the negotiations of the real estate transaction, the legal opinion concluded that the City Purchase Agreement was a sophisticated and comprehensive agreement negotiated between sophisticated parties and that "City Legal staff exercised the proper standard of care in documenting the City Purchase Agreement and in documenting the issues unique to the Purchase Transaction".

Following consideration of this matter, Council passed Resolution No. 0222-2009 asking for a judicial inquiry with respect to the matters discussed in the City Solicitor's report dated September 24, 2009 and other related matters; and directed that the City Solicitor report back on the parameters as soon as possible.

**COMMENTS:**

Pursuant to Section 274(1) of the *Municipal Act, 2001*, Council may pass a resolution requesting a judge be appointed to conduct a public inquiry. Upon receipt of such a resolution, the Chief Judge of the Superior Court of Justice must appoint a judge. This is an extraordinary remedy that is not often used by municipalities. The inquiry can be scoped to deal with a single incident of misconduct by a Member of Council, an employee of the municipality, or a person under contract with the municipality in relation to their duties or obligations to the Municipality; or it can be a broad inquiry into any matter connected with the good government of the municipality or the conduct of any part of its public business, or both. Section 274 is attached as Appendix 1. During the judicial inquiry, the inquiry judge will be referred to as the "Commissioner".

**Purpose of a Municipal Public Inquiry**

Justice Binnie, in the Supreme Court of Canada decision *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)* defined the purpose of a municipal judicial inquiry as follows:

“the power of an Ontario municipality to authorize a judicial inquiry into matters touching the good government of the municipality, or “any part of its public business”, and any alleged misconduct in connection therewith, reaches back prior to Confederation. Apart from a few amendments to harmonize this power with other legislative changes in the Province, [Section 274 of the *Municipal Act, 2001*] is substantially unchanged from its predecessor section in 1866. This reflects a recognition through the decades that good government depends in part on the availability of good information. A municipality, like senior levels of government, needs from time to time to get to the bottom of matters and events within its baileywick. The power to authorize a judicial inquiry is an important safeguard of the public interest, and should not be diminished by a restrictive or overly technical interpretation of the legislative requirements for its exercise. At the same time, of course, individuals who played a role in the events being investigated are also entitled to have their rights respected.”

In the last 10 years there have been two municipal judicial inquiries in the Province of Ontario, the first being the Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry and Good Governance Report which commenced in 2002, and the second being the 2003 Waterloo RIM Park Inquiry. The reports issued from both of these inquiries have been reviewed for purposes of responding to Council’s resolution concerning defining the parameters for a judicial inquiry in Mississauga. The materials related to the 1993 Sarnia inquiry, however, are no longer readily available.

In determining whether or how to proceed with a municipal judicial inquiry, it is important that Council understand the following:

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- By its requesting resolution, Council has the ability to control the scope of the inquiry. The resolution must be carefully constituted as it will establish the terms of reference and mandate of the Commissioner. If the resolution is too vague, it may be struck out by the Courts for lack of sufficient particularity.
  - Potential parties will be notified based on the terms of reference.
  - A public inquiry is a public investigation, carried out in the public eye and is not a trial. A public inquiry seeks to explain why something occurred and not to determine guilt or liability. Unlike a court, it is not an adversarial proceeding.
  - The findings of a judicial inquiry are not binding in subsequent court proceedings and there are no legal consequences attached to them.
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- At the end of an inquiry, the Commissioner will report his/her factual findings, make observations and issue recommendations that may include legislative, policy or procedural changes to be implemented to address the specific concerns identified through the inquiry.
  - The conduct and the rules of procedure to be followed on an inquiry is under the control and direction of the Commissioner.
  - The Commissioner will determine which issues are to be reviewed and investigated within the parameters set by the terms of reference. Ancillary issues may come up during the inquiry not originally anticipated. The Commissioner's decisions in this respect will impact on the cost and length of the inquiry.
  - The costs of the Commissioner will be paid by the Federal Government as a Justice of the Superior Court, however the Commissioner will likely engage legal counsel and possibly other persons to assist in the investigation or inquiry, and these costs plus any incidental expenses will be paid by the

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municipality.

- Council should authorize outside legal counsel to be retained to represent the municipality in the conduct of a judicial inquiry to ensure there is no perception of bias and to assure the integrity of the process in the public eye.
- Council must also give consideration to paying for the costs of legal counsel for the parties to the proceeding or for Members of Council or staff called upon to provide testimony.
- It is very difficult to estimate the potential costs of an inquiry due to the unknowns that will impact the hearing length, any potential delays in receiving documents and materials, unknown forensic audit and investigative needs, determination of the parties and witnesses, the potential for legal challenges and many other issues that can arise.
- A time limit cannot be established by the municipality for an inquiry. The Act requires the Commissioner to report the results of the inquiry to Council "as soon as practicable".
- Any person who has a substantial or direct interest in the subject matter of an inquiry is entitled to apply for standing. Where the Commissioner grants full standing, that person can call evidence and cross-examine witnesses, and also must agree to abide by the Rules of Procedure established by the Commissioner. Standing may be granted for the entire proceeding or only for part of it, and it may have lesser rights attached to it, as determined by the Commissioner.
- Legal counsel acting for parties at a judicial inquiry play a different role than in a courtroom and will be expected to assist the inquiry and ensure that all relevant and helpful evidence is brought forward.

**Powers of the Judge**

The judge conducting the inquiry has the powers of a commission under Part II of the *Public Inquiries Act*. These powers include the power to summon witnesses to give evidence and to require the

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production of such documents and things as the Commission may deem appropriate evidence. Where a person fails to comply with such a summons, the Commission may state a case to the Divisional Court setting out the facts. The Divisional Court, after hearing evidence, has the authority to punish or take steps to treat the person as if he or she had been found guilty of contempt of the Court. The Judge conducting the inquiry therefore does not have the power to cause a person to be apprehended who has been served with a summons and who has failed to appear or to ask for a search warrant to be issued, but can only refer the matter to the Divisional Court for any action. No adverse employment action can be taken against an employee who, acting in good faith, provides information or evidence to the Commission.

#### Terms of Reference

When this matter was considered by City Council at its meeting of September 30, 2009, Council instructed the City Solicitor to report back on the parameters of a judicial inquiry, and asked that the following be included in the parameters:

1. Review of all of the circumstances of the relationship between WCD and the City;
2. Review the interrelationship with Enersource, OMERS and WCD and any other players that may have been involved; and,
3. Review the relationship between the individuals involved in WCD and the Derrydale Development matter.

Attached as Appendix 2, for Council's consideration, is a draft resolution setting out the relevant history and terms of reference for the proposed judicial inquiry, based on Council's instructions at its meeting of September 30, 2009.

It is important to note that the Council Resolution and Terms of Reference must be sufficiently detailed to identify what is to be inquired into and the parameters of the municipality's interest, however, unlike pleadings in a court of law, details of specific events are not required. Justice Bellamy states "it is not realistic to expect detailed allegations to precede an investigation. That would cripple

the investigation before it began." Having said that, where a judicial inquiry is expected to investigate allegations of potential misconduct, the Supreme Court of Canada, in the City of Sarnia decision previously referenced, makes it clear that allegations of misconduct, if they are to be made, must be specified. Once the investigation commences, the Commissioner will be required to provide formal notice of misconduct to any individuals being investigated. The Supreme Court of Canada in the decision of *Canada (A.G.) v. Canada (commission of inquiry on blood system)* being the tainted blood inquiry, determined that "misconduct" as used in the context of a judicial inquiry is a broad term encompassing "improper or unprofessional behaviour" or "bad management". It is therefore not a finding that has criminal implications.

#### **Cost Estimates and Time Estimate**

As previously noted, the municipality has little control over the hearing in terms of time, issues or the costs of support that the judge determines are required.

If Council chooses to proceed with a municipal judicial inquiry substantially in accordance with the terms of reference set out in this report, then the inquiry should be limited to an investigation into specific misconduct rather than a general inquiry into the good government of the municipality. In this respect, the Sarnia and Waterloo inquiries are most relevant for the purposes of estimating time. It is therefore assumed that the hearing would take approximately 40 days at a cost in the range of \$2-2.5 million. The Toronto inquiry was much longer and much more complex because it expanded beyond the MFP Computer Leasing matter to a second inquiry regarding property tax software, and a detailed analysis of the conduct of the public business and recommendations for good municipal government.

This cost estimate is based on the following assumptions:

#### **Commission Counsel**

It is to be expected that the judge assigned will want to appoint Commission Counsel to assist him or her in carrying out the inquiry. Commission Counsel was appointed in Sarnia, Waterloo and Toronto.

The role of Commission Counsel is not to advance any particular point of view, but rather to investigate and lead evidence in a thorough, impartial and balanced manner. Commission Counsel must be prepared to ask probing questions, especially when a witness' evidence is inconsistent or evasive because they (Commission Counsel) are advocates for the truth. Justice Bellamy states that Commission Counsel play a critical role in representing the public interest at an inquiry. She states that: "They are not prosecutors. Their role is not adversarial, nor do they take one side over another. They have a duty to make sure that all issues bearing on the public interest are brought to my attention. Their job is to use their skill and experience to present all the available relevant evidence in as fair and thorough a fashion as possible." She also states that: "They must investigate, test, and verify."

Justice Sills, the Waterloo Commissioner, describes the duty of Commission Counsel as ensuring that all issues related to the public interest are brought to the Commissioner's attention: "They represent no particular interest or point of view and play no adversarial or partisan role." The municipality is responsible for paying the full cost of Commission Counsel. For the purposes of estimating the costs of the Toronto inquiry, Toronto staff looked at the cost of Commission Counsel in Sarnia, being \$8,800 a day and assumed a 20% increase or \$10,500 a day. Today costs would likely be in the range of \$12,500 a day. Estimating 40 hearing days, this would cost approximately \$500,000 in fees for Commission Counsel. A conservative estimate of legal fees for Commission Counsel's involvement in the investigative stage is \$300,000, based on the costs of previous inquiries. The total estimate for Commission Counsel therefore is estimated at this time to be \$800,000.

#### Investigator

The City of Waterloo retained the services of KPMG Forensic Inc. to conduct its investigation. In the City of Toronto, KPMG had done most of the investigative work for the City prior to the request for a judicial inquiry. Justice Bellamy retained her own investigators to track down witnesses and documents, and conduct preliminary interviews for Commission Counsel. The costs of so doing were estimated to have been \$75,000 for the Toronto inquiry.

As in the City of Toronto case, if Council chooses to proceed with a municipal judicial inquiry based upon the terms of reference set out in this report, a great deal of the preliminary investigative work to determine the issues concerning the inter-relationships with Enersource, OMERS and WCD has already been documented. Like the Toronto case, however, it could be expected that further work would be required to conduct interviews and collect documentation in respect of the Commission's proposed mandate. It is therefore estimated that any follow up investigative work should be in the range of \$100,000.

#### Administrative Support

The Commissioner will require administrative support during the investigation and will need a clerk for the hearing. It is estimated that these costs should not exceed \$40,000 for a 40 day hearing.

#### Advertising and Process

The first phase of the Toronto inquiry estimated these costs to be \$30,000. The Commissioner will make all determinations respecting advertising, establishing a website and other process costs. The purpose of the advertisements is to solicit potential evidence that the public might have that otherwise would not come to the attention of the Commission. The website, if the Commission opts to establish one, will also ensure public access to the inquiry's proceedings and progress. Based on the Toronto costs, it is estimated that this cost should not exceed \$40,000.

#### Court Reporter/Transcripts

In the Sarnia judicial inquiry, this cost was approximately \$42,000 and the Toronto inquiry estimated costs to be \$100,000. The rates of local service providers currently range from \$45 to \$75 per hour for attendance at court and \$4-\$5 per page for transcripts. The estimate for court reporting and transcripts is approximately \$120,000 for a 40 day inquiry.

#### Commissioner Incidental Expenses

Miscellaneous expenses for the first phase of the Toronto Inquiry were

\$15,000. These included the cost of providing the software needed by Justice Bellamy, meals, travel, and other incidentals. A similar amount would be appropriate.

#### Inquiry Hearing Room and Office Space

Courtroom 1, the largest courtroom at the Provincial Offences Court at 950 Burnhamthorpe Road, is available for 4.5 days a week for up to one year. Courtroom 1 has a retiring room immediately adjacent and there is a vacant JP office in that area that could accommodate a Superior Court judge. Office furniture and computer equipment would be required however. In addition, vacant space designed for an articling student for the JPs is available for use by administrative support staff, again subject to the requirement to provide furniture and a computer. For this reason, and as furniture and computer equipment would remain after the inquiry, no cost has been included in this respect. Of note that the approval of the Regional Senior Justice of the Peace and Regional Senior Justice would both be required for this space to be utilized. Staff do not anticipate any problems in this respect however.

#### Total Cost of Inquiry Commission

Consequently, the total cost of the inquiry itself is estimated to be in the range of \$1,075,050. Applying a 15% contingency (\$161,257.50), this figure becomes \$1,236,307.50.

#### Other Costs

In addition to the costs of the inquiry itself, other costs must be considered:

#### Counsel Representing the City

Sarnia, Waterloo and Toronto all retained outside legal counsel to represent the City's interests at the public inquiry. The City will play a role in the inquiry by assisting where appropriate or necessary to ensure that all necessary information in City files is made available. The City is responsible for ensuring that the Commissioner is aware of all internal administrative procedures that may be relevant to the issues addressed by the inquiry and for responding to any requests

from the Inquiry Commissioner or the Commission Counsel for assistance. Additionally, legal counsel retained on behalf of the City would ensure that the City's interests are protected in the event of future litigation.

Outside counsel representing the City may also be called upon to make submissions regarding the issues before the Inquiry and in respect of staff. Outside counsel may be instructed to make specific submissions on allegations of misconduct against various persons, if appropriate and pursuant to instructions provided in their retainer. The Commissioner will only make such findings to the extent necessary to fulfill the purpose of the inquiry as described in its terms of reference.

As previously noted, municipal judicial inquiries are guided by principles concerning fairness, thoroughness, efficiency and accessibility, as well as cost-effectiveness. In order to avoid any perception of bias and in order to ensure that matters can be handled expeditiously, it is recommended that the City retain outside counsel. It is also proposed that this be done through a competitive bid process. As City staff will be able to perform some of the background work gathering documentation and other evidence, it is estimated that the cost of the City's outside legal counsel would be in the range of \$600,000 or 75% of the costs of Commission Counsel.

Funding for Legal Representation – Parties, City Council Members and Staff

While the Commissioner does not have jurisdiction to order the City to provide funding, consideration must be given to providing funding for legal representation for Members of Council, City staff and parties to the proceeding. Legal counsel retained to represent the City cannot represent the interests of individual employees or Members of Council. Justice Bellamy references comments made in the *Royal Commission on the Donald Marshall, Jr., Prosecution* in making her recommendations respecting funding legal counsel for parties to the inquiry:

“The Commission, if its findings are to be considered credible, must be perceived to be conducting fair hearings, and to be doing everything possible to ensure that proper

representation is provided for all parties whose participation in all, or some part, of the hearings is required. It would be extremely unfortunate, and inconsistent with the proper administration of justice, if a necessary party were prevented from presenting its full story to the Commission due to lack of financial resources. The public interest is unlikely to be served adequately if only some interested groups and parties are represented, since necessarily that would risk having our findings influenced in favour of those parties who are either better organized or better funded.

In the Waterloo and Toronto municipal public inquiries, criteria was established by which funding was provided to partially offset the legal costs of parties, including Members of City Council and staff who were parties or significant witnesses at the hearings. In both cases, where individuals chose to request funding for their legal counsel, they did so following specific criteria established. Funding amounts can be capped and criteria can be established so that eligible costs only apply after the judge has been appointed. Generally, funding would pay for one lawyer to attend while the individual is being interviewed or when appearing at the hearing, and funding would be at a discounted or partial payment rate. Justice Bellamy states that it is not in the public interest for funding to be open-ended or at a lawyer's regular hourly rate, and that accounts should be subject to assessment.

In order to ensure that witnesses, including Members of Council and staff, cooperate freely and fully with Commission Counsel and the Commissioner, it is recommended that Council approve, in principle, funding for legal fees for such individuals who will be given party status or called as witnesses.

**FINANCIAL IMPACT:** The total cost of a judicial inquiry, based upon information available at this time, and subject to the decisions that will be made by the Commissioner, is in the range of \$2-2.5 million.

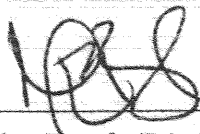
**CONCLUSION:** At its meeting of September 30, 2009, City Council passed Resolution No. 0222-2009 requesting a judicial inquiry in respect of the matters discussed in a report from the City Solicitor respecting conflict of

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interest and the real estate transactions by which the City acquired lands for a downtown Sheridan College campus. The *Municipal Act* authorizes Council to pass a resolution calling for a judicial inquiry and requires the Chief Justice of the Superior Court of Ontario to appoint a judge. The judicial inquiry is a public investigation carried out in the public eye and its findings are not binding in subsequent court proceedings. The terms of reference will frame the inquiry, however the inquiry judge will make the key decisions respecting the issues to be investigated and made the subject of the hearing. The *Municipal Act* requires the inquiry judge to report back to Council as soon as practicable and leaves it to the inquiry judge to determine time and many of the costs associated with the inquiry. As determined by Council, the terms of reference authorize the inquiry judge to investigate any supposed breach of trust or other misconduct by a Member of Council or staff relating to the relationships and use of City resources or City approvals that involve the principals and representatives of WCD, OMERS and its affiliates or Enersource Corporation. It is estimated that the inquiry will take approximately 40 hearing days and cost in the range of \$2-2.5 million, based on the Council direction provided to date.

**ATTACHMENTS:**

- Appendix 1: Section 274 of the *Municipal Act, 2001*.
- Appendix 2: Draft Resolution.



Mary Ellen Bench, BA, LLB, CS  
City Solicitor

*Prepared By: Mary Ellen Bench, City Solicitor*

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## Appendix 1

### Municipal Act, 2001

#### S.O. 2001, CHAPTER 25

**Consolidation Period:** From June 5, 2009 to the e-Laws currency date.

Last amendment: 2009, c. 18, Sched. 18.

#### JUDICIAL INVESTIGATION

##### **Investigation by judge**

**274. (1)** If a municipality so requests by resolution, a judge of the Superior Court of Justice shall,

- (a) investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality;
- (b) inquire into any matter connected with the good government of the municipality; or
- (c) inquire into the conduct of any part of the public business of the municipality, including business conducted by a commission appointed by the council or elected by the electors. 2001, c. 25, s. 274 (1).

##### **Powers**

(2) In making the investigation or inquiry, the judge has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation or inquiry as if it were an inquiry under that Act. 2001, c. 25, s. 274 (2).

##### **Report**

(3) The judge shall report the results of the investigation or inquiry to the council as soon as practicable. 2001, c. 25, s. 274 (3).

##### **Counsel**

(4) The council may hire counsel to represent the municipality and pay fees for witnesses who are summoned to give evidence at the investigation or inquiry. 2001, c. 25, s. 274 (4).

##### **Representation by counsel**

(5) Any person whose conduct is called into question in the investigation or inquiry may be represented by counsel. 2001, c. 25, s. 274 (5).

##### **Costs**

(6) The judge may engage counsel and other persons to assist in the investigation or inquiry and the costs of engaging those persons and any incidental expenses shall be paid by the municipality. 2001, c. 25, s. 274 (6).

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Appendix 2

Draft Resolution

WHEREAS under Section 274 of the *Municipal Act 2001*, a Council of a municipality may, by resolution, request a Judge of the Superior Court of Justice, to investigate and inquire into any supposed breach of trust or other misconduct of a Member of Council, an employee of the Municipality or a person having a contract with the Municipality in relation to the duties or obligations of that person to the Municipality and inquire into or concerning any matter connected with the good government of the municipality, of the conduct of any part of its public business;

AND WHEREAS any Judge so requested shall make inquiry and shall report the results of the investigation or inquiry to the Council as soon as practicable;

AND WHEREAS Council at its meeting of June 10, 2009 authorized the City to enter into a Memorandum of Understanding with Sheridan Institute of Technology and Advanced Learning for the purpose of building a downtown Mississauga college campus, and at the same time by virtue of By-law 0182-2009 delegated to staff the responsibility to negotiate an Agreement of Purchase and Sale between OMERS Realty Management Corporation and 156 Square One Limited (the "Vendors") respecting the acquisition by the City of approximately 8.5 acres of land in the City Centre to be developed in accordance with the Memorandum of Understanding;

AND WHEREAS an Agreement of Purchase and Sale was signed between the Vendors and the City on July 20, 2009 requiring the Vendors to delivery the Lands free of encumbrances on closing, scheduled for September 17, 2009;

AND WHEREAS the City was aware of the previous Agreement of Purchase and Sale entered into between the Vendors and World Class Developments Limited ("WCD") and the City negotiated an Indemnification and Hold-harmless Agreement with the Vendors to protect the City and Sheridan from any claims by WCD, as well as a Release Agreement with Sheridan in the event of a claim by WCD that could jeopardize Sheridan's ISF funding for the downtown Mississauga college campus referenced in the MOU;

AND WHEREAS on July 9, 2009 the Vendors filed an application in the Superior Court (Commercial List) to confirm that their previous Agreement of Purchase of Sale with WCD was terminated;

AND WHEREAS on August 28, 2009 WCD served a counter-application against the Vendors seeking, among other things, a declaration that the Agreement of Purchase and Sale entered into between WCD and the Vendors remained in full force and effect;

AND WHEREAS in support of its counter claim WCD filed affidavit evidence from two (2) individuals identified as its principals, namely Peter McCallion and Tony DiCicco as well as and affidavit from a hotelier, which affidavits referenced meetings with City staff, Mayor McCallion

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and these principals to discuss the development of the subject site as a hotel and conference centre;

AND WHERE the affidavit filed in court by Peter McCallion on behalf of WCD describes how he became interested in developing the subject lands, his awareness of the City's overall concept for development in the City Centre, and how he approached the Chair of OMERS, with a proposal to acquire the lands and develop them accordingly;

AND WHEREAS at its meeting of September 16, 2009, Council raised several concerns about the proposed City real estate transaction and noting a perception of conflict of interest respecting the real estate transaction based on the affidavits filed in court by WCD, instructed the City Solicitor to obtain an external legal opinion on whether a conflict of interest exists for the Mayor and Council or for staff and to obtain a legal opinion that would consider whether staff acted appropriately in negotiating the agreements with the Vendors for the City to acquire the subject lands;

AND WHEREAS at its meeting of September 30, 2009 Council had the opportunity to discuss the two (2) outside legal opinions obtained;

AND WHEREAS Council at that meeting was satisfied with the legal opinion obtained concerning the actions of staff in negotiating the Agreement of Purchase and Sale and instructed staff to proceed to close the transaction thereby taking title to the subject lands, and to complete negotiations with Sheridan College;

AND WHEREAS Council expressed concern about the matters involving the transaction with WCD and in particular the involvement of both the Mayor and her son, Peter McCallion;

AND WHEREAS at its meeting of September 30, 2009 Council enacted Resolution Number 0222-2009 asking for a judicial inquiry with respect to the matters discussed in the City Solicitor's Report dated September 24, 2009 entitled "Response to Issues Raised by Council – Proposed or Pending Acquisition or Disposition by the Municipality or a Local Board – Agreement of Purchase and Sale – Lands within the City Centre" and other related matters and directed the City Solicitor to report back on the parameters as soon as possible;

NOW THEREFORE the Council of the City of Mississauga does hereby resolve that:

1. an investigation is hereby requested to be conducted pursuant to Section 274 of the *Municipal Act, 2001* which authorizes a Judge of the Superior Court of Justice to investigate any supposed breach of trust or other misconduct of a Member of Council, an employee of the municipality or person having a contract with the municipality in relation to the duties or obligation of that person to the municipality and inquire into any matter connected with the good government of the municipality or the conduct of any part of its public business; and,

2. The Honourable Heather Forster Smith, Chief Justice of the Superior Court of Ontario, be requested to designate a Judge of the Superior Court as Commissioner for the inquiry and the Judge so designated is hereby authorized to conduct the investigation and inquiry.

AND IT IS FURTHER RESOLVED THAT the terms of reference of the inquiry shall be:

To inquire into all aspects of the aforesaid transactions, their history and their impact on the ratepayers if the City of Mississauga as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations that the Commissioner may deem appropriate and in the public interest as a result of the inquiry.

And it is further resolved that the Commissioner, in conducting the inquiry into the transactions in question to which the City of Mississauga is a party, is empowered to ask any questions which he or she may consider as necessarily incidental or ancillary to a complete understanding of these transactions.

And, for the purpose of providing fair notice to those individuals who may be required to attend and give evidence, without infringing on the Commissioner's discretion in conducting the inquiry in accordance with the terms of reference stated herein, it is anticipated that inquiry may include the following:

1. to investigate and inquire into all relevant circumstances pertaining to the various transactions referred to in the recitals to this resolution, including the relevant facts pertaining to the various transactions at the relevant time, the basis of and reasons for making the recommendations for entering into the subject transactions and the basis of the decisions taken in respect of the subject transactions;
2. to investigate and inquire into the relationships, if any, between the existing and former elected and administrative representatives of the City of Mississauga and the existing and former principals and representatives of WCD, OMERS and its affiliate companies at all relevant times; and,
3. to investigate and inquire into all aspects of similar real estate, development or other business transactions involving Enersource, OMERS and its related companies, and/or the principals and representatives of WCD which engaged the City of Mississauga's resources or approval processes, and the basis of the decisions that were taken in respect of these matters.