Speaking Notes for Opening of Mississauga Judicial Inquiry

The Honourable J. Douglas Cunningham, Commissioner

December 14, 2009

Good morning, ladies and gentlemen. I am pleased to welcome you to the first public session of the Mississauga Judicial Inquiry. My name is Doug Cunningham, and I am the Associate Chief Justice of the Ontario Superior Court of Justice. I have been appointed by the Chief Justice of that Court to be the Commissioner for this Judicial Inquiry pursuant to the provisions of the *Municipal Act.*

Before we begin hearing from counsel who are here today, I would like to take a few minutes to discuss the Inquiry. In particular, I'd like to briefly explain the purpose of this Inquiry, how it will operate, and then address what I consider the criteria to be for decisions about standing and funding.

Please note that everything I say during the course of the Inquiry, as well as the submissions of all counsel, will be available on the Inquiry website: www.mississaugainquiry.ca. This website provides the public with access to all of the information about the Inquiry, and any announcements about Inquiry matters will be posted on that website. Once the hearings begin, you will also be able to access each day's transcripts, hopefully by 9:00 pm or so every night, and review the schedule for upcoming testimony. The website also includes contact information for the people who can answer any questions about any aspect of the Inquiry.

Purpose of an Inquiry

Turning then to the purpose of an Inquiry. A judicial inquiry is not a trial. No-one is facing criminal charges, nor is anyone being sued civilly. A Commission's goal is to inquire into and report on matters of public interest surrounding the conduct of business in and by the City of Mississauga, and to make recommendations for the future, where appropriate. As has been said, good government depends in part upon good information. I, as Commissioner, and my Commission Counsel are impartial; our mandate is to conduct an investigation and present evidence to determine the facts. I then have a duty to report to the public about those facts and to express my opinion with respect to those facts.

I should point out that this inquiry is quite different than many others that you may have heard about in recent years. For example, in the inquiries into the Walkerton water system and the Air India bombing, part of the goal was to determine what caused these tragedies and how those errors could have been prevented. In each instance there had been horrific events involving loss of life. In this case, on the other hand, we set out to examine certain transactions and relationships. These may well be important matters, and they are certainly matters of contention. I want to emphasize that we do not begin with the presumption that there is established wrongdoing or negligence.

I have taken note of the fact that City Council believes it appropriate that there be a judicial inquiry into certain transactions of City business, and the surrounding circumstances. It may

interest you to know that Ontario municipalities have been entitled to conduct inquiries such as this since before Confederation. I hope that our efforts will help Council members and the public to get that information.

This Inquiry was created by a vote of Mississauga City Council, and the Terms of Reference were finalized by vote on November 11, 2009. The Terms of Reference can be found on the Inquiry website. I take my factual summary from those Terms. In particular, we are going to inquire into:

1. First, the terms of the December 2000 Enersource Shareholders Agreement. The City was a party to that Agreement and is a 90% owner of Enersource, and City Council has expressed concern about terms that gave certain powers to the 10% owner. We will have evidence as to how the terms came to be, who approved them, and what Council knew about the versions of the Agreement as they were proposed. We will look at the surrounding circumstances of the Agreement. As an example, we will consider the changing energy market and the different regulatory regimes which were in place as the Agreement was negotiated.

2. The second topic is the agreement that the City entered into to purchase 8.5 acres of land in the City Centre and lease it to the Sheridan Institute of Technology and Advanced Learning for a new college campus. Another company, World Class Developments, had previously agreed to purchase this land, and there was a court application about whether that earlier Agreement of Purchase and Sale remained valid. Peter McCallion, Mayor McCallion's son, was involved in the transaction and the subsequent Court action on behalf of World Class Developments. We will inquire into the context of the deals, the history of these deals and the conduct of City business with respect to them. We will examine the settlement of the litigation.

3. An issue has also been raised surrounding whether Mayor McCallion declared a conflict of interest in the meeting which considered the WCD transaction to which I have referred above, whether it was properly recorded in the Minutes and so on. I expect that this issue will not take as long to resolve as the issues which I have covered in my brief review.

This is the inquiry framed by City Council. I am bound by law to follow the Terms of Reference as I understand them.

How the Inquiry Will Operate

In fulfilling Council's mandate, we will conduct the hearings with civility and courtesy to all participants, witnesses and members of the public. The Inquiry is not bound by the rules of evidence that apply in a court, but they will serve as a guideline. I have developed Rules of Procedure for this Inquiry, and these draft Rules are available on the Inquiry webpage now.

Commission Counsel have been working hard since appointed to collect documents, identify relevant people, and acquire the information we need to move forward with the Inquiry. After today's hearing, we will know who the parties seeking standing are, and will receive documents from people with knowledge about the matters to be investigated. This information will

determine when we can start the Inquiry. Our goal is to start in the first quarter of 2010, and we will update the public as soon as we set an official start date.

Standing and Funding

In a moment, we will hear from individuals and organizations who would like standing for this hearing. Parties granted full standing have the opportunity to examine witnesses and make closing submissions. They will also receive copies of all documents that will be made exhibits, and copies of witness statements as they are prepared.

I am also prepared to consider granting limited standing to parties who may wish simply to make written submissions at the conclusion of the evidence.

Parties with standing are obligated to provide Commission Counsel with all documents have any bearing on the subject matter of the inquiry, and the names, addresses and telephone numbers of all witnesses they feel should be heard and, if possible, provide summaries of the information the witnesses may have. Parties must also provide Commission Counsel with a plan setting out how they will identify, locate and produce all documents that have any bearing on the subject matter of the inquiry.

Please note that the people requesting standing today are not the only ones with relevant information. If you have information that would be helpful to the Commission, or if you know someone who may have helpful information, please contact Commission Counsel. We must consider all relevant information out there, and are dependent upon the public to assist us in obtaining that information.

In deciding whether or not to grant standing to those requesting it today, I must consider whether the individual or corporation has a substantial and direct interest in the subject matter of the Inquiry, and whether their participation may be helpful to the Commission in fulfilling its mandate.

Parties can also request funding in order to engage counsel and otherwise participate in the Inquiry. I do not have the jurisdiction to order that the City assist any party with funding. I can, however, recommend that the City consider assisting parties with the costs they may incur in participating in the hearing. I hope and expect that the City will consider my recommendations as to funding carefully. In making that recommendation, I will bear in mind the following considerations:

- What is the nature of the party's interest and proposed involvement in the hearing?
- Is the applicant able to participate in the Inquiry without funding?
- Does the applicant for have a satisfactory proposal as to the use of the funds?

If the City elects to provide funding to certain parties, Commission Counsel can appoint a third party to assess the way that the money is being spent, in order to ensure that it is consistent with the principles that led the City to provide funding to a party in the first place.

Having made these introductory remarks, I thank you for being here today, and turn the hearing over to Will McDowell, Commission Counsel.