



# City of Mississauga Judicial Inquiry

The Honourable J. Douglas Cunningham, Commissioner

## **Oral Decision of Commissioner Cunningham Motion brought by Peter McCallion for funding, March 4, 2010:**

Without question, any person seeking funding at an inquiry such as this must demonstrate an inability to participate in the inquiry without such funding.

I recognize that the only power I have in this regard is to make recommendations to the municipality. I also recognize, as did former Justice Killeen in the Sarnia Inquiry, the shortcomings of Section 274 of the *Municipal Act* (formerly s. 100).

Having said that, I am mindful that it was the City which decided to request a judicial inquiry. Having made that decision – a decision by way of a resolution that significantly impacts upon the reputation of Peter McCallion – the City must adhere to the procedures established by the Commissioner.

As I indicated earlier, when we last met, I encouraged all counsel seeking funding to attempt to work out a resolution of the funding issues with the City. With the exception of Peter McCallion, it would appear that the issues were resolved satisfactorily.

No agreement was reached with respect to the funding for Peter McCallion, and as I indicated on December 14th, absent such an agreement, I would make a recommendation to City Council.

I fully recognize that public funds are involved here, and I appreciate the political concerns about financial prudence. However, given that the City chose to request an inquiry, in part, into the dealings of Peter McCallion, it must act responsibly and fairly. I refer to the decision of Mr. Justice Binnie as was presented to me by Commission counsel in *Consortium Developments v. Sarnia*:

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.<sup>1</sup>

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<sup>1</sup> *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3 case at paragraph 26:

This is a judicial inquiry and I must ensure complete fairness in the process.

Originally, I had hoped that the evidentiary portion of the Inquiry might have begun March 1st. We are now going to begin May 17th. I recognize, given the volume of documentary evidence, that the March date was unrealistic. I also believe that the Inquiry will be much more focussed if this material is disclosed and reviewed before we commence with the evidence.

The financial information presently put forward by Peter McCallion is of little assistance to me, and I agree with the City's submissions in that regard. I propose that Peter McCallion swear an affidavit with respect to his financial circumstances, and that this affidavit be provided to the Commission. It will not form part of the record.

It will then be the responsibility of Commission Counsel to fully cross-examine Mr. McCallion on his affidavit. I expect all of this to be done by the end of March. This affidavit and the cross-examination transcripts thereupon will then be provided to me in order to assist me in making a funding recommendation to the municipality.

I do not, in any way, consider this to be a reopening of a legislative decision. This is simply the Commissioner doing his job. At all costs, I would like to avoid a judicial review application which could seriously delay this Inquiry. Whether or not such a decision is reviewable would be for the Divisional Court to determine, not me. But, in any event, it would involve a delay, and a significant one.

I also recognize that Mr. McCallion's involvement in the Inquiry would not in any way touch upon the Enersource issue.

Peter McCallion is entitled to fully participate in this Inquiry and, ultimately, I will make a recommendation regarding any funding for this participation. Of course, it will be for the City to accept, reject or modify my recommendation. In arriving at any such decision, however, the City should be mindful of the fact that it put Peter McCallion's dealings at the heart of this Inquiry. There are myriad legal and evidentiary issues confronting Mr. McCallion for which he will need counsel.

As to the involvement of Mr. Woloshyn, the resolution in adopting the City Solicitor's recommendation does not in any way charge Mr. Woloshyn with the responsibility of making funding decisions. His role is to review the accounts as they are submitted to the City and to advise the City accordingly.

Cunningham, J.  
March 4, 2010