



RESOLUTION 0271-2009
adopted by the Council of
The Corporation of the City of Mississauga
at its meeting on November 11, 2009

Moved by: C. Parrish

Seconded by: S. McFadden

WHEREAS Council at its meeting of October 28, 2009 approved Resolution 0234-2009 which contained the terms of reference approved by Council in making its request for a judicial inquiry to be held into the matters set out in that resolution;

AND WHEREAS for reasons set out in the City Solicitor's report to Council dated November 6, 2009 respecting the judicial inquiry and the potential for litigation, Council wishes to amend and reconfirm as amended Resolution 0234-2009, to amend the terms of reference and clarify that the request for a judicial inquiry should focus on the matters set out herein:

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, or 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;

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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") but City Councillors were not aware that WCD had any continuing interest in the subject lands or any claim regarding these lands 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 DeCicco as well as an affidavit from a hotelier, which affidavits referenced meetings with City staff, Mayor McCallion and these principals to discuss the development of the subject site as a hotel and conference centre;

AND WHEREAS 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 an individual he describes as the "Chair of OMERS", with a proposal to acquire the lands and develop them accordingly;

AND WHEREAS the individual referenced is actually the current President and CEO of OMERS, and was also integral to the process by which a negative veto was added to the December 2000 Enersource Shareholders Agreement, to which the City was a party and which was executed by the Mayor, after it was approved by Council and without Council's knowledge of the insertion of the negative veto, which event has never been satisfactorily explained despite several attempts by the Council to obtain this information;

AND WHEREAS at its meeting of September 16, 2009, Council raised several concerns about the proposed City real estate transaction with the Vendors 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;

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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 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 including the events leading up to the sale of ten (10) percent of Enersource Corporation to an OMERS affiliated corporation (Borealis Energy Corporation) and directed the City Solicitor to report back on the parameters as soon as possible;

AND WHEREAS Council at its meeting of September 30, 2009 also considered a report dated September 28, 2009 from the Commissioner of Corporate Services and Treasurer recommending that the Council minutes of May 21, 2008 be amended respecting the WCD matter to delete the reference to the Mayor having declared a conflict of interest because a review of the video recording of the meeting revealed that no such declaration was made during the meeting, and while the report recognized that this error in the minutes was significant it did not provide an explanation as to how it occurred;

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 transactions and matters described in the aforesaid recitals, their history and their impact on the Corporation of 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.

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And it is further resolved that the Commissioner, in conducting the inquiry into the transactions and matters in question to which the Corporation of 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 matters.

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 and matters 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 in the context of the transactions and matters described in the recitals to this resolution; and,
- 3.. to investigate and inquire into whether any existing or former elected or administrative representatives of the Corporation of the City of Mississauga had a direct or indirect personal economic interest, or other conflict of interest or misconduct, that might have influenced their actions in any of the subject transactions or matters described in the recitals to this resolution.

A recorded vote was called with the following results:

	<u>YES</u>	<u>NO</u>
Mayor H. McCallion	Absent due to Declared Conflict of Interest	
Councillor C. Corbasson	X	
Councillor P. Mullin		X
Councillor M. Prentice	Absent	
Councillor F. Dale	X	
Councillor E. Adams	X	
Councillor C. Parrish	X	
Councillor N. Iannicca	X	
Councillor K. Mahoney		X
Councillor P. Saito		X
Councillor S. McFadden	X	
Councillor G. Carlson	X	

Recorded Vote

Carried – (7-3) 1 Absent due to declared Conflict of Interest/1 Absent from meeting