

MISSISSAUGA JUDICIAL INQUIRY

**BEFORE: ASSOCIATE CHIEF
MR. JUSTICE J. DOUGLAS CUNNINGHAM**

**SUBMISSIONS OF OMERS ADMINISTRATION CORPORATION
(PHASE II OF THE INQUIRY: MISSISSAUGA LANDS SALE)**

OMERS STATEMENT OF FACTS

January 26, 2011

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STATEMENT OF FACTS – MISSISSAUGA LANDS SALE

ARTICLE I – BACKGROUND

1.01 OMERS

1. OMERS Administration Corporation (hereinafter “OMERS”) is the administrator of a public sector jointly sponsored pension benefit plan and is one of Canada’s largest pension plans, providing pension services to more than 400,000 active and retired members and 928 employers. OMERS mission is to pay the pensions of OMERS current and future retirees. Everything OMERS does is for the purpose of enabling it to keep its commitment to pay pensions. Pursuant to the *OMERS Act 2006*, OMERS is the trustee of the OMERS pension funds.

Nobrega Chief (M. Barrack) – p. 633

2. OMERS manages \$61 billion in gross investment assets (approximately \$51 billion net) that generate the income necessary to pay pensions. About 70% of pension payments are funded by investment earnings and returns.

Nobrega Chief (M. Barrack) – pp. 634-635

3. The pension plan serves over 900 local government employers in Ontario, including the City of Mississauga (the “City”), the Peel Regional government, the Peel Regional Police Services Board, local school boards and the local Children’s Aid Society.
4. OMERS relationship with the City is as administrator of the pension plans for the City’s employees. The City is a participating employer in the OMERS pension plans. In this capacity, OMERS interacts with the City on a regular basis to carry out its pension administration responsibilities for the City’s employees covered by the pension plans. There are over 20,000 members and retirees who live and work in Mississauga.

5. OMERS also has significant investments in Mississauga including a major investment in Square One Mall (since 1998), a major investment in Enersource (since 2000) and an investment in a nursing home.

Nobrega Chief (M. Barrack) – pp. 632-637

1.02 The Lands

6. OMERS subsidiary, OMERS Realty Management Corporation (“**Oxford**”) owned approximately 130 acres of land in the Mississauga City Centre bounded by Burnhamthorpe Road on the south and Hurontario Street on the east. Oxford owned the land in co-ownership with 1331430 Ontario Inc. (“**133**”), a subsidiary of Alberta Investment Management (“**AIM**”) (together, the “**Co-Owners**”). AIM is the public service pension fund in Alberta. 133 later became 156 Square One Limited (“**156**”).
7. Of the 130 acres owned by Oxford and AIM in the Mississauga City Centre, 89 acres are occupied by the Square One Shopping Centre (“**Square One**”) and adjacent shopping centre parking.

Exhibit 96 - Mississauga City Centre Land Holdings

8. The lands which are the subject matter of the sale agreements discussed below comprise two blocks consisting of 8.55 acres of vacant land immediately west of Square One and north of the Mississauga Living Arts Centre (the “**Lands**”). The Lands are designated as Blocks 6 (sometimes referred to as Block 9) and 7 (sometimes referred to as Block 29).

Exhibit 96 - Mississauga City Centre Land Holdings

9. The southerly portion of the Lands (Block 6) was the City’s desired location for a full service four- or five-star hotel and convention centre. Oxford was aware that Mississauga Mayor Hazel McCallion (the “**Mayor**”) wanted a luxury hotel built in the Mississauga City Centre to enhance the City’s profile and draw visitors (business and tourists) to the City Centre.

Exhibit 96 - Mississauga City Centre Land Holdings

10. The ownership of the Lands was governed by a Co-Ownership Agreement between OMERS and AIM. The Lands were managed by Oxford for the Co-Owners pursuant to a Property Management Agreement. Oxford had day-to-day management of the Co-Owners' portfolio of assets. All material decisions were required to be unanimous.

Lusk Cross (D. Jack) – pp. 1753-1754

11. The primary asset of the Co-Owners in the City Centre was their \$800-million investment in Square One. Any development of the Lands had to compliment Square One and further the Co-Owners' strategic goal of long-term value creation for Square One.

Lusk Cross (J. Finnigan) – pp. 1751-1752

1.03 OMERS Relationship with the City

12. In the City's Official Plan which came into force in 2003 (the "**Official Plan**"), the long-term vision for the City was to create a true, robust downtown. The Official Plan called for the development of a more traditional downtown – a mixed-use development with offices, retail stores, and housing. To reach this goal, City Hall, the central library, the YMCA, and the Living Arts Centre were moved to the City's core. The missing links included a hotel and convention centre which would bring the tourists downtown.

Sajeki Chief (N. Loewith) – pp. 1384-1387

Sajeki Cross (F. Kristjanson) – pp. 1422-1424

13. OMERS and AIM were familiar with the City's goal to create an urban, downtown environment. It was also common knowledge that the City was interested in having a hotel in its core. The Co-Owners understood that it was in their interest to maintain and foster good relations with City Staff and the Mayor. The Co-Owners were willing to help the City realize on its vision for a luxury hotel/convention facility in the City Centre as it was complimentary to the Co-Owners strategic goal of value creation for Square One.

Dal Bello Cross (L. Ritacca) – pp. 2301-2304

Dal Bello Cross (L. Rothstein) – pp. 2316-2317

Dal Bello Cross (E. McIntyre) – pp. 2339-2342

Nobrega Chief (W. McDowell) – p. 3199

Nobrega Cross (F. Kristjanson) – pp. 3351-3353

De Bever Cross (F. Kristjanson) – pp. 4305, 4308-4309

Exhibit 258 – October 4, 2005 e-mail

14. OMERS and AIM's mandates were to make prudent commercial investments that financially benefit the capital pools. Any support for the Mayor's vision for a luxury hotel/convention facility was secondary to the capital pools' commercial considerations.

De Bever Cross (F. Kristjanson) – pp. 4306-4307

15. The World Class Developments' ("WCD") transaction with the Co-Owners envisioned a hotel near the Living Arts Centre as part of the overall development scheme.

Nobrega Chief (W. McDowell) – p. 3199

Nobrega Cross (F. Kristjanson) – pp. 3351-3353

Kitt Cross (L. Ritacca) – pp. 4109-4110

Exhibit 258 – October 4, 2005 e-mail

16. Mayor McCallion is Canada's longest serving Mayor. She is an effective, assertive and outspoken promoter of Mississauga's interests.

Nobrega Cross (F. Kristjanson) – p. 3353

17. Maintaining and promoting good relations with Mississauga included taking the Mayor's calls and meeting with her at her request. To the extent the Co-Owners could assist the City in achieving its development goals, that was regarded as good business for the Co-Owners. The proposed hotel and residential condo development was accretive to the value of Square One and since it also met one of the City's major development goals it was a good project for the Co-Owners to support.

Lusk Cross (J. Finnigan) – p. 1747

Latimer Cross (D. Jack) – pp. 2249-2250

DeBever Cross (M. Barrack) – pp. 4342-4347

Exhibit 258 – October 4, 2005 e-mail

ARTICLE II – THE AGREEMENT WITH WCD

18. In the fall of 2005 the Mayor was pressing Oxford to sell the Lands to a development group known to the Mayor who was willing to build a luxury hotel in the City Centre. The Mayor dealt directly with Paul Haggis, who was the president and CEO of OMERS. Michael Latimer, the President and Chief Executive Officer of Oxford at the time, indicated that Oxford was willing to address the Mayor's concerns provided that it was in the interests of Oxford's stakeholders to do so.

Exhibit 261 – Email Re: Hazel and Oxford

19. There is evidence that Peter McCallion approached Michael Nobrega with the hotel concept sometime in 2005. Mr. Nobrega was the President and Chief Executive Officer of Borealis Infrastructure, OMERS infrastructure investing arm, at the time. Mr. Nobrega referred Mr. McCallion to Oxford's real estate development group which reported to Mr. Latimer.

Nobrega Cross (C. Lax) – pp. 3245-3248

Exhibit 212 – McCallion Affidavit sworn August 24, 2009

20. OMERS position on the development of the Lands was best expressed by Mr. Latimer in his e-mail of October 4, 2005 (Exhibit 258), as follows:

“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 on 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.

We have no intention to frustrate the Mayor, nor frankly would it be in our best interest as you would expect given our investments in Mississauga, we have resources devoted to the issue and hopefully we can bring this to a soft landing but not to the detriment of our stakeholders.”

Latimer Cross (D. Jack) – pp. 2249-2250

Exhibit 258 – October 4, 2005 e-mail

21. Throughout all of the Co-Owners’ dealings with WCD for the: (i) negotiation of the Agreement of Purchase and Sale (“APS”); (ii) amendments to the APS; (iii) extensions to the APS; and (iv) the termination of the APS, the Co-Owners pursued their own interests on reasonable commercial terms consistent with the viewed expressed in Mr. Latimer’s e-mail above. The Co-Owners were never asked to give special treatment to WCD by virtue of Peter McCallion’s involvement and they did not do so.

Nobrega Cross (F. Kirstjanson) – pp. 3349-3351, 3353-3357

Mayor Chief (W. McDowell) – pp. 5058-5061

Mayor Cross (C. Lax) – pp. 5283-5284

Exhibit 258 – October 4, 2005 e-mail

22. The Mayor played a role in the decision of the Co-Owners to sell the Lands to WCD, but once the project was proposed the Co-Owners did their due diligence and satisfied themselves that the project had merit in relation to the Square One asset. The Co-Owners followed their usual process for internal review and approval and negotiated commercial terms that protected their interests.

Costin Cross (L. Rothstein) – pp. 1509-1511

Costin Cross (M. Barrack) – pp. 1584-1585

Lusk Cross (L. Rothstein) – pp. 1711-1715, 1720-1722

Latimer Chief (W. McDowell) – pp. 2199-2202

23. Despite numerous interventions by the Mayor seeking concessions for WCD, the Co-Owners acted in accordance with their legal obligations under the APS and their own self-interest. The Co-Owners decided to terminate the APS in December 2008 over the

objections of WCD and considerable efforts by the Mayor to keep the hotel prospect alive.

Dal Bello Chief (W. McDowell) – pp. 2281-2294

Kitt Chief (N. Loewith) – pp. 4061-4066

Exhibit 117 – Termination of APS

Exhibit 275 – WCD Update Memorandum from John Filipetti

Exhibit 299 – Handwritten note of Mr. Dal Bello dated January 1, 2009

2.01 The Initial Discussions

24. In December 2005, Oxford entered into discussions with WCD who, at that time, was led by Murray Cook.

Latimer Chief (W. McDowell) – pp. 2204-2205

Cook Cross (C. Lax) – pp. 4529-4533

Exhibit 260 – December 12, 2005 Letter

Exhibit 284 – January 31, 2007 Report

25. Mr. Cook was known to Ken Lusk, who was with Hawthorne Realty Advisors, AIM's asset manager in Ontario. Mr. Lusk knew of Mr. Cook when Mr. Cook was a senior executive at Inducon Development Corporation and later when he was running the Deerhurst Resort in Muskoka.

Lusk Chief (W. McDowell) – pp. 1663-1664

26. Mr. Lusk met with Mr. Cook about the hotel development in March 2006. Mr. Lusk did not have any concerns about Mr. Cook's capabilities as a hotel developer but saw the real issue as whether WCD could find an investor. Mr. Lusk shared his positive assessment of Mr. Cook with Oxford several times. Dean Hansen of AIM testified that AIM had confidence in Mr. Cook and believed he could 'deliver the deal'.

Lusk Chief (W. McDowell) – pp. 1668-1669

Hansen Chief (N. Loewith) – pp. 2406-2407

27. Mr. McCallion's involvement with the proposed transaction as an agent was known to AIM from the outset and did not cause AIM any concern as they were not compensating him. AIM did not know how much Mr. McCallion was going to be paid and did not ask. AIM had no hesitation in dealing with the Mayor notwithstanding her son's involvement in the project.

Lusk Chief – pp. 1669-1670

Lusk Cross (L. Ritacca) – pp. 1707-1708

Lusk Cross (J. Finnigan) – pp. 1746-1747

Dal Bello Chief (W. McDowell) – pp. 2277-2278

Dal Bello Cross (L. Ritacca) – pp. 2305-2310

Dal Bello Cross (E. McIntyre) – pp. 2343-2374

28. AIM realized the value of trying to accommodate the City's needs and the importance of developing good relations with the City. In Exhibit 156, a Memorandum dated May 1, 2006 from Mr. Lusk to Mr. Dal Bello, Mr. Lusk wrote "...The City Centre needs a hotel, and the Mayor wants one desperately. Accordingly, we should be able to leverage our willingness to sell the property with the Mayor and the City with outstanding development issues we want addressed."

Lusk Cross (J. Finnigan) – p. 1747

Exhibit 156 – May 1, 2006 Memorandum

29. Mr. Dal Bello admitted on cross-examination that cooperating with the City in order to obtain leverage on other outstanding development issues was part of the rationale for recommending the sale of the Lands to WCD. Mr. Dal Bello further acknowledged the importance of maintaining good relations with the City.

Dal Bello Cross (M. Barrack) – p. 2384

30. The negotiations with WCD were difficult and protracted. Oxford wanted to ensure that WCD would be bound to build a suitable four-star or better hotel before commencing construction of the residential condominiums on the site. Oxford understood that residential condominiums were more profitable for WCD to construct and sell, however the use of the parcel for the construction of a luxury hotel was the *raison d'être* for the decision to sell to WCD.

Latimer Chief (W. McDowell) – pp. 2200-2202

Latimer Cross (L. Rothstein) – pp. 2243-2244

31. No other developer expressed an interest in the Lands. It was in the commercial interests of the Co-Owners to develop the Lands, having regard to their Square One investment, rather than leave the Lands vacant.

Lusk Cross (J. Finnigan) – pp. 1751-1752

Latimer Chief (W. McDowell) – pp. 2200-2202

Latimer Cross (L. Rothstein) – pp. 2243-2244

Mayor Chief (E. McIntyre) – p. 4868

32. The Co-Owners understood from the outset that the construction of a luxury hotel in the City Centre was a challenging project. The hotel combined with residential condominiums could be made to work for a developer trying to develop and finance the project. The Co-Owners recognized synergies between the proposed hotel and Square One that could enhance the long-term value of Square One. The Co-Owners negotiated a market sale price and protected themselves on the use of the Lands by strong conditions requiring construction of the hotel to the Co-Owners' specifications before construction of the residential component of the project.

Costin Chief (W. McDowell) – pp. 1437-1439

Costin Cross-Exam (L. Rothstein) – pp. 1509-1511

Exhibit 97 – Agreement of Purchase and Sale

33. AIM advocated for coming to an agreement with WCD. Mr. Lusk met with Mayor McCallion in March 2006 and understood her strong desire to have an agreement concluded for the construction of the hotel. In a phone call in October 2006 with Mr. Lusk, the Mayor expressed her deep frustration with the Co-Owners' failure to finalize a sale transaction so that the Lands could be developed more quickly.

Lusk Chief (W. McDowell) – pp. 1667-1669

Lusk Cross (E. McIntyre) – pp. 1740-1742

De Bever Cross (M. Barrack) – pp. 4347-4348, 4351-4352

Exhibit 162 – E-mail from Mr. Lusk to Mr. Peddicord, October 20, 2006

Exhibit 644 – Handwritten notes of Mr. Hansen, July 16, 2008

34. The length of the negotiations and Oxford's position on the terms required to secure construction of the hotel became sources of irritation between AIM and Oxford in 2006. AIM wanted to accommodate the Mayor's desire for a luxury hotel in the City Centre and wanted the negotiations to proceed more quickly and with less onerous terms for WCD.

Costin Chief (W. McDowell) – pp. 1431-1432

Costin Cross (T. Wynne) – pp. 1504-1505

Lusk Cross (L. Rothstein) – pp. 1711-1715

Latimer Chief (W. McDowell) – pp. 2204-2205

Latimer Cross (E. McIntyre) – p. 2232

Latimer Cross (L. Rothstein) – p. 2244

35. Both Oxford and AIM understood that Peter McCallion was a real estate agent representing WCD in the transaction and that Mr. McCallion's fee, in any event, would be WCD's responsibility. The APS specifically stated that the Co-Owners had no responsibility for paying any agents' fees.

Dal Bello Chief (W. McDowell) – pp. 2277-2278

Dal Bello Cross (L. Ritacca) – pp. 2305-2310

Dal Bello Cross (E. McIntyre) – pp. 2343-2374

Kitt Chief (N. Loewith) – pp. 4014-4015

36. Peter McCallion was not a significant participant in the discussions with the Co-Owners or the City for development of the Lands. Mr. McCallion’s role with WCD, however, will be discussed further below.
37. From the initiation of discussions in 2005 through to approximately the end of 2007, Mr. Cook led the initiative for WCD.

DeCicco Chief (L. Rothstein) – pp. 3552-3553

DeCicco Cross (E. McIntyre) – pp. 3941-3942

Cook Chief – pp. 4462-4463, 4466

38. The protracted negotiations ended with the signing of the APS on January 31, 2007. The Co-Owners agreed to sell the Lands to WCD for a purchase price of \$14,492,250 (exclusive of GST).

Costin Cross-Exam (M. Barrack) – pp. 1574-1577

Cook Chief – pp. 4456-4458

Exhibit 97 – Agreement of Purchase and Sale

39. The Co-Owners’ obligation to complete the APS was subject to certain conditions relevant to ensuring the project would benefit Square One, including a condition requiring WCD to provide evidence satisfactory to the Co-Owners that WCD had entered into a Management Agreement for a hotel with a four-star or better operator. “Hotel” was defined to mean “a four-star hotel having convention facilities and having no fewer than 200 rooms to be operated by an international hotel brand and having full service guest amenities, including a full service restaurant, a fitness facility and room service on the hotel site.” The APS contained extensive provisions requiring the construction of the hotel before construction of the high rise residential towers, as well as buy-back rights if the hotel was not built.

Costin Chief (W. McDowell) – pp. 1433-1437

Costin Cross-Exam (L. Rothstein) – pp. 1511-1512, 1514-1515, 1521

Costin Cross-Exam (M. Barrack) – pp. 1574-1577

Exhibit 97 – Agreement of Purchase and Sale

40. Following execution of the APS, the Co-Owners were bound by the rights and obligations contained in the APS, including extension rights available to WCD.

Lusk Cross (J. Finnigan) – pp. 1749-1750

2.02 Early 2008 – WCD Ownership Change and Requests for Amendments

41. In February 2008, WCD sought extensive amendments to the hotel provisions of the APS. WCD wanted the hotel conditions deleted or significantly relaxed.

Costin Chief (W. McDowell) – pp. 1443-1446

Exhibit 98 – February 28, 2008 Memorandum

42. In March 2008, Oxford learned for the first time that there had been a change of control at WCD. Mr. Cook had left the company and Anthony (Tony) DeCicco was the new principal. The change in management did not trigger any contractual rights in favour of the Co-Owners. They were bound to accept the change in management. The Co-Owners could not refuse to proceed with the APS because Mr. DeCicco was now in charge. The Mayor vouched for Mr. DeCicco and told Oxford that she believed he could execute the project.

Lusk Cross (E. McIntyre) – pp. 1738-1740

Latimer Chief (W. McDowell) – pp. 2204-2205

Latimer Cross (E. McIntyre) – p. 2232

Latimer Cross (L. Rothstein) – p. 2244

DeCicco Cross (E. McIntyre) – pp. 3942-3943

Kitt Chief (N. Loewith) - pp. 4004-4007

Kitt Cross (C. Lax) – pp. 4092-4096

Exhibit 284 – January 31, 2007 Report

43. The Mayor intervened on WCD's behalf in a number of meetings and telephone discussions with senior Oxford officials between March and July 2008. The Mayor supported WCD's requests that the hotel conditions be relaxed and that WCD be given more time to meet its obligations. Oxford kept AIM informed of all the discussions with WCD and the Mayor.

Kitt Chief (N. Loewith) – pp. 4017- 4019, 4021-4024, 4029-4030, 4041-4051

Kitt Cross (F. Kristjanson) – pp. 4165-4169

Exhibit 285 – July 9, 2008 e-mail

Exhibit 423 – November 21, 2008 e-mail

Exhibit 491 – December 2, 2008 e-mail

44. The Co-Owners understood that the Mayor's support for WCD was consistent with her longstanding goal for a luxury hotel and a vibrant City Centre.

DeBever Cross (F. Kristjanson) pp. 4306-4307

45. The Co-Owners understood that the hotel conditions of the APS resulted in some economic inefficiencies for WCD. The Co-Owners believed the hotel project had merit and wanted to provide WCD with the opportunity to succeed. Within reason the Co-Owners were motivated to accommodate the Mayor's request for reasonable relief to WCD from strict compliance with the APS. A successful hotel and condo development would be good for Square One.

Lusk Chief (W. McDowell) – p. 1662

Latimer Chief (W. McDowell) – pp. 2201-2203

Dal Bello Chief (W. McDowell) – pp. 2276-2277

Dal Bello Cross (E. McIntyre) – pp. 2349-2350, 2359-2365

Kitt Cross (F. Kristjanson) – pp. 4163-4165, 4172-4176

46. Between March and July there were extensive negotiations between Oxford and WCD over possible amendments to the APS. The Co-Owners also understood that market conditions were deteriorating in 2008 making the hotel project much more challenging.

Costin Chief (W. McDowell) – pp. 1447-1457

Costin Cross-Exam (L. Rothstein) – pp. 1517-1519, 1525-1528

Costin Cross-Exam (M. Barrack) – pp. 1583, 1585-1587

Exhibit 99 – April 1, 2008 letter

Exhibit 100 – April 23, 2008 letter

Exhibit 101 – April 29, 2008 letter

Exhibit 102 – April 29 voicemail message

Exhibit 103 – May 8, 2008 letter

Exhibit 105 – Amending Agreement

47. On July 31, 2008, an Amending Agreement (the “**Amending Agreement**”) was signed:
- (a) to give WCD the right to extend the condition date three times for 60 days each time for a non-refundable fee of \$125,000 per extension; and
 - (b) to amend the hotel provisions to deal with some (but not all) of WCD’s concerns. In particular, there was a prohibition on building on Block 29 (the northern block) until a four-star hotel operated by an international hotel brand was completed on Block 9, the provision of a \$2.5 million letter of credit cashable by Oxford if the hotel was not substantially completed within 55 months, and a buy-back of Block 29 if hotel construction was not commenced within 24 months of closing.

Costin Chief (W. McDowell) – pp. 1456-1457

Costin Cross (L. Rothstein) – pp. 1517, 1525-1528

Costin Cross (M. Barrack) – pp. 1583, 1585-1587

Exhibit 105 – Amending Agreement

48. Starting in July 2008, Oxford's counsel began a series of correspondence with WCD's counsel concerning compliance with the hotel condition. There was disagreement over WCD's compliance with the hotel condition.

Kitt Chief (N. Loewith) – pp. 4026-4028, 4031-4032

Kitt Cross (L. Ritacca) –p. 4114

Kitt Cross (F. Kristjanson) – p. 4163

Exhibit 423 – November 21, 2008 e-mail

Exhibit 432 – July 9, 2008 e-mails

49. Through the summer and fall of 2008, the Co-Owners became increasingly concerned about WCD's willingness and ability to meet the hotel condition in the Amending Agreement. The global financial crisis made financing the project more difficult. Further, it did not appear to the Co-Owners that WCD was making any material progress in securing a four-star hotel operator.

Nobrega Cross (F. Kristjanson) – pp. 3359-3363

Kitt Chief (N. Loewith) – pp. 4031-4032

Kitt Cross (L. Ritacca) – p. 4114

Kitt Cross (F. Kristjanson) – p. 4163

Exhibit 432 – November 21, 2008 email

50. In October 2008, WCD sought further amendments to the APS due to the "economic chaos we find ourselves in". By letter dated October 17, 2008 (delivered by Peter McCallion on October 23, 2008) Mr. DeCicco sought a waiver of the condition requiring WCD to provide evidence of a management agreement with the hotel operator and relief from other purchasers' covenants including the requirement to provide a \$2.5 million letter credit to secure WCD's obligation to build the hotel.

Exhibit 245 – October 17, 2008 letter

Exhibit 247 – October 24, 2008 e-mail

Exhibit 262 – October 24, 2008 e-mail

51. Oxford considered WCD's request for further relief from the hotel condition and solicited the views of AIM and the City. Rather than reject this proposal out of hand, AIM wanted to determine what the Mayor's view was. AIM's representatives commented that no one had "spoken to the City to take the pulse of the Mayor." It was urged that the City's point of view should be determined before AIM took a position. Mr. Dal Bello pointed out that this was consistent with AIM's attempt to maintain good relations with the City.

Dal Bello Cross (M. Barrak) – pp. 2385-2389

Kitt Chief (N. Loewith) – pp. 4034-3037

Exhibit 245 – October 17, 2008 letter

Exhibit 490 – October 24, 2008 e-mail

52. The Mayor continued to support WCD's development efforts and encouraged Oxford and AIM to extend and/or relax the hotel condition in the APS. There were a series of meetings and telephone discussions through November and December in which the Mayor encouraged the vendors to grant relief to WCD. The Mayor wanted to keep the prospect of a hotel in the City Centre alive pending improved market conditions for the financing and construction of the project.

Latimer Chief (W. McDowell) – p. 2206

Latimer Cross (L. Rothstein) – p. 2245

De Bever Chief (W. McDowell) – pp. 4283-4284

Mayor Chief (E. McIntyre) – pp. 4921-4926

Mayor Chief (W. McDowell) – pp. 5164-5166, 5175-5177

Mayor Cross (D. Jack) – pp. 5323-5333

Mayor Cross (L. Ritacca) – pp. 5447-5452

Exhibit 273 – December 2, 2008 e-mail

53. On December 2, 2008, Mr. DeCicco informed Mr. Phillipetti of Oxford by telephone that due to "unprecedented" economic conditions he had been unable to obtain a commitment

from the hotel operator, but remained committed to the deal. Mr. DeCicco again sought a waiver of the hotel condition.

Nobrega Cross (C. Lax) – pp. 3272-3277

Exhibit 310 – December 2, 2008 e-mail

Exhibit 470 – December 1, 2008 e-mail

54. On December 5, 2008, Dean Hansen of AIM noted that the Mayor wished to meet with all parties, including Michael Nobrega, Michael Kitt and the purchasers, the following week. He further noted that “Peter McCallion has an interest in [the] development” and that issues involved were “more political” due to Michael Nobrega’s service on the same board as the Mayor at Enersource, a separate OMERS investment in Mississauga.

Exhibit 295 – D. Hansen Notes re Block 6 & 7, December 5, 2008

55. In an e-mail from John Filipetti to Michael Kitt dated December 8, 2008, the position of AIM was summarized, “It seems it would help AIM if Peter McCallion stayed out of the discussions and wrote a letter declaring that he is doing so.” AIM did not express any concern with Peter McCallion having an economic interest. Only that he stay out of the discussions.

Exhibit 244 – December 8, 2008 e-mail

56. AIM believed that the City had ‘bullied’ the vendors into the sale in the first place and was bullying them again to sell on a much weaker promise of a future hotel from WCD. On December 11, 2008, AIM informed Oxford that it did not want to revise or extend the APS. However, AIM’s willingness to placate the Mayor continued through this time. As recorded in Mr. Filipetti’s memo (Exhibit 143), AIM was “uncomfortable with the involvement of Peter McCallion as an apparent principal of WCD” but at the same time AIM’s position was “As a concession to the Mayor, AIM will support a designation of part of the lands for hotel use only to preserve the potential for future hotel development.” Therefore, despite concerns that Peter McCallion may be a principal of WCD, AIM was still willing to make concessions to the Mayor.

Dal Bello Chief (W. McDowell) – pp. 2288-2290

Dal Bello Cross (L. Ritacca) – pp. 2312-2315

Dal Bello Re-Direct (W. McDowell) – pp. 2394

Mayor Chief (E. McIntyre) – pp. 4947-4949

Mayor Chief (W. McDowell) – pp. 5186-5190

Exhibit 143 – December 11, 2008 memo (with handwritten notes)

Exhibit 275 – December 11, 2008 memo

57. The Mayor spoke by telephone with Michael Kitt on December 11th and with Michael Nobrega on December 14th. The Mayor continued to advocate for concessions for WCD.

Exhibit 493 - Email Chain December 11, 2008 From Kitt To Filipetti RE: Tony Called

58. Despite AIM's expressed concern in the December 11th memo (Exhibit 143) that Peter McCallion was an apparent principal of WCD, this concern was not raised with the Mayor when she called Mr. Dal Bello to "work him over" on December 15th.

Dal Bello Chief (W. McDowell) – p. 2287

Mayor Cross (M. Barrack) – p. 5403

59. In that conversation, the Mayor accused AIM of not being good corporate citizens for not extending the WCD transaction. Mr. Dal Bello, despite this exchange, did not at any point in his conversation with the Mayor express any concern about her son's involvement in the WCD transaction.

Dal Bello Cross (L. Ritacca) – p. 2312

60. Instead of raising the issue with the Mayor directly, AIM relied on Michael Kitt of Oxford to raise the issue of Mr. McCallion's involvement at the meeting which occurred on the same day as the Mayor's conversation with Mr. Dal Bello. While no one, including Mr. Kitt, recalled the exact wording of the question, it is reasonable to assume that he was conveying AIM's request that Mr. McCallion stay out of the discussions.

This would explain a response that “He is off the file.” Neither the question nor the answer address the issue of whether Peter McCallion was “an apparent principal” of WCD.

Dal Bello Cross (L. Ritacca) – p. 2311

Kitt Chief (N. Loewith) – pp. 4061-4062, 4064-4066

De Bever Cross (M. Barrack) – pp. 4367-4370

Exhibit 244 – December 8, 2008 e-mail

61. On December 15, 2008, Mr. DeCicco, Mr. Kitt and the Mayor met to discuss further amending the APS. In response to concerns raised by AIM about Peter McCallion’s role in the project. Mr. Kitt testified that the Mayor told him that ‘Peter is off the file’. Mr. Kitt advised Mr. DeCicco and the Mayor that the vendors intended to terminate the APS. While the Mayor did not agree she made the statement that Peter McCallion was off the file, she did agree that it was consistent with her view that the transaction had been terminated and as an agent, he would have no further involvement in the file. The statement is entirely consistent with her belief at the time.

DeCicco Cross (J. Finnigan) – pp. 3927-3931

DeCicco Commission Questions (D. Cunningham) – pp. 3975-3976

Mayor Cross (M. Barrack) – pp. 5412-5421

62. On a December 16th conference call with AIM, Mr. Kitt told the participants that the Mayor said that Peter McCallion was off the file.

Kitt Chief (N. Loewith) – pp. 4060-4065

Kitt Cross (D. Jack) – pp. 4125, 4129-4134

Kitt Cross (F. Kristjanson) – pp. 4154-4160

Exhibit 141 – December 16, 2008 Handwritten Notes

63. Oxford and WCD exchanged legal letters asserting their positions over compliance with the hotel conditions.

**Exhibit 576 - Email dated 30th January, 2008 From John Filipetti to Michael Kitt -
RE: Sq 1 – Sheridan**

64. WCD did not provide the Co-Owners with a signed hotel management agreement with a four-star brand. The unresolved disagreement regarding compliance with the APS ultimately led to the Co-Owners' termination of the APS on January 9, 2009 for WCD's failure to meet the conditions.

Exhibit 117 – Termination of Agreement of Purchase and Sale

65. By the time the APS was terminated there had been nine extensions granted to WCD to satisfy its conditions as follows:

- (a) January 16, 2008 for 120 days to May 20, 2008;

Costin Chief (W. McDowell) – pp. 1440-1443

Exhibit 610 – January 16, 2008 email

- (b) May 20 for 30 days to June 26;

- (c) June 20 for 32 days to July 28;

- (d) July 28 for 3 days to July 31;

- (e) July 31 for 60 days to September 30;

Exhibit 131 – July 31, 2008 letter

- (f) September 24 for 60 days to November 28;

Costin Chief (W. McDowell) – pp. 1457-1460

Exhibit 106 – July 14, 2008 e-mail

Exhibit 107 – September 24, 2008 letter

Exhibit 108 – September 26, 2008 letter

Exhibit 109 – Draft Hotel Project Management Agreement

Exhibit 133 – August 6, 2008 letter

- (g) November 28 for 14 days to December 12;

Exhibit 112 – November 28, 2008 email

(h) December 12 for 7 days to December 19; and

Exhibit 495 – December 15, 2008 email

(i) December 16 for 21 days to January 9, 2009.

Exhibit 145 – December 16, 2008 letter

66. WCD had been allowed almost 24 months to satisfy the hotel conditions but was unable to do so.

67. There was a further exchange of legal letters between the parties. WCD refused to accept the termination of APS.

Exhibit 120 - Purchase and Sale Agreement re Block 29, Plan 43M-1010, Mississauga, ON

Exhibit 121 - Purchase and Sale Agreement re Block 29, Plan 43M-1010, Mississauga, ON

68. On January 12, 2009, Mr. Kitt and Mr. Phillipetti of Oxford and Michael DalBello of AIM met with the Mayor and informed her that the vendors had terminated the APS. The Mayor was disappointed but understood the decision.

Kitt Chief (N. Loewith) – pp. 4065-4067

Kitt Cross (F. Kristjanson) – pp. 4177-4179

2.03 Co-Owners' Understanding of Peter McCallion's Role

69. AIM and OMERS each understood that Peter McCallion was the purchaser's real estate agent and that he would be paid by WCD on the successful completion of the sale.

Costin Cross (D. Jack) – pp. 1554-1569

McCallion Cross (E. McIntyre) – pp. 2148-2149, 2152-2153

McCallion Re-cross (W. McDowell) – pp. 2183-2184

McCallion Cross (C. Lax) – pp. 1973-1975

Latimer Chief (W. McDowell) – pp. 2196-2198

Latimer Cross (L. Ritacca) – pp. 2237-2239

70. Peter McCallion never played a lead or even an active role in the negotiation of the APS. The sale negotiations were handled almost exclusively by Mr. Cook and counsel. After entering into the APS on January 30, 2007, Mr. Cook took the lead in dealing with the City to develop the project. After Mr. Cook's departure, Mr. DeCicco took the lead in all negotiations with the City and the Co-Owners.

DeCicco Chief (L. Rothstein) – pp. 3552-3553

DeCicco Cross (E. McIntyre) – pp. 3941-3942

Cook Chief (N. Loewith) – pp. 44603-44604, 4462-4463, 4466

71. Peter McCallion attended some meetings with the City and the Co-Owners, but as far as the Co-Owners were concerned was never the directing mind of WCD.

Latimer Chief (W. McDowell) – pp. 2196-2198

Latimer Cross (L. Ritacca) – pp. 2237-2239

De Bever Chief (W. McDowell) – p. 4282

De Bever Cross (M. Barrack) – pp. 4340-4341

72. Peter McCallion was never seen by the Co-Owners (or even WCD) as an important player in the sale transaction or the development of the Lands. Mr. McCallion was viewed as a fringe player in the development. The Co-Owners did not view Mr. McCallion as having the structuring, financing, development or management skill required to lead this development.

Latimer Chief (W. McDowell) – pp. 2196-2198

DeCicco Chief (L. Rothstein) – pp. 3576-3578

DeCicco Cross (E. McIntyre) p. 3945

Kitt Chief (N. Loewith) – pp. 4051-4052

Kitt Cross (F. Kristjanson) pp. 4172-4176

Exhibit 143 – December 11, 2008 memo

Exhibit 244 – December 8, 2008 email

73. Mr. Sajecki understood Mr. McCallion was a real estate agent in charge of putting together the agreement of purchase and sale with OMERS/Oxford. It was not unusual for a real estate agent to meet with Mr. Sajecki's team. Mr. Sajecki's staff were aware of Peter McCallion's involvement in meetings between WCD and the City. However, Mr. Sajecki did not have any serious concern about Mr. McCallion's involvement because Mr. McCallion seldom spoke. Mr. McCallion never asked for special treatment because of his relationship with the mayor. Mr. Sajecki was concerned about the optics of the situation and he ensured his staff treated Mr. McCallion like all other real estate agents.

Sajecki Chief (N. Loewith) – pp. 2750-2752

Sajecki Cross (B. Gover) – pp. 2786-2790

Sajecki Cross (E. McIntyre) – p. 2800

74. The Co-Owners believed that Peter McCallion's financial interest in the project was indirect and contingent on completion of the sale. The Co-Owners were satisfied that the commercial terms of the APS advanced and protected their interests and did not concern themselves with the particulars of Mr. McCallion's compensation arrangement with WCD. The Co-Owners had no objections to Peter McCallion earning his living as a real estate agent. The Co-Owners were never asked by the Mayor to give WCD special consideration because of Mr. McCallion's role and did not do so. Nor does it appear that WCD received any special consideration from the City due to Peter McCallion's involvement.

Latimer Chief (W. McDowell) – pp. 2196-2198

Latimer Cross (L. Ritacca) – pp. 2237-2239

DeBever Cross (M. Barrack) – pp. 4349-4350

75. The Co-Owners did not object to or question Mayor McCallion's advocacy for the hotel deal in light of Peter McCallion's pecuniary interest as a real estate agent. As far as the Co-Owners were concerned, the Mayor was doing her job in advocating for a

development project which she believed was in Mississauga's interests and which had been identified in the Official Plan as a desired service for the City Centre.

De Bever Cross (M. Barrack) pp. 4334-4337

76. There were no policies or procedures at OMERS, AIM or the City that prohibited dealing with the Mayor to discuss the project in circumstances where her son had a contingent, indirect financial interest as real estate agent. As long as the terms with WCD were reasonable commercial terms and no special treatment was sought due to Peter McCallion's role, the Co-Owners did not perceive a problem. It was just another issue to be managed.

Kitt Chief (N. Loewith) – pp. 4060-4065

Kitt Cross (D. Jack) – pp. 4125, 4129-4134

Kitt Cross (F. Kristjanson) – pp. 4154-4160

De Bever Cross (M. Barrack) pp. 4334-4337, 4351-4352

Exhibit 141 – December 16, 2008 handwritten notes

Exhibit 244 – December 8, 2008 e-mail

Exhibit 644 – Handwritten notes of Mr. Hansen July 16, 2008

77. There was no legal (or other) obligation on the Co-Owners to report the Mayor's conduct, refuse to deal with the Mayor or otherwise restrict the Co-Owners' dealings with the Mayor. In any event, even if the Co-Owners had wanted to express a concern, there was no mechanism in the City of Mississauga (such as an Integrity Commissioner) to do so and complaining could have undermined the contract with WCD.
78. From the evidence, there appears to be considerable confusion over Peter McCallion's true role in WCD. Peter McCallion testified that he believed he was a real estate agent for the purchaser. However, certain documents produced at the Inquiry, including the Declaration of Trust, suggests that he may have had first a majority and then a minority beneficial interest in WCD. Mayor McCallion testified that she thought that her son was

representing Mr. Couprie's interest as an investor in WCD. The Co-Owners thought he was WCD's agent.

Mayor Chief (E. McIntyre) – pp. 4827-4829

Mayor Chief (W. McDowell) – p. 5093

Mayor Cross (C. Lax) – pp. 5258-5260

Mayor Cross (L. Ritacca) – pp. 5436-5438, 5440-5441

79. The true nature of Peter McCallion's role was confused by his delivery of a WCD business card bearing his name to Oxford on October 23, 2008 with the letter from Tony DeCicco seeking further amendments to the APS. The business card was regarded by John Filipetti at Oxford as mildly puzzling and raised a concern that Peter McCallion's role may have been something other than as a real estate agent.

De Bever Cross (M. Barrack) – pp. 4367-4370

Exhibit 244 – Mr. Filipetti email to Mr. Kitt, December 8 2008

Exhibit 723 – Will Say of John Filipetti

80. With increasing pressure from Mayor McCallion and WCD in November and December of 2008 to amend or extend the APS, AIM in particular became more concerned over the optics of Mayor McCallion's lobbying for WCD. Unknown to both AIM and OMERS were the terms of the Mayor's declaration of conflict of interest and the fact that a declaration had been made in April 2008. Mr. Kitt believed that that Mayor was being used by Mr. DeCicco to gain concessions but found it difficult to raise the issue with her.

Kitt Chief (N. Loewith) – pp. 4014-4015

Kitt Cross (C. Lax) – pp. 4102-4107

Kitt Cross (L. Ritacca) – pp. 4113-4114

Kitt Cross (D. Jack) – pp. 4127-4129, 4135-4137

Kitt Re-exam (N. Loewith) – p. 4198

De Bever Chief (W. McDowell) – p. 4820

Exhibit 144 – Mr. Kitt email to Mr. Nobrega, December 14, 2008

Exhibit 275 – December 15, 2008 memo for senior people at Oxford for terms of deal

81. The emails and memos prepared at the time indicate that AIM was increasingly uncomfortable with proceeding further with the hotel project and wanted clarification of Peter McCallion's role. This clarification was sought and received by Michael Kitt (according to his testimony) at his meeting with the Mayor and Mr. DeCicco at the Barber House Restaurant on December 15, 2008. Mr. Kitt testified that at that time, the Mayor informed him that Peter McCallion was "off the file". Mr. Kitt relayed this information to AIM on a conference call the next day.

Kitt Chief (N. Loewith) – pp. 4060-4065

Kitt Cross (D. Jack) – pp. 4125, 4129-4134

Kitt Cross (F. Kristjanson) – pp. 4154-4160

De Bever Cross (M. Barrack) – pp. 4367-4370

Exhibit 244 – December 8, 2008 e-mail

Exhibit 141 – December 16, 2008 handwritten notes

82. Neither AIM nor Oxford knew the true nature of Peter McCallion's role as an apparent owner of WCD. Oxford was not privy to any information about Peter McCallion's role that was not also available to AIM. Leo DeBever, the head of AIM, acknowledged that he was not aware of any evidence that suggested that Oxford had any more or better information about Peter McCallion's true role with WCD. Notwithstanding the heightened concern over Mr. McCallion's role in WCD, both AIM and Oxford were interested to know what the City's position was about further amendments to the APS and the timeline for construction of the hotel. At the time of these heightened concerns in October, November and December 2008, the Co-Owners were contractually bound to WCD. The suspicion that Peter McCallion may have had some ownership interest in WCD did not eliminate or alter the legal obligations that the Co-Owners had to WCD under the APS.

De Bever Cross (M. Barrack) – pp. 4377-4379

Exhibit 306 – October 27, 2008 e-mail

83. As events transpired, the concerns about Peter McCallion's true role with WCD were dealt with through Mr. Kitt's report that Mr. McCallion was "off the file". Notwithstanding the Mayor's lobbying efforts for the hotel deal, the Co-Owners terminated the APS in January 2009.

Kitt Chief (N. Loewith) – pp. 4060-4065

Kitt Cross (D. Jack) – pp. 4125, 4129-4134

Kitt Cross (F. Kristjanson) – pp. 4159-4160

Exhibit 117 – Termination of the Agreement of Purchase and Sale

Exhibit 141 – December 16, 2008 handwritten note

84. The APS was terminated, not because of uncertainty over Peter McCallion's true role, but because WCD could not meet the hotel conditions in the APS. Mr. Dal Bello confirmed this in his testimony. The correspondence between the parties beginning in July 2008, cited at paragraph 48 above make it clear that compliance with the hotel conditions was the key issue between the parties.

Dal Bello Cross (E. McIntyre) – p. 2382

85. By December, WCD could not meet the hotel conditions. As Mr. Kitt's e-mail of December 12, 2008 and memo to December 15, 2008 make clear, the Co-Owners were not prepared to further waive or amend the hotel conditions. Uncertainty over Peter McCallion's role with WCD was a concern but not a decisive factor in the decision to terminate the APS. WCD's failure to meet these conditions was the reason why the APS was terminated.

Dal Bello Cross (E. McIntyre) – p. 2382

Exhibit 275 – December 15, 2008 memorandum

Exhibit 494 – December 12, 2008 e-mail

**ARTICLE III – SALE OF THE LANDS TO
THE CITY FOR SHERIDAN COLLEGE**

3.01 The Negotiations Leading up to the Execution of the City APS

86. In early 2009, Oxford began exploring the possibility of selling the Lands to Sheridan College (“**Sheridan**”). Sheridan was interested in constructing a campus in Mississauga. The prospect of having Sheridan College use the Lands was a very attractive idea to the Co-Owners. A Sheridan College campus would compliment Square One well because of the number of students the College would attract to the shopping centre and the Square One theatres.

Latimer Chief (W. McDowell) – p. 2211

Latimer Cross (E. McIntyre) - p. 2226

Kitt Chief (N. Loewith) - pp. 4067-4071

87. On March 24, 2009, Mr. Filipetti contacted DTZ Barnicke, Sheridan’s agent, to obtain the information package for Sheridan’s “request for proposals” for the development of its Mississauga campus.

Exhibit 723 – Will Say of John Filipetti

88. On April 15, 2009, Oxford submitted a proposal for sale of the Lands to Sheridan.

Costin Chief (W. McDowell) – pp. 1474-1475

Kitt Chief (N. Loewith) –pp. 4071-4074

**Exhibit 119 - Sheridan College Institute of Technology and Advanced Learning -
Proposal for Mississauga Campus**

Exhibit 120 - April 30, 2009 Letter

89. On April 24, 2009, Barnicke advised Oxford that its proposal was on the short list.

Exhibit 723 – Will Say of John Filipetti

90. On April 30, 2009, Oxford wrote to Mr. DeCicco to advise WCD that Oxford intended to market and effect a sale of the Lands and that it would hold WCD responsible if it

attempted to interfere with the sale effort. The letter was sent in good faith to WCD to indicate that if it interfered with the Sheridan Request for Proposal, it would be exposing itself to liability.

Kitt Chief (N. Loewith) – pp. 4071-4074

Exhibit 120 - April 30, 2009 Letter

91. Mr. DeCicco responded on May 5, 2009 reiterating WCD's position that the APS had not been validly terminated.

Exhibit 121 - Purchase and Sale Agreement re Block 29, Plan 43M-1010, Mississauga, ON

92. Oxford discussed with AIM the possibility of settling the WCD dispute. By letter dated May 15, 2009, the Co-Owners offered to settle the issues concerning the APS with WCD for the return of the refundable deposits in the amount of \$750,000 and the return of \$250,000 of the non refundable deposit in exchange for a release. WCD rejected the offer on May 21, 2009.

Exhibit 122 - Blocks 9 and 29, Plan 43M-1010 -- Mississauga, ON, May 15, 2009

Exhibit 125 - Purchase and Sale Agreement re: Blocks 9 and 29, Plan 43M-1010, Mississauga, May 21, 2009

93. Negotiations continued with Sheridan and the City through May, June and July over the terms for the sale of the Lands for construction of Sheridan's Mississauga campus. Oxford was aware that Sheridan was relying on federal and provincial infrastructure funding to finance the construction of the campus. The reliance on infrastructure funding created significant time pressure on the parties. The federal funding program required that Sheridan commence construction in the fall of 2009 and that all construction be completed by March of 2011.

Costin Chief (W. McDowell) – p. 1493

Kitt Chief (N. Loewith) – pp. 4071-4074

Baker Cross (M. Barrack) – pp. 4643-4645

Baker Cross (F. Kristjanson) – p. 4681

94. It was ultimately decided that the City would purchase the Lands and lease the Lands to Sheridan. On June 10, 2009, City Council passed a Resolution and Bylaw approving the Sheridan deal, which included acquiring the Lands, leasing part of them to Sheridan, keeping part of the Lands as park land, and completing construction on Phase II and III within certain deadlines. The Mayor was kept informed of the deal's progress.

Bench Cross (E. McIntyre) – p. 2674

Baker Cross (F. Kristjanson) – pp. 4675-4676

95. Oxford confirmed to Barnicke that the price proposed to Sheridan, net Barnicke's commission, was not greater than the price of the Lands under the previous APS with WCD.

Exhibit 459 – John Filipetti confirms price to Barnicke, June 8, 2009

Exhibit 723 – Will Say of John Filipetti

96. The City and Oxford negotiated issues surrounding parking, road construction, costs and the amount and type of retail development to be allowed on the site.

Nobrega Chief (M. Barrack) – pp. 3117-3123

Exhibit 329 – July 10, 2009 email

97. As negotiations extended into July 2009, senior officials at the City, including the City solicitor and the Mayor, became frustrated by perceived delays in the process.

Bench Chief (W. McDowell) – pp. 2599-2601

Nobrega Chief (M. Barrack) – pp. 3123-3130

Nobrega Cross (C. Lax) – pp. 3294-3297

Exhibit 228 – Mary Ellen Bench notes

Exhibit 315 – Mary Ellen Bench notes

Exhibit 323 – Mary Ellen Bench email to Mayor, July 13, 2009

Exhibit 329 – July 10, 2009 e-mail

Exhibit 394 – July 10, 1009 e-mail

98. As discussed above, there was significant pressure to begin construction as soon as possible due to Sheridan's reliance on government infrastructure funding.

Exhibit 126 – Email re Mayor McCallion, July 11, 2009

99. There was also concern over a soil contamination issue which was identified in WCD's earlier application to the City for site plan approval, but which the Mayor claimed the City was unaware of at the time of the Co-Owner's bid. There were low levels of beryllium in the surface soil on the site. Beryllium is a naturally occurring element present in rocks and soil in the area.

Exhibit 445 – Email from Mr. Filipetti to Mr. Charles, July 10, 2009

100. Meanwhile, on July 9, 2009, the Co-Owners issued a Notice of Application for an Order declaring that the WCD APS had been validly terminated. The Application was ultimately made returnable on October 19, 2009. Oxford kept the City advised of the status of these legal proceedings through the City Solicitor.

Exhibit 127 – Notice of Application of OMERS and 156, July 11, 2009

101. In July 2009, City staff came to the Mayor to ask her to become directly involved in resolving the contamination issues. The contamination issue was of grave concern to the Mayor and she was disappointed that she did not learn of it earlier. She needed to know the degree of contamination, how it would be eliminated and who was going to pay for that. City Staff were relying on the Mayor to clear the road blocks with OMERS which mainly concerned the contamination issue.

Mayor Chief (E. McIntyre) – pp. 4994-4999

Exhibit 329 – July 10, 2009 Email

102. Michael Nobrega was drawn into the negotiations between Oxford and the City on or about July 8, 2009. Janice Baker, the City's Chief Operating Officer, telephoned Mr. Nobrega to alert him to deal points on which the negotiating teams were at an impasse. It was not unusual for City staff to go over the heads of the Oxford deal team and to engage Mr. Nobrega to resolve differences. City staff would occasionally enlist Mayor McCallion to involve Mr. Nobrega in the resolution of issues.

Bench Chief (W. McDowell) – pp. 2598-2599

Bench Cross (M. Barrack) – p. 2626

Nobrega Chief (M. Barrack) – pp. 3117-3123

Nobrega Chief (M. Barrack) – pp. 3159-3161

Exhibit 322 – June 11, 2009 email

Exhibit 329 – July 10, 2009 email

103. OMERS director David O'Brien testified that in early July 2009, at the dinner following the TACC golf tournament, the Mayor asked him to investigate OMERS treatment of WCD under the APS. The Mayor also informed Mr. O'Brien that the City was in negotiations with Oxford for the purchase of the Lands and that the City had discovered the Lands were contaminated.

O'Brien Chief (W. McDowell) – pp. 2921-2925

O'Brien Cross (C. Lax) – pp. 2956-2957, 2974-2975

O'Brien Cross (L. Ritacca) – p. 3030-3032

O'Brien Cross (F. Kristjanson) – pp. 3057-3058, 3065-3066

O'Brien Cross (Commissioner) – pp. 3079-3081

104. A few days later Mr. O'Brien had breakfast with Mr. DeCicco and Peter McCallion. The purpose of the breakfast was for Mr. O'Brien to educate himself on the issues between WCD and the Co-Owners. Mr. O'Brien was not sure whether Mr. DeCicco mentioned that he thought WCD had a \$10 million claim against the Co-Owners for breach of the APS.

O'Brien Chief (W. McDowell) – pp. 2929-2930

O'Brien Cross (C. Lax) – pp. 2980-2981, 2995-1996

O'Brien Cross (M. Barrack) – pp. 3072-3073

105. On July 10, 2009, Mr. O'Brien alerted Mr. Nobrega that the Mayor had contacted Mr. O'Brien and was concerned about alleged contamination of the Lands. Mr. O'Brien did not disclose his earlier meetings with the Mayor, Mr. McCallion and Mr. DeCicco to Mr. Nobrega.

O'Brien Chief (W. McDowell) – pp. 2927-2929

O'Brien Cross (C. Lax) – pp. 2961-2965

Nobrega Chief (M. Barrack) – pp. 3123-3130

Nobrega Cross (C. Lax) – pp. 3294-3297

Exhibit 329 – July 10, 2009 e-mail

Exhibit 394 – July 10, 2009 e-mail

106. The Mayor was viewed by City staff as a very good negotiator. She indicated that she wanted to be involved in closing the Sheridan College deal. The Mayor's relationship with Mr. Nobrega was viewed as helpful. City staff asked the Mayor to reach out to Mr. Nobrega, even over Oxford's head.

Bench Chief (W. McDowell) – pp. 2598-2599

Bench Cross (M. Barrack) - p. 2626

Exhibit 322 - June 11, 2009 Email

107. The Mayor and Mr. Nobrega spoke on July 11, 2009. The Mayor expressed her frustration to Mr. Nobrega because Sheridan had a deadline to meet to get the infrastructure funding and she was worried that further delays were going to cost them this deal. Mr. Nobrega advised her that Mr. Kitt would call her on Monday and set up a one on one meeting. At this point, the Mayor had accepted that the WCD deal was dead and was pushing the Sheridan deal because she did not want to lose that as well. Mr.

Nobrega was not aware that the Mayor had asked David O'Brien to "look into" the WCD issue.

Nobrega Chief (M. Barrack) - pp. 3131-3138

Nobrega Cross (C. Lax) - 3299-3300

Nobrega Cross (F. Kristjanson) – pp. 3366-3367

Mayor Chief (E. McIntyre) – pp. 5002-5007

Exhibit 126 – July 11, 2009 Email

Exhibit 657 - July 13, 2009 Email

108. Mr. Nobrega informed himself about the outstanding issues regarding the negotiation of an agreement with the City through discussions (and emails) with John Fillipetti and Michael Kitt. He reported back to David O'Brien and the Mayor on the facts he had learned and left the issues with Mr. Kitt to deal with.

Nobrega Chief (M. Barrack) – pp. 3131-3140

Nobrega Cross (C. Lax) – pp. 3299-3303

Nobrega Cross (F. Kristjanson) – pp. 3366-3367

Exhibit 126 – July 11, 2009 e-mail

109. On July 13, 2009, Mr. Kitt spoke with the Mayor on her cell phone. The Mayor informed him that she would give OMERS no favours in terms of delaying the Sheridan closing and that the City wants the AIM board approval waived by the following Friday.

Kitt Chief (N. Loewith) – pp. 4080-4082

Kitt Cross (D. Jack) – p. 4140

Kitt Cross (F. Kristjanson) – pp. 4187-4190

110. On July 14, 2009, Mr. Nobrega received an email that had been sent to the Mayor and others by Ms. Bench detailing how the City became aware of the beryllium issue. The beryllium issue was a priority and Oxford was working towards resolving it.

Nobrega Chief (M. Barrack) – pp. 3140-3141

Exhibit 324 – July 14, 2009 Email

Exhibit 403 – July 11, 2009 Email

111. On July 15, 2009, Oxford's Investment Advisory Committee recommended the sale of the Lands to the City. This recommendation was approved. The draft agreement as approved contained a clause to address remediation of the contaminated soil. The agreement also contained an indemnity in favour of the City and Sheridan College for any claims made by WCD and a term that Oxford deliver a court order declaring the WCD APS terminated or a settlement agreement with WCD as a condition of closing.

**Exhibit 286 - Square One - Land Sale to City of Mississauga - dated July 15, 2009 -
Recommendations The Investment Advisory Committee**

112. Also on July 15, 2009, Mr. Kitt met with Mr. DeCicco to discuss settlement of the dispute with WCD. Mr. Kitt offered to refund all WCD's deposits. The real estate professionals at Oxford running the file and their counterparts at AIM believed that the Co-Owners had a strong case on the legal merits and that a settlement for the return of deposits was appropriate. Mr. DeCicco advised that WCD wanted \$4 million dollars to settle its claims.

Kitt Chief (N. Loewith) – pp. 4080-4085

Kitt Cross (C. Lax) – p. 4108

113. On July 16, 2009, counsel for WCD made an offer to settle WCD's dispute with the Co-Owners. The offer contained two alternatives: WCD would buy the hotel lands without the hotel block or WCD would offer to settle for \$3.8 million dollars plus GST. Regarding the first option, if the Co-Owners were to sell the Lands for strictly condo use, they would prefer to open it up to competitive bidding. The first option was therefore not acceptable. Regarding the second option, the amount was not acceptable to the Co-Owners.

Coleman Chief (W. McDowell) - pp. 2848-2851

Coleman Cross (C. Lax) - pp. 2882-2883

Exhibit 287 – July 16, 2009 Letter

Exhibit 373 – Handwritten notes of Dean Hanson

114. The Co-Owners kept the City advised of WCD's assertion that it continued to retain an interest in the Lands.

Coleman Chief (W. McDowell) – pp. 2851-2853

Exhibit 321 – July 19, 2009 e-mail

115. On July 20, 2009, the Co-Owners entered into an agreement of purchase and sale with the City (the "City APS"). The sale price was \$14,908,902.00. The closing date was September 17, 2009. Due to the dispute with WCD, the parties also entered into an Indemnification and Hold Harmless Agreement (the "Indemnity") which provided that the Co-owners would indemnify the City and Sheridan from any liability arising from the claim by WCD, subject to certain limitations and with a cap on legal costs. The Indemnity was required by the City.

Costin Chief (W. McDowell) - pp. 1498-1500

Coleman Chief (W. McDowell) - pp. 2851-2853

Exhibit 128 - City Agreement of Purchase and Sale

Exhibit 129 - Indemnification and Hold Harmless Agreement

116. The sale of the Lands to the City with the attendant time pressures created leverage for WCD against the Co-Owners.

Nobrega Cross (F. Kristjanson) – pp. 3370-3372

3.02 The Settlement of the WCD Litigation

117. On August 27, 2009 Mr. Nobrega received an email from Mr. O'Brien alerting him that the Mayor remained upset over the alleged contamination issue. This took Mr. Nobrega by surprise as he assumed the issue would have been resolved in the six weeks since July 10th.

O'Brien Cross (C. Lax) – pp. 2982-2986, 2487-2989

Nobrega Chief (M. Barrack) – pp. 3142-3144

Nobrega Cross (C. Lax) – pp. 3305-3307

Exhibit 404 – August 27, 2009 email

118. On August 28, 2009, WCD's counsel delivered WCD's counter application against the Vendors to Oxford's counsel. WCD sought a declaration that the APS was not validly terminated. Supporting affidavits, including an affidavit sworn by Peter McCallion, were delivered a few days later.

Exhibit 447 – Notice of Application of WCD

119. On August 28, 2009, Mr. Nobrega met with Mr. Latimer in order to discuss, among other things, the sale of the Lands to the City. At that meeting, Mr. Nobrega learned for the first time that the Co-Owners were involved in litigation with WCD over the APS and that the Co-Owners had indemnified the City in respect of WCD's claims. Mr. Nobrega was very concerned that: (a) there could be reputational issues for OMERS if it was unable to complete the sale to the City or if the WCD litigation interfered with the infrastructure funding on which the Sheridan construction relied; (b) the scope of the Indemnity given to the City was very broad, exposing OMERS to too much risk; and (c) the litigation would become unwieldy in terms of lawyers' fees for OMERS and the City and the amount of executive time that would have to be devoted to the litigation.

Nobrega Chief (M. Barrack) – pp. 3146-3149, 3150-3154, 3154-3158, 3165-3168

Nobrega Chief (W. McDowell) – pp. 3220-3228, 3233-3234

Nobrega Cross (F. Kristjanson) – pp. 3381-3383

Exhibit 129 – Indemnification and Hold Harmless Agreement

Exhibit 206 – July 15, 2009 Proposal to Oxford Investment Advisory Committee

120. Both Mr. Latimer, as the President and CEO of Oxford, and Mr. Nobrega, as the CEO of OMERS, determined that the business risks posed by the WCD litigation were not

acceptable and decided that the WCD claims should be settled before September 17, 2009, the scheduled closing date of the City APS.

Latimer Chief (W. McDowell) – pp. 2217-2218

Nobrega Chief (M. Barrack) – pp. 3150-3154

Exhibit 286 – July 15, 2009 – Proposal to Oxford Investment Advisory Committee

121. This decision was at odds with the assessment of the legal risks posed by the WCD litigation made by Oxford staff and AIM who had decided to let the litigation run its course. In exercising their business judgment, Messrs. Latimer and Nobrega decided that the threat to the closing and/or the advance of the necessary infrastructure funding posed by the unresolved litigation was not acceptable. It does not appear that Oxford staff or AIM were aware of the risk that the WCD litigation may have put the infrastructure funding in jeopardy.

Latimer Chief (W. McDowell) – pp. 2212-2214

Coleman Chief (W. McDowell) – p. 2848

Nobrega Chief (M. Barrack) – pp. 3146, 3149, 3165-3167, 3177-3178

Kitt Cross (D. Jack) – p. 4138

122. On August 31, 2009, Ms. Baker sent an email to Mr. Nobrega updating him on the beryllium issue and the associated costs. City staff such as Ms. Baker would go over the heads of Oxford by contacting Mr. Nobrega directly when they believed Oxford was not resolving the issues to the City's satisfaction.

Nobrega Chief (M. Barrack) – pp. 3159-3161

Baker Cross (M. Barrack) - pp. 4651-4655

Exhibit 397 – August 31, 2009 Email

Exhibit 501 – August 31, 2009 Email

123. Mr. Nobrega forwarded Ms. Baker's August 31, 2009 email to Mr. Latimer. He felt that it was time for Mr. Latimer to take over. Mr. Nobrega still had confidence in his team,

but they may have been suffering from “deal fatigue”. Mr. Latimer was told to take care of the contamination issue.

Nobrega Chief (M. Barrack) – pp. 3161-3163

Nobrega Re-exam (M. Barrack) – p. 3390

Exhibit 501 – August 31, 2009 Email

124. Mr. Nobrega decided that he would take over responsibility for resolving the WCD issue. Over the Labour Day weekend (September 5-7, 2009), Mr. Nobrega obtained and reviewed the City APS and Indemnity.

Nobrega Chief (M. Barrack) – pp. 3158-3163-3165

125. Mr. Nobrega’s instincts were that WCD was ‘street smart’ and that it might find creative ways to launch claims against the City and Sheridan College which could threaten the closing of the City APS and/or the infrastructure funding, regardless of the legal merits of those claims. Mr. Nobrega had unsatisfactory experience with litigation in the past and was very concerned about costs associated with the WCD litigation and the exposure on the Indemnity. Mr. Nobrega was not comfortable with simply letting the litigation run its course.

Nobrega Chief (M. Barrack) – pp. 3180-3185

Nobrega Chief (W. McDowell) – pp. 3240-3242

Nobrega Cross (D. Jack) – pp. 3335-3338

Nobrega Re-exam (M. Barrack) – pp. 3387-3388

Exhibit 426 – September 12, 2004 email

126. On September 8, 2009, before an OMERS pre-Investment Committee Meeting, Mr. Nobrega asked David O’Brien, the Chair of the Investment Committee of the OMERS Board, to go on a “fact finding mission” to determine a price at which WCD’s claims could be settled. Mr. Nobrega selected Mr. O’Brien as he was the former City Manager of Mississauga and was well connected in Mississauga. Mr. Nobrega regularly used his

board members as “ambassadors” to gather intelligence and fact-find so that decisions could be made on the best available information.

Nobrega Chief (M. Barrack) – pp. 3169-3172

Nobrega Cross (F. Kristjanson) – pp. 3368-3369

127. At the time he asked Mr. O’Brien to assist with the WCD settlement, Mr. Nobrega was aware that Mr. O’Brien had a close relationship with the Mayor, but was not aware that the Mayor had asked Mr. O’Brien to involve himself in the issues between WCD and the Co-Owners. Mr. Nobrega never discussed the Co-Owners’ settlement of the WCD dispute with the Mayor. To OMERS knowledge, the Mayor had no involvement in the negotiation of the settlement.

Nobrega Chief (M. Barrack) – pp. 3171-3172

Nobrega Re-exam (W. McDowell) – pp. 3386-3387

Mayor Chief (E. McIntyre) – pp. 4991-4992

Mayor Cross (M. Barrack) – p. 5432

128. As far as Mr. Nobrega was concerned, Mr. O’Brien was representing OMERS in determining the amount required to settle WCD’s claims but Mr. O’Brien was not given any authority to settle.

Nobrega Chief (M. Barrack) – pp. 3172-3175

Nobrega Chief (W. McDowell) – pp. 3219-3220

Nobrega Cross (L. Ritacca) – p. 3244

129. There was evidence that Mr. O’Brien was one of the trustees under the McCallion Family Trust under which Peter McCallion is a beneficiary. Mr. O’Brien did not think there were any assets in the Family Trust and testified that the trust was inactive. There is no evidence that in any of the dealings which are relevant to this Inquiry, Mr. O’Brien believed he was acting in his capacity as a trustee for the Family Trust. In any event, Mr. O’Brien’s duties as trustee would be to protect the assets in the Family Trust of which

there were none. That duty did not come into conflict with Mr. O'Brien's duties to OMERS in determining how much it would cost to obtain a release from WCD.

McCallion Chief (B. Gover) – pp. 1870-1872

McCallion Cross (W. McDowell) – pp. 1957-1960

McCallion Cross (E. McIntyre) – p. 2171

Mayor Chief (E. McIntyre) – pp. 4999-5001

Mayor Chief (W. McDowell) – pp. 5220-5224

130. From the totality of the evidence, Mr. O'Brien's role most closely approximated that of a mediator or 'go-between' among the City, WCD and OMERS. Mr. O'Brien had no power of decision but facilitated the resolution of the WCD litigation which, in turn, cleared the path for the Sheridan project to proceed.

131. Mr. O'Brien reported back to Mr. Nobrega on September 10th that he had lengthy discussions with Mr. DeCicco and that WCD's bottom line price for settlement was \$4 million including the \$1.4 million in deposits held by the Co-Owners. Mr. Nobrega asked Mr. O'Brien to tell Mr. DeCicco to have his lawyers send an offer to Oxford the next day (September 11th) to confirm the proposed settlement terms.

Nobrega Chief (M. Barrack) – pp. 3172-3175

Nobrega Chief (W. McDowell) – pp. 3219-3220

Nobrega Cross (L. Ritacca) – p. 3244

Exhibit 382 – September 11, 2009 fax and email

132. Settlement letters were exchanged between counsel for the parties and settlement was reached. WCD was paid \$4 million in return for a release of all claims under the WCD APS.

DeCicco Chief (L. Rothstein) – pp. 3693-3694

Exhibit 619 – September 11, 2009 letter

133. It is clear from the evidence of Mr. O'Brien and Mr. DeCicco that there was a vigorous negotiation of the settlement price for WCD's claims conducted over many hours on September 10, 2009. Mr. DeCicco started with \$10 million while Mr. O'Brien opened with \$2 million. By the evening, Mr. O'Brien was at \$3 million and Mr. DeCicco was at \$5 million. Mr. O'Brien advised Mr. Nobrega that a compromise of \$4 million would likely be accepted by WCD. Mr. Nobrega instructed Mr. O'Brien to advise Mr. DeCicco to have WCD's lawyers prepare a settlement offer at \$4 million.

O'Brien Chief (W. McDowell) – pp. 2947-2950

O'Brien Cross (C. Lax) – p. 3015-3022

O'Brien Cross (L. Ritacca) – pp. 3042-3046

O'Brien Cross (M. Barrack) – p. 3073

O'Brien Cross (Commissioner) – pp. 3081-3088

DeCicco Chief (L. Rothstein) – pp. 3687-3693

DeCicco Chief (W. McDowell) – pp. 3797-3798

DeCicco Cross (L. Ritacca) – p. 3913-3916

134. In the negotiations with WCD on September 10, 2009, Mr. O'Brien was not acting as a municipal official or as an emissary of the Mayor. He was a fiduciary representative of OMERS, on whose Board he sat since 2006. Mr. O'Brien did not owe any obligations to the City or the Mayor in the negotiations with WCD. Mr. O'Brien had left the employment of the City in early 2004.

O'Brien Chief (W. McDowell) – pp. 2944-2947

O'Brien Cross (C. Lax) – pp. 3014-3015

O'Brien Cross (L. Ritacca) – pp. 3041-3042

O'Brien Cross (D. Jack) – p. 3046

O'Brien Cross (F. Kristjanson) – p. 3057

O'Brien Cross (M. Barrack) – pp. 3073-3074

O'Brien Cross (Commissioner) – pp. 3081, 3084

135. It is submitted that regardless of the identity of the negotiator for OMERS, it is clear from the evidence Mr. DeCicco was not willing to accept less than \$4 million for a release of WCD's claims. Mr. DeCicco was a street-smart and aggressive professional litigant who was completely self-interested to maximize the settlement payment. He used his leverage to maximum effect and a release from WCD could not be obtained before closing of the City APS for less than \$4 million.

O'Brien Cross (C. Lax) – pp. 3018-3021

Nogrega Chief (M. Barrack) – p. 3166

136. It is equally clear that none of the settlement monies were paid to Peter McCallion. The settlement funds were paid directly to WCD's litigation counsel by wire transfer to their trust account. The Co-Owners had no information on the disposition of the funds after they were paid to WCD counsel.

DeCicco Chief (L. Rothstein) – pp. 3696-3697

DeCicco Chief (W. McDowell) – pp. 3722-3723

DeCicco Cross (C. Lax) – p. 3821-3822, 3830, 3833

DeCicco Cross (L. Ritacca) – pp. 3916-3917

DeCicco Commission Questions (D. Cunningham) – pp. 3977-3978

Exhibit 632 – Organizational Chart – Paliare Roland Trust Account

137. The Commission's forensic investigators traced the flow of the settlement funds. That exercise revealed a complex series of payments, the majority of which were made to Mr. DeCicco or those affiliated with him or his family. None of the settlement funds made their way to Peter McCallion.

DeCicco Cross (C. Lax) – pp. 3813-3819 , 3819-3822, 3824-3831, 3833

DeCicco Cross (J. Finnigan) – p. 3925

Exhibit 632 – Organizational Chart – Paliare Roland trust account

138. While a \$4 million settlement was \$2.6 million more than the Co-Owners had agreed to pay in July 2009, it was an amount that, in the best business judgment of the Chief Executive Officer of OMERS, was acceptable in order to:

- (a) remove WCD as an obstacle to closing the City APS;
- (b) remove WCD as an obstacle to the advance of infrastructure funding for Sheridan College;
- (c) eliminate the Co-Owners financial exposure on the Indemnity in favour of the City;
- (d) eliminate the risk that senior Oxford managers would be kept from their duties by litigation with WCD; and
- (e) eliminate the reputational risk to the Co-Owners if they were unable to close on City APS.

Nobrega Chief (M. Barrack) – pp. 3146-3149, 3150-3154, 3154-3158, 3165-3168

Nobrega Chief (W. McDowell) – pp. 3220-3228, 3233-3234

Nobrega Cross (F. Kristjanson) – pp. 3381-3383

Exhibit 129 - Indemnification and Hold Harmless Agreement

Exhibit 206 – July 15, 2009 Proposal to Oxford Investment Advisory Committee

139. Mr. Nobrega's job as CEO required him to take decisive action on difficult judgment calls with less than perfect information. Mr. Nobrega assessed the business risk posed by the WCD litigation differently than his subordinates. He did not know:

- (a) What steps WCD might take to interfere with the closing;
- (b) Whether the City would close over the unfulfilled condition in the City APS to deliver a settlement with WCD;
- (c) Whether federal officials would advance the necessary infrastructure funding when informed that the Lands were subject to litigation; or

- (d) The outcome of the WCD litigation, how long it would take or how much it would cost.

Bench Cross (M. Barrack) – pp. 2630-2631

Nobrega Chief (M. Barrack) – pp. 3150-3154, 3165-3168

Nobrega Chief (W. McDowell) – pp. 3220-3228, 3233-3234

Nobrega Cross (F. Kirstjanson) – pp. 3381-3383

Exhibit 129 – Indemnification and Hold Harmless Agreement

Exhibit 286 – July 15, 2009 Proposal to Oxford Investment Advisory Committee

140. Against all of these uncertainties, Mr. Nobrega knew that if he could settle the WCD litigation, all these risks could be removed.

See paras. 138 and 139, *supra*

Nobrega Cross (F. Kristjanson) – pp. 3370-3372

141. AIM did not consider itself constrained by the information it had about Peter McCallion's involvement:

- (a) When AIM learned at the end of October 2008 that Peter McCallion may have had an ownership interest in WCD, as opposed to simply being a real estate agent, it did not refuse any further dealings with the City or direct that an investigation be conducted in order to determine the true nature of Mr. McCallion's role. Instead, AIM's asset manager suggested to Oxford that it take "the pulse of the Mayor, or planning staff in order to determine what the City's position was on WCD's request for concessions before making any decision on how to proceed."

Dal Bello Cross (M. Barrack) – pp. 2387-2389

Exhibit 306 – October 27, 2008 e-mail

- (b) In connection with the settlement of the WCD litigation:
- (i) AIM knew that Peter McCallion had a pecuniary interest in WCD, either as an agent or possibly as an investor; and

- (ii) AIM knew that the legal merits of the Co-Owners' position on termination of the APS was strong.

Notwithstanding this, AIM was prepared to participate in a settlement that would have returned all the deposits to WCD, including those that were non-refundable under the terms of the APS. In other words, AIM supported a settlement that was more generous than WCD's legal entitlement.

Dal Bello Chief (W. McDowell) – pp. 2277-2278, 2297-2299

Dal Bello Cross (L. Ritacca) – pp. 2305-2310

De Bever Cross (M. Barrack) – pp. 4373-4374

- (iii) When it came to the ultimate settlement with WCD for a payment of \$4 million, Mr. Dal Bello admitted that the settlement could not proceed without AIM's signature on the settlement documents. OMERS had not accepted WCD's offer of September 11, 2009 when Mr. Nobrega corresponded with Mr. De Bever. Mr. Nobrega's e-mail of September 12th confirms that "no arrangement has been signed to my knowledge..." AIM signed the settlement documents and realized all the benefits of the settlement without having to contribute anything more to achieve these benefits.
- (iv) AIM's real issues with the settlement were, first, the amount was \$2.6 million higher than AIM had previously authorized. Mr. Dal Bello admitted that this was simply a question of the exercise of business judgment about the right amount for the settlement – a question on which AIM and OMERS disagreed. Second, the fact that AIM had not been consulted about the settlement before their approval was sought on September 12, 2009.

Dal Bello Cross (M. Barrack) – pp. 2389-2393

Nobrega Chief (M. Barrack) – pp. 3185-3187

Nobrega Cross (C. Lax) – pp. 3308-3312

De Bever Cross (M. Barrack) pp. 4375-4376

Exhibit 426 – September 12, 2009 e-mail

142. The best interests of OMERS were served by clearing away the business risks posed by the WCD litigation and securing the real benefits to Square One from the successful completion of the Sheridan project. Mr. Nobrega was motivated by the best interest of OMERS.

Nobrega Chief (M. Barrack) – pp. 3180-3185

Nobrega Chief (W. McDowell) – pp. 3240-3242

Exhibit 426 – September 12, 2009 e-mail

143. There was considerable evidence adduced by AIM about OMERS failure to obtain the prior approval of AIM to the \$4 million settlement. The essence of the differences between the OMERS and AIM are contained in the emails exchanged between Mr. Nobrega and Mr. DeBever on September 12, 2009.

Exhibit 426 – September 12, 2009 email

144. All participants at the Inquiry know that AIM is not happy that it was not consulted on the negotiation of the \$4 million settlement. It has made that point repeatedly. However, as noted by the Commissioner during the cross-examination of Craig Coleman, *“I’m not sure any lingering issues between 156, AIMco and OMERS really have any bearing on this Inquiry.”*

Coleman Cross (D. Jack) – p. 2908

145. It is submitted that the issues between OMERS and AIM over the settlement are not relevant to the Commissioner’s mandate on this Inquiry. Any disputes between the Co-Owners over the settlement are not the proper subject matter for an Inquiry under section 274 of the *Municipal Act*. There are other forums to resolve differences between the Co-Owners.