

**CITY OF MISSISSAUGA JUDICIAL INQUIRY**

**Phase II: Written Submissions  
of the City of Mississauga**

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## Introduction

1. On October 28, 2009, the Council of the Corporation of the City of Mississauga (“Council”) requested a judicial inquiry into questions that arose as a result of a failed land deal between World Class Developments Ltd. (“WCD”) and certain companies affiliated with the Ontario Municipal Employees Retirement System (“OMERS”).
2. Council requested the Inquiry in order to determine whether any of the circumstances surrounding WCD’s land deal affected the good government of the City of Mississauga (the “City”). To ensure public confidence, Council deemed it necessary to have these circumstances investigated by a Judge of the Superior Court of Justice.
3. This Inquiry is guided by the Terms of Reference adopted by Council.<sup>1</sup> While the Terms of Reference empower the Commissioner to ask any questions that he deems necessary, they specifically invite him to address certain questions. It is those questions that motivated Council to request this Inquiry.
4. The specific questions that Council raised in the Terms of Reference are as follows:
  - a) What relationships, if any, existed between the elected and administrative representatives of Mississauga (the “City”) and the principals and representatives of WCD?
  - b) What relationships, if any, existed between the elected and administrative representatives of the City and the principals and representatives of OMERS and its affiliate companies that are relevant to the land deal with WCD?
  - c) Did any member of Council, City employee or person with a contract with the City engage in any misconduct in relation to their duties to the City?

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<sup>1</sup> Exhibit 1 (Terms of Reference, Resolution 0271-2009, adopted November 11, 2009) (Tab 1)

- d) Did any of the elected or administrative representatives of the City have a conflict of interest that influenced their actions in relation to the matters under inquiry?
5. These submissions address the questions raised in the Terms of Reference, and in so doing, also address the list of issues distributed by Commission Counsel. This is accomplished by examining the role of certain primary players and the relationships between them. The submissions proceed as follows:
- a) The role of Peter McCallion
  - b) The role of Tony DeCicco
  - c) The role of Emilio Bisceglia
  - d) The roles of Edward Sajecki and Marilyn Ball
  - e) The role of Mayor Hazel McCallion
6. After addressing the role that each of these individuals had in the events under inquiry, these submissions make recommendations as to how to ensure that events like those under inquiry do not reoccur.

### **Overview**

7. As of 2002, Peter McCallion envisioned a project that would see the construction of a luxury hotel, convention centre and condominiums in Mississauga City Centre. He was aware that the City saw a four-or-five star hotel and convention centre as integral to its long-term vision for City Centre, and believed he could profit from that vision.

8. Over the next three years, Peter McCallion tried to find investors for the project. In 2005, Leo Couprie agreed to be an investor, and Peter McCallion incorporated WCD as the corporate vehicle he would use to carry the project out.
9. In the summer of 2005, Peter McCallion recruited Murray Cook to manage the WCD project. In the fall of 2005, Cook and Peter McCallion entered into negotiations with OMERS Realty Management Corporation and 156 Square One Ltd. (collectively, the "Sellers") to purchase Blocks 9 & 29 in Mississauga City Centre (the "Lands"). The Lands were managed by Oxford Properties Group ("Oxford") on the Sellers' behalf. Both OMERS Realty Management Corporation and Oxford are subsidiaries of OMERS. 156 Square One Ltd. ("156") is a subsidiary of ARCA Investments Inc., the assets of which are managed by the Alberta Investment Management Corporation ("AIMCo").
10. WCD and the Sellers entered into an agreement of purchase and sale ("APS") on January 31, 2007. The APS required WCD to build a four-star hotel with convention facilities.
11. In the summer of 2007, Peter McCallion replaced Cook with Tony DeCicco, because he feared that Cook was going to cut him out of the deal. Under DeCicco's management, WCD eventually abandoned its plan to build a hotel and convention centre, and began to explore the possibility of either selling the Lands to another purchaser or building condominiums exclusively. The Sellers terminated the APS in January 2009, and legal proceedings between the Sellers and WCD commenced in July of that year.
12. Throughout the life of the project, the principals of WCD received significant assistance from Peter McCallion's mother, Mayor Hazel McCallion. The Mayor helped Peter McCallion convince Cook to join the project, pressured the Sellers to sell the Lands to

WCD, and negotiated amendments to the APS on WCD's behalf. Ultimately, the Mayor told David O'Brien, an OMERS board member, that she was concerned that the litigation between WCD and the Sellers would jeopardize Sheridan College's plan to build a campus on the Lands. O'Brien, on behalf of OMERS, subsequently met with Peter McCallion and DeCicco and negotiated a settlement of the litigation in which WCD received \$4,000,000.

13. Throughout the WCD project, Peter McCallion and his partners took improper advantage of Peter McCallion's relationship with the Mayor, and used it to further their own financial ends. Despite the obvious conflict between her interest in her son and her duties as an elected official to act impartially, the Mayor chose to work to advance the goals of WCD.

#### **I. The Role of Peter McCallion**

14. Peter McCallion would have the Commissioner believe that he was nothing more than WCD's real estate agent and the representative of one of its investors.
15. Despite his claims to the contrary, Peter McCallion was and knew himself to be a shareholder and active principal in WCD. He wrongfully took advantage of his relationship to the Mayor to further his business goals, and as a result impugned the reputation of the City for impartially dealing with residents. Peter McCallion had access to the Mayor that nobody else had, and willingly provided that access to others, such as DeCicco.

*i) Peter McCallion incorporates WCD*

16. In 2002, well before WCD was incorporated, Peter McCallion travelled to China to meet with possible investors for a project to build a hotel, convention centre and condominiums in the City Centre.<sup>2</sup> The Mayor accompanied him on this trip.<sup>3</sup> It was during this trip that they first met Couprie.<sup>4</sup>
17. In 2005, Peter McCallion incorporated WCD and put together the initial WCD management “team”, which consisted of himself and Cook, supported by the lender, Couprie.<sup>5</sup>
18. Couprie was nothing more than an investor in WCD. He loaned WCD \$750,000, and hoped to receive an additional \$750,000 as return on his investment.<sup>6</sup> That loan was personally guaranteed by Peter McCallion.<sup>7</sup> While Couprie was the sole shareholder at the time of WCD’s incorporation, he held the shares merely as security for his investment.<sup>8</sup> It was never intended that Couprie would be an equity owner of WCD.
19. In the summer of 2005, Peter McCallion sought out Cook, an experienced developer, to manage the WCD project.<sup>9</sup> To facilitate this, he arranged a meeting between himself,

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<sup>2</sup> Testimony of Peter McCallion, p. 1801 (Tab 2)

<sup>3</sup> Testimony of Leo Couprie, pp. 3403-3404 (Tab 3)

<sup>4</sup> Testimony of Peter McCallion, p. 1808 (Tab 4)

<sup>5</sup> Testimony of Peter McCallion, pp. 1805-1806 (Tab 5)

<sup>6</sup> Testimony of Leo Couprie, p. 3406 (Tab 6)

<sup>7</sup> Exhibit 274, p. 2 (Loan Agreement, dated January 29, 2007) (Tab 7)

<sup>8</sup> Testimony of Leo Couprie, p. 3407 (Tab 8)

<sup>9</sup> Testimony of Murray Cook, pp. 4525-4526 (Tab 9)

Cook and the Mayor.<sup>10</sup> The Mayor had known Cook personally for many years.<sup>11</sup> At that meeting, the Mayor encouraged Cook to join her son in the management of WCD, and Cook subsequently agreed to do so.<sup>12</sup> Cook was to be compensated for his work with a 20% carried interest in the project.<sup>13</sup>

20. The Mayor met with Peter McCallion and Cook twice more in 2006.<sup>14</sup> The purpose of both of these meetings was to allow Peter McCallion and Cook to bring the Mayor up to date on her son's project.<sup>15</sup>
21. While Cook was the manager of the project, Peter McCallion was involved in the selection of the architectural team, and was a constant presence at meetings with the consultants.<sup>16</sup> He claims to have attended these meetings as Couprie's representative.<sup>17</sup> However, Couprie had no active or substantial involvement in WCD's business. Peter McCallion attended these meetings in order to protect his shareholder's interest in WCD.

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<sup>10</sup> Exhibit 228, p. 13 (Mayor's Agendas, dated May 18, 2005) (Tab 10)

<sup>11</sup> Testimony of Murray Cook, p. 4437 (Tab 11)

<sup>12</sup> Testimony of Murray Cook, pp. 4521-4522; Testimony of Peter McCallion, pp. 2042-2044 (Tab 12)

<sup>13</sup> Testimony of Murray Cook, pp. 4450-4451 (Tab 13)

<sup>14</sup> Exhibit 228, p. 7 (Mayor's Agendas, dated May 29, 2006); Exhibit 228, p. 9 (Mayor's Agendas, dated September 22, 2006) (Tab 14)

<sup>15</sup> Testimony of Peter McCallion, pp. 2050-2052; Testimony of Murray Cook, pp. 4537-4539 (Tab 15), 4551-4553 (Tab 13)

<sup>16</sup> Testimony of Murray Cook, pp. 4446-4447 (Tab 16)

<sup>17</sup> Testimony of Peter McCallion, pp. 2074-2076 (Tab 17)

*ii) WCD begins negotiating with the Sellers*

22. WCD benefitted greatly from the Mayor's assistance. Despite being an experienced real estate agent, Peter McCallion relied on his mother to initiate negotiations with the Sellers. In October 2005, she complained to OMERS that Oxford had not taken steps to sell the Lands to WCD, and convinced them to contact Cook.<sup>18</sup> Moreover, the Mayor informed OMERS that she knew how to contact Cook, and would let him know that Oxford would be in touch shortly.<sup>19</sup>
23. Oxford was not familiar with Cook,<sup>20</sup> and was unsure whether he was capable of completing the proposed project. This concern was warranted, given that WCD was a "shell corporation... with only a borrowed office" and Oxford had "not seen any financials or even been able to determine who in fact are the real principals."<sup>21</sup> Further, Oxford did not believe the deal to be a "best use plan" for the Lands.<sup>22</sup>
24. The Mayor's intervention convinced Oxford to negotiate with WCD despite its concerns. She assured the Sellers that Cook had the capability to complete the project,<sup>23</sup> and continued to pressure Oxford to sell the Lands.<sup>24</sup> This pressure caused tension between

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<sup>18</sup> Exhibit 258 (E-mail chain involving Fred Biro, Michael Latimer and Paul Haggis, dated October 4, 2005); Testimony of Mayor McCallion, p. 4875 (Tab 18)

<sup>19</sup> Exhibit 591 (E-mail chain involving Fred Biro, Michael Latimer and Paul Haggis, dated October 4, 2005) (Tab 19)

<sup>20</sup> Testimony of Michael Latimer, p. 2204 (Tab 20)

<sup>21</sup> Exhibit 164 (E-mail discussion between Ronald Peddicord and Dean Hansen, dated October 18, 2006) (Tab 21)

<sup>22</sup> Exhibit 153 (E-mail discussion between Ken Lusk and Ronald Peddicord, dated April 17, 2006) (Tab 22)

<sup>23</sup> Testimony of Ken Lusk, p. 1667-1668 (Tab 23)

<sup>24</sup> Exhibit 146 (E-mail from Ken Lusk to Michael Dal Bello, dated March 9, 2006) (Tab 24)

the Sellers. AIMCo was initially against the deal, but was convinced to support it by Oxford. It was then Oxford's turn to question the deal, to which 156 responded "if the Mayor calls we have no intention of taking a bullet for Oxford."<sup>25</sup> The Mayor continued to pressure the Sellers throughout 2006, and complained that she felt that the deal was taking too long.<sup>26</sup>

25. It is submitted that, but for the Mayor's considerable and direct support for her son's project, the Sellers would not have agreed to work with WCD.

*iii) Peter McCallion's ownership in WCD is formalized*

26. In January 2007, Peter McCallion and Couprie entered into a Declaration of Trust, pursuant to which Couprie would hold 80% of the equity in WCD in trust for Peter McCallion.<sup>27</sup> The Mayor signed the document as a witness, though she claims not to have read it.
27. There was no reason to justify the Declaration of Trust save to keep Peter McCallion's ownership interest in WCD secret. Peter McCallion was not disqualified from holding shares, and the trust provided Couprie with no security for his loan. Based on the evidence, if the Sellers had known that Peter McCallion was an owner of WCD, they may

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<sup>25</sup> Exhibit 162 (E-mail discussion between Ken Lusk and Ronald Peddicord, dated October 20, 2006) (Tab 25)

<sup>26</sup> Exhibit 162 (E-mail discussion between Ken Lusk and Ronald Peddicord, dated October 20, 2006) (Tab 25)

<sup>27</sup> Exhibit 190 (Declaration of Trust) (Tab 26)

not have entered into the APS,<sup>28</sup> and would have been concerned with the Mayor's involvement.<sup>29</sup>

28. The Declaration of Trust is inconsistent with Peter McCallion's claim to be nothing more than a real estate agent. A real estate agent would have had no possible entitlement to 80% of the company, and Peter McCallion is unable to offer any plausible reason why this interest was transferred to him.<sup>30</sup> The purpose of the document was to give Peter McCallion the beneficial interest of the majority of WCD, as was always intended.
29. In two payments made in March 2007 and May 2007, despite his claims to be no more than WCD's real estate agent, Peter McCallion advanced \$103,500 to WCD.<sup>31</sup> By this time, he knew that the Sellers would not pay him a commission on the sale of the Lands. He now alleges that he advanced the money to protect the possibility that he would receive real estate commissions on the eventual sale of condominium units.<sup>32</sup> In fact, WCD owed money to its consultants, and Peter McCallion needed to protect his interest in WCD. Almost all of the \$103,500 went to pay consultants working for WCD.<sup>33</sup>
30. WCD planned to submit a site plan application to the City on July 31, 2007, and was required to pay a fee of approximately \$50,000. WCD did not have the money to do so, and as a result, on July 27, 2007, Peter McCallion arranged for a loan of \$50,000 from

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<sup>28</sup> Testimony of Leo De Bever, pp. 4282-4283 (Tab 27)

<sup>29</sup> Testimony of George Craig Coleman, pp. 2834-2835 (Tab 28)

<sup>30</sup> Testimony of Peter McCallion, pp. 2021-2022 (Tab 29)

<sup>31</sup> Testimony of Peter McCallion, p. 1891; Exhibit 195 (Financial Document showing WCD bank account activity) (Tab 30)

<sup>32</sup> Testimony of Peter McCallion, pp. 1806-1807 (Tab 5)

<sup>33</sup> Exhibit 195 (Financial Document showing WCD bank account activity) (Tab 30)

TACC Group Inc. ("TACC"). He provided TACC with a promissory note in this amount, which he signed as an authorized signing officer of WCD.<sup>34</sup> Peter McCallion now claims that he had no authority to sign this note, as he was merely a real estate agent.<sup>35</sup> He is unable to explain why a real estate agent would have arranged for this loan.

*iv) Peter McCallion replaces Cook with DeCicco*

31. In the Summer of 2007, Peter McCallion decided to bring in DeCicco to replace Cook.<sup>36</sup> At the time, WCD was facing serious financial problems. While Cook claimed that he could find investors for the company, Peter McCallion was concerned that Cook and his new investors would squeeze him out of WCD. His solution was to replace Cook, and bring in DeCicco as an investor.<sup>37</sup> The decision to replace Cook was Peter McCallion's alone. Couprie, not being involved with the business, had no opinion on the matter.<sup>38</sup>
32. When DeCicco assumed management of the project, Peter McCallion transferred 80% of his beneficial interest in WCD (64%) to DeCicco. This left Peter McCallion with a 16% interest. Couprie continued to hold Peter McCallion's interest in trust and now held DeCicco's interest in trust as well.

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<sup>34</sup> Exhibit 196 (Promissory Note dated July 27, 2007) (Tab 31)

<sup>35</sup> Testimony of Peter McCallion, pp. 1846-1847 (Tab 32)

<sup>36</sup> Testimony of Peter McCallion, pp. 1830-1832; Testimony of Murray Cook, pp. 4465-4466 (Tab 33)

<sup>37</sup> Testimony of Peter McCallion, p. 1832 (Tab 33)

<sup>38</sup> Testimony of Leo Couprie, p. 3446 (Tab 34)

33. Peter McCallion and DeCicco demanded that Cook give up his 20% interest in WCD and agree to terminate a Put and Call Agreement which gave Cook the right to force the other shareholders to purchase his interest in WCD, under certain conditions.<sup>39</sup> Cook refused.
34. Peter McCallion and DeCicco turned to the Mayor for assistance in pressuring Cook to accept their demands.<sup>40</sup> It was hoped that the Mayor could convince Cook to leave WCD as successfully as she had convinced him to join.
35. The Mayor arranged a meeting between herself, Peter McCallion and Couprie, in order to obtain Couprie's opinion on the dispute. Couprie made clear to the Mayor that he did not know DeCicco or Cook, and that the decision was Peter McCallion's to make.<sup>41</sup>

*v) Litigation commences against Cook*

36. Despite their efforts, Peter McCallion and DeCicco were unable to force Cook to accept their demands. As a result, in March 2008, they resorted to litigation, and claimed \$100,000,000 from Cook.<sup>42</sup> While Couprie was the nominal plaintiff, he never reviewed the claim or instructed Emilio Bisceglia, who was both the lawyer nominally representing him and an investor in WCD.<sup>43</sup> It was DeCicco who instructed Bisceglia.

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<sup>39</sup> Exhibit 194, pp. 2-5 (Put and Call Agreement, dated August 30, 2006); Testimony of Tony DeCicco, pp. 3580-3581 (Tab 35)

<sup>40</sup> Exhibit 236 (Mayor's Phone Message, dated November 5, 2007) (Tab 36)

<sup>41</sup> Exhibit 228, p. 4 (Mayor's Agenda, dated November 20, 2007); Testimony of Peter McCallion, pp. 2085-2086 (Tab 37); Testimony of Leo Couprie, pp. 3446-3447 (Tab 34)

<sup>42</sup> Exhibit 198 (Statement of Claim of Leo Couprie, dated March 25, 2008) (Tab 38)

<sup>43</sup> Testimony of Leo Couprie, pp. 3434-3436 (Tab 39)

37. The Couprie claim never mentions Peter McCallion. Instead, it conspicuously avoids referring to him, to the point of claiming that it was Couprie who commenced negotiations to purchase the Lands, although Couprie had no involvement in negotiations whatsoever.
38. Along with his defence, Cook launched a counterclaim against both Couprie and WCD.<sup>44</sup> In his pleadings, Cook made repeated reference to “another participant” in WCD, but did not provide a name for that participant. That participant was none other than Peter McCallion, and Cook carefully refrained from connecting him to WCD in his pleadings, though he mentioned both DeCicco and Bisceglia.<sup>45</sup>
39. The obvious inference from the content of these pleadings is that all parties were aware that Peter McCallion’s interest in WCD was to be kept secret. Even Cook, who was being sued for \$100,000,000, was careful not to reveal this fact.
40. DeCicco continued to keep the Mayor apprised regarding the dispute with Cook into mid-2008, specifically updating her with regard to communications WCD received from Cook’s lawyer.<sup>46</sup>
41. The litigation settled in September 2008, and a mutual release was executed. Peter McCallion, despite not being named in any of the pleadings, signed the release as one of the “World Class Parties”.<sup>47</sup> He claims that he did not read the release before signing it,

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<sup>44</sup> Exhibit 199 (Statement of Defence and Counterclaim of Murray Cook, dated July 9, 2008) (Tab 40)

<sup>45</sup> Testimony of Murray Cook, pp. 4512-4513 (Tab 41)

<sup>46</sup> Exhibit 238 (Mayor’s Phone Message, dated December 21, 2007 ); Exhibit 239 (Mayor’s Phone Message, dated May 22, 2008) (Tab 42)

<sup>47</sup> Exhibit 210 (Full and Final Mutual Release dated September 23, 2008) (Tab 43)

and is unable to explain why, as a real estate agent, he would be required to sign a release relating to a dispute between shareholders.<sup>48</sup> However, Bisceglia claims that he told Peter McCallion that he was required to sign the release because he was a part owner of WCD.<sup>49</sup>

*vi) DeCicco takes over management of WCD*

42. The fact that DeCicco took over the management of WCD did not cause Peter McCallion to stop actively participating in the project.
43. A particularly telling example of Peter McCallion's participation occurred in May 2008. The Mayor asked Michael Kitt of Oxford to meet with Peter McCallion regarding the project.<sup>50</sup> The meeting took place on May 13, 2008, and was attended by Kitt, Peter McCallion and the Mayor herself, although Peter McCallion arrived late. During the meeting, the Mayor sought amendments to the APS.<sup>51</sup> When Peter McCallion arrived, he pushed Kitt for further concessions.
44. Kitt testified that he was uncomfortable negotiating the transaction with the Mayor rather than with the purchasers.<sup>52</sup>

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<sup>48</sup> Testimony of Peter McCallion, pp. 2029-2030 (Tab 44)

<sup>49</sup> Testimony of Emilio Bisceglia, p. 5538 (Tab 45)

<sup>50</sup> Exhibit 271 (E-mail discussion between Michael Kitt and Michael Nobrega, dated April 30, 2008) (Tab 46)

<sup>51</sup> Testimony of Michael Kitt, pp. 4013-4021; Exhibit 246 (E-mail discussion between John Filipetti and Michael Kitt, dated May 13, 2008); Exhibit 421 (E-mail discussion between Michael Kitt and Michael Nobrega, dated May 20, 2008) (Tab 47)

<sup>52</sup> Testimony of Michael Kitt, pp. 4012-4013 (Tab 47)

vii) *The Sellers terminate the deal with WCD*

45. In January 2009, the Sellers terminated the APS with WCD.<sup>53</sup> WCD refused to accept the termination, and maintained that the APS was in force. On July 9, 2009, the Sellers sought a declaration from the Superior Court of Justice that the APS terminated in January 2009.
46. In the course of the litigation, Peter McCallion filed an affidavit, dated August 24, 2009, prepared by Paliare Roland Rosenberg Rothstein LLP and commissioned by Bisceglia in which he swore that he was “one of the principals of World Class Developments.”<sup>54</sup>
47. At some point after the affidavit was sworn, City Solicitor Mary Ellen Bench provided a copy of it to the Mayor.<sup>55</sup> The Mayor then demanded that Peter McCallion explain why he had sworn an affidavit in which he stated that he was a principal of WCD, and urged him to “correct” the document.<sup>56</sup>
48. On September 11, 2009, after his phone call with his mother, Peter McCallion asked Bisceglia’s office to prepare a second affidavit for him, in which he purported to “delete” his claim to be a principal of WCD from his first affidavit.<sup>57</sup> Although Bisceglia’s office drafted this affidavit, Bisceglia refused to commission it, as he believed it to be untrue.<sup>58</sup>

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<sup>53</sup> Exhibit 117 (Letter from Abraham Costin to Minden Gross LLP, dated January 9, 2009 (Tab 48))

<sup>54</sup> Exhibit 212 (Affidavit of Peter McCallion dated August 24, 2009), at para. 1 (Tab 49)

<sup>55</sup> Testimony of Mayor McCallion, pp. 5020-5022 (Tab 50)

<sup>56</sup> Testimony of Mayor McCallion, pp. 5020-5024 (Tab 50); Testimony of Peter McCallion, pp. 1862-1863 (Tab 51)

<sup>57</sup> Exhibit 206 (Affidavit of Peter McCallion, dated September 11, 2009) (Tab 52)

<sup>58</sup> Testimony of Emilio Bisceglia, p. 5527 (Tab 53)

Peter McCallion proceeded to have it commissioned at the offices of Danson Schwarz Recht LLP. Jayson Schwarz, one of the partners of that firm, has acted as the Mayor's lawyer for many years.<sup>59</sup>

49. Evidently, Peter McCallion subsequently determined that his second affidavit was not sufficient. On September 15, 2009, he swore a third affidavit, in which he specified that his original affidavit's reference to being a principal of WCD "should be deleted as it is not true. I am not a principal of WCD."<sup>60</sup> Although the Mayor denies speaking to Peter McCallion about his second affidavit, Peter McCallion believes that he swore the third affidavit because his mother told him that the second affidavit "needed to be more clarified."<sup>61</sup> This affidavit was also commissioned at Danson Schwarz Recht LLP.
50. Peter McCallion alleges that his claim to be a principal of WCD in his first affidavit was an oversight. This is despite the fact that he reviewed multiple drafts of the affidavit, and made "quite a few" revisions to it.<sup>62</sup>

*viii) The settlement of the WCD litigation*

51. On July 7, 2009, during a golf tournament dinner, the Mayor told O'Brien that she was concerned that the dispute between WCD and the Sellers could imperil the City's plans to purchase the Lands and lease them to Sheridan College for the construction of a

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<sup>59</sup> Testimony of Peter McCallion, pp. 1963-1964 (Tab 54)

<sup>60</sup> Exhibit 207 (Affidavit of Peter McCallion, dated September 15, 2009) (Tab 55)

<sup>61</sup> Testimony of Peter McCallion, pp. 1868-1869 (Tab 56)

<sup>62</sup> Testimony of Peter McCallion, p. 1861 (Tab 51)

Mississauga campus.<sup>63</sup> She asked O'Brien to familiarize himself with the issues.

O'Brien sits on the OMERS Administration Corporation's Board of Directors.

52. Peter McCallion was also present at that dinner. That very evening, O'Brien approached Peter McCallion and informed him that he wanted to settle the differences between WCD and the Sellers.<sup>64</sup> McCallion arranged a meeting between O'Brien, DeCicco and himself a few days later.<sup>65</sup>
53. During that July meeting, O'Brien told DeCicco and Peter McCallion that he was on OMERS' board, and wanted to settle the dispute. O'Brien claims that DeCicco offered to settle the dispute for \$10,000,000, although DeCicco denies that he provided O'Brien with a number.<sup>66</sup> O'Brien later briefed the Mayor on this meeting.<sup>67</sup>
54. In late August 2009, the Mayor called O'Brien and again expressed concern over the litigation between WCD and the Sellers.<sup>68</sup> O'Brien subsequently met with the Mayor on or about September 3, 2009, and they discussed Peter McCallion's affidavit in which he had sworn that he was a principal of WCD.<sup>69</sup> They continued this discussion the morning

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<sup>63</sup> Testimony of David O'Brien, pp. 2921-2924; Testimony of Mayor McCallion, pp. 4993-4994 (Tab 57)

<sup>64</sup> Testimony of Peter McCallion, pp. 1870-1871 (Tab 56)

<sup>65</sup> Testimony of Peter McCallion, p. 1871 (Tab 56)

<sup>66</sup> Testimony of David O'Brien, p. 2929; Testimony of Tony DeCicco, pp. 3668-3672 (Tab 58)

<sup>67</sup> Testimony of David O'Brien, pp. 2979-2980 (Tab 59)

<sup>68</sup> Exhibit 404 (E-mail from David O'Brien to Michael Nobrega, dated August 27, 2009); Testimony of David O'Brien, pp. 2982-2984 (Tab 60)

<sup>69</sup> Testimony of David O'Brien, pp. 2989-2990 (Tab 61)

of September 5, 2009, during which time they agreed the Sheridan College project could be jeopardized if the WCD litigation continued.<sup>70</sup>

55. Shortly thereafter, on or about September 9, 2009, O'Brien obtained authority from Michael Nobrega, OMERS' Chief Executive Officer, to meet with WCD on behalf of OMERS and discuss the possibility of settling the litigation.<sup>71</sup>
56. O'Brien met with Peter McCallion and DeCicco on or about September 10, 2009 to discuss settlement.<sup>72</sup> Either during that meeting or through telephone conversation that evening, a settlement in principle was reached in which the Sellers would pay WCD the sum of \$4,000,000, which included the return of deposits previously paid by WCD.<sup>73</sup> O'Brien called the Mayor on September 14 to give her an "update on what I have".<sup>74</sup> Although the Mayor denies it, O'Brien's evidence is that he called to inform her of the settlement.<sup>75</sup>
57. The communications between the Mayor and O'Brien raise a strong inference that O'Brien was trying to settle the WCD litigation at the Mayor's request. That settlement allowed the Sheridan College transaction to proceed without risk, ended the litigation in which Peter McCallion had filed an affidavit in which he had revealed himself as a

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<sup>70</sup> Testimony of David O'Brien, pp. 2999-3002 (Tab 62)

<sup>71</sup> Testimony of David O'Brien, pp. 3013-3014; Testimony of Michael Nobrega, pp. 3168-3170 (Tab 63)

<sup>72</sup> Testimony of David O'Brien, p. 3014 (Tab 63); Testimony of Tony DeCicco, pp. 3687-3689 (Tab 64)

<sup>73</sup> Testimony of David O'Brien, pp. 3020-3021 (Tab 65); Testimony of Tony DeCicco, p. 3689 (Tab 64)

<sup>74</sup> Exhibit 330 (Mayor's Phone Message, dated September 14, 2009) (Tab 66)

<sup>75</sup> Testimony of David O'Brien, pp. 3023-3024 (Tab 67)

principal of WCD, and delivered a healthy profit to WCD. These results were all beneficial to the Mayor.

*ix) Suggested Conclusions Regarding Peter McCallion's Conduct*

58. An examination of Peter McCallion's role in the WCD project yields answers to the questions raised by the Terms of Reference. Peter McCallion was one of the principals and representatives of WCD. However, the Mayor was related to the principals of WCD not only by blood, but also through her dedicated advancement of their business interests.
59. Peter McCallion was a major shareholder in WCD and hoped to realize a large profit on that equity interest through the deal with the Sellers. He wrongfully used his relationship with the Mayor to further that goal.
60. While Peter McCallion tried to hide his ownership interest from the Sellers, his partners in WCD were well aware that he was a shareholder. Bisceglia knew of Peter McCallion's ownership interest from the beginning of his involvement.<sup>76</sup> DeCicco claims that Peter McCallion told him that his shares were being held by Couprie.<sup>77</sup>
61. From the outset, Peter McCallion actively solicited the Mayor's assistance with the project. He used the Mayor to convince Cook to join the project, to pressure the Sellers into selling the Lands to WCD, to force Cook out of WCD to make room for DeCicco, and to convince the Sellers to amend the APS. He realized that the Sellers would only work with him if the Mayor pressured them to do so, and hid his ownership of WCD from the Sellers, lest it prevent the Mayor from advancing WCD's interests.

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<sup>76</sup> Testimony of Emilio Bisceglia, pp. 5495-5496 (Tab 68)

<sup>77</sup> Testimony of Tony DeCicco, pp. 3561-3562 (Tab 69)

62. Peter McCallion knew or ought to have known that it was improper for the Mayor to advance the interests of a company of which he was a shareholder. By seeking the support of the Mayor, he took advantage of her office.

## II. The Role of Tony DeCicco

63. It was not until DeCicco assumed management of the project that he realized the full extent of the challenge that WCD faced in building a four-star hotel on the Lands. He eventually determined that it would not be possible to build a hotel of this quality on the Lands.<sup>78</sup> At that point, DeCicco abandoned the plan to build a hotel and convention centre, and instead focused on simply obtaining the most profit he could, either by selling the Lands once they had been purchased from the Sellers or building condominiums exclusively.
64. DeCicco acquired 80% of Peter McCallion's interest in WCD, but was careful to keep Peter McCallion actively involved in the company. This was because of the unique entrée that Peter McCallion offered to the office of the Mayor. DeCicco took advantage of this special connection wherever possible.

### *i) DeCicco's initial contact with the Mayor*

65. DeCicco became involved with WCD in the Summer of 2007. However, his relationship with the Mayor goes back much farther.

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<sup>78</sup> Testimony of Tony DeCicco, p. 3969 (Tab 70)

66. DeCicco first met the Mayor in the early 1980s.<sup>79</sup> For years, his contact with her was sporadic, and limited to functions that they both attended.<sup>80</sup> It was only through his relationship with Peter McCallion that DeCicco gained easier and regular access to the Mayor.<sup>81</sup>
67. DeCicco began to arrange meetings with the Mayor through Peter McCallion at least as early as February 2003.<sup>82</sup> The three met on many more occasions over the following two years.<sup>83</sup> These meetings allowed DeCicco to build a relationship with the Mayor, and demonstrated to him the benefits of maintaining ties to Peter McCallion. DeCicco began to exploit that relationship as soon as he replaced Cook at WCD.
68. Surprisingly, it was the Mayor that informed the Sellers that Cook had been replaced by DeCicco, rather than DeCicco or Peter McCallion, and this did not occur until DeCicco had been involved with WCD for more than half a year.<sup>84</sup> The Sellers had never heard of DeCicco. However, just as she had vouched for Cook, the Mayor assured the Sellers that DeCicco had “significant financial resources.”<sup>85</sup>

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<sup>79</sup> Testimony of Tony DeCicco, pp. 3523-3524 (Tab 71)

<sup>80</sup> Testimony of Tony DeCicco, p. 3526 (Tab 72)

<sup>81</sup> Testimony of Tony DeCicco, p. 3529 (Tab 73)

<sup>82</sup> Exhibit 234, p. 1 (Mayor’s agendas, dated February 12, 2003) (Tab 74)

<sup>83</sup> September 9, 2003 (Exhibit 234, p. 3); November 12, 2003 (Exhibit 234, p. 4); January 29, 2004 (Exhibit 234, p. 5); April 24, 2004 (Exhibit 228, p. 19); July 13, 2004 (Exhibit 234, p. 7); September 14, 2004 (Exhibit 234, p. 8); October 30, 2004 (without Peter McCallion) (Exhibit 234, p. 10); January 17, 2005 (Exhibit 234, p. 12) (Tab 75)

<sup>84</sup> Testimony of Michael Kitt, pp. 4002-4003 (Tab 76)

<sup>85</sup> Exhibit 429 (E-mail discussion between John Filipetti and Ronald Peddicord, dated March 31, 2008) (Tab 77)

*ii) DeCicco asks the Mayor to obtain concessions from the Sellers*

69. From the beginning of his involvement, DeCicco regularly spoke to the Mayor about the project. He informed her of discussions and progress with the architects<sup>86</sup> and updated her on WCD's attempts to secure a hotelier for the project.<sup>87</sup> He also provided her with information regarding the payment of WCD's bills and thanked her for her help.<sup>88</sup> Had she not been personally involved with the project, DeCicco would have had no reason to provide the Mayor with these sorts of detail. A private company's ability to pay its bills is not and should not be a municipal concern.
70. As part of its deal with the Sellers, WCD was required provide the Sellers with proof that it had entered into a hotel management agreement by July 28, 2008. By early July, DeCicco knew that WCD would not be able to meet this deadline, so he solicited the Mayor's assistance to obtain an extension.<sup>89</sup>
71. In response to this request, the Mayor convinced the Sellers to give WCD an extra six months to find a hotelier.<sup>90</sup> The fact that the Mayor made this request, rather than WCD,

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<sup>86</sup> Exhibit 237 (Mayor's Phone Message, dated November 5, 2007), Exhibit 515 (Mayor's Phone Message, dated November 29, 2007) (Tab 78)

<sup>87</sup> Exhibit 204 (Mayor's Phone Message, dated June 5, 2008); Exhibit 240 (Mayor's Phone Message, dated June 6, 2008); Testimony of Peter McCallion, pp. 2095-2099 (Tab 79)

<sup>88</sup> Exhibit 235 (Mayor's Phone Message, dated November 5, 2007) (Tab 80)

<sup>89</sup> Testimony of Mayor McCallion, pp. 4925-4926 (Tab 81)

<sup>90</sup> Exhibit 285 (E-mail chain involving Michael Latimer, Michael Kitt and John Filipetti, dated July 9, 2008); Testimony of Michael Nobrega, pp. 3104-3105 (Tab 82)

caused Kitt to believe that WCD was using the Mayor “as an effective communication tool” to “advance negotiation positions.”<sup>91</sup> This was precisely DeCicco’s aim.

72. That was not the only time that DeCicco used the Mayor to obtain extensions to deadlines in the deal. In November 2008, WCD was required to pay a deposit to the Sellers. DeCicco again asked the Mayor to obtain an extension for the payment of the deposit.<sup>92</sup> The Mayor, on behalf of WCD, obtained a further one-week extension from the Sellers.<sup>93</sup>
73. When that extension had nearly expired, DeCicco once again sought the Mayor’s assistance in obtaining another extension for WCD.<sup>94</sup> The Mayor obtained a further one week extension.<sup>95</sup>
74. However, WCD was again unable to pay the deposit, and yet again turned to the Mayor,<sup>96</sup> who managed to convince the Sellers to extend the deposit deadline until January 9, 2009.<sup>97</sup> When WCD failed to make that deposit, the Sellers terminated the APS.

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<sup>91</sup> Testimony of Michael Kitt, pp. 4023-4024 (Tab 83)

<sup>92</sup> Exhibit 529 (Mayor’s Phone Message, dated November 17, 2008); Exhibit 530 (Mayor’s Phone Message, dated November 19, 2008); Exhibit 531 (Mayor’s Phone Message, dated November 19, 2008); Exhibit 532 (Mayor’s Phone Message, dated November 20, 2008); Exhibit 533 (Mayor’s Phone Message, dated November 21, 2008) (Tab 84)

<sup>93</sup> Exhibit 423 (E-mail discussion between Michael Kitt and Michael Nobrega, dated November 21, 2008); Exhibit 464 (Mayor’s Phone Message, dated November 21, 2008) (Tab 85)

<sup>94</sup> Exhibit 534 (Mayor’s Phone Message, dated November 27, 2008); Exhibit 535 (Mayor’s Phone Message, dated November 28, 2008); Exhibit 536 (Mayor’s Phone Message, dated December 2, 2008); (Tab 86)

<sup>95</sup> Exhibit 470 (E-mail discussion between Michael Kitt and John Filipetti, dated December 1, 2008); Exhibit 438 (E-mail chain involving Michael Kitt, Michael Nobrega and John Filipetti, dated December 2, 2008); Exhibit 627 (Mayor’s Phone Message, dated December 3, 2008) (Tab 87)

<sup>96</sup> Exhibit 537 (Mayor’s Phone Message, dated December 11, 2008, Peter McCallion calling on behalf of DeCicco); Exhibit 538 (Mayor’s Phone Message, dated December 12, 2008) (Tab 88)

*iii) DeCicco seeks assistance from the Mayor with City issues*

75. DeCicco not only sought the Mayor's assistance with respect to the Sellers, but also with respect to the City itself. In order for WCD to build anything on the Lands, City Council had to vote to remove the holding designation that had been placed on the Lands. This vote was initially scheduled to occur on April 23, 2008, but was deferred to April 30, 2008 at WCD's request.
76. Between April 22, 2008 and April 29, 2008, DeCicco left five separate telephone messages for the Mayor.<sup>98</sup> One of these messages was "very long and detailed", and disclosed that he had "met with City officials" and wanted to speak to the Mayor.<sup>99</sup>
77. The April 30, 2008 date was also deferred, again at WCD's request. WCD never succeeded in having the holding designation lifted.

*iv) DeCicco decides not to build a hotel*

78. By September 2008 at the latest, DeCicco had decided against attempting to build a hotel on the Lands. WCD began to explore the possibility of selling and transferring the

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<sup>97</sup> Exhibit 425 (E-mail chain involving Michael Kitt, Michael Nobrega and Michael Latimer, dated December 17, 2008) (Tab 89)

<sup>98</sup> Exhibit 519 (Mayor's Phone Message, dated April 22, 2008), Exhibit 520 (Mayor's Phone Message, dated April 23, 2008), Exhibit 521 (Mayor's Phone Message, dated April 25, 2008), Exhibit 522 (Mayor's Phone Message, dated April 28, 2008); Exhibit 523 (Mayor's Phone Message, dated April 29, 2008) (Tab 90)

<sup>99</sup> Exhibit 521 (Mayor's Phone Message, dated April 25, 2008) (Tab 90)

obligation to construct a hotel to the purchaser.<sup>100</sup> Ernst & Young was retained to locate a purchaser.

79. DeCicco maintains that Ernst & Young was only retained so that WCD could find out what was “going on in the marketplace.”<sup>101</sup> That contention is brought into serious doubt by the evidence that DeCicco and Bisceglia provided Ernst & Young with offers and counter-offers to transmit to potential purchasers.
80. WCD was unable to find a purchaser willing to purchase the property and accept the hotel conditions, causing DeCicco to attempt to convince the Sellers to waive the hotel requirement. He sought the Mayor’s assistance in this regard, and though she denies supporting him in this, the evidence indicates that the Sellers believed that she wanted them to sell WCD the Lands without the hotel condition.<sup>102</sup> This would have allowed WCD to build nothing but condominiums. However, the Sellers refused to grant the concession.
81. After DeCicco failed to convince the Sellers to remove the hotel condition from its deal with WCD, he resorted to subterfuge. WCD was required to enter into a hotel management agreement in order to close the deal with the Sellers. The Sellers required WCD to produce such an agreement to them. WCD purported to enter into an apparent hotel management agreement with Steve Gupta’s company, Eastons.

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<sup>100</sup> Exhibit 561 (E-mail chain involving Emilio Bisceglia, Tony DeCicco and Ray Drost, dated September 11, 2008) (Tab 91)

<sup>101</sup> Testimony of Tony DeCicco, pp. 3809-3810 (Tab 92)

<sup>102</sup> Exhibit 438 (E-mail chain involving John Filipetti, Michael Kitt and Michael Nobrega, dated December 2, 2008) (Tab 87)

82. However, the agreement that was produced to the Sellers deliberately failed to reveal the existence of a side agreement, which permitted WCD to unilaterally terminate the hotel management agreement on one week's notice.<sup>103</sup> The side agreement effectively negated all of WCD's obligations in the purported hotel management agreement. Its existence was known to DeCicco, who signed it, and Bisceglia, who drafted it,<sup>104</sup> but not to the Sellers.

*v) Suggested Conclusions Regarding Tony DeCicco's Conduct*

83. The Terms of Reference inquire into the relationships between City officials and representatives of both WCD and OMERS and its affiliate companies. The assistance that the Mayor provided to DeCicco vividly demonstrates the nature of the Mayor's relationship to both WCD and OMERS/Oxford/156. Throughout the WCD project, DeCicco routinely solicited the Mayor for assistance, and she responded by pressuring the Sellers to comply.

84. DeCicco was interested in the WCD project because it came with the unique ability to have the Mayor act as his spokesman. Peter McCallion's main role was as a conduit to the Mayor, but over time, DeCicco no longer needed that conduit, as he had ready and direct access to the Mayor himself.

85. When DeCicco needed Peter McCallion's connections to the Mayor, he was a trusted ally. However, when WCD received the settlement monies from OMERS, and the deal was at an end, DeCicco conveniently forgot about Peter McCallion. Peter McCallion

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<sup>103</sup> Exhibit 401 (Letter re: Management Agreement from WCD to Steve Gupta, dated December 15, 2008) (Tab 93)

<sup>104</sup> Testimony of Emilio Bisceglia, p. 5508 (Tab 94)

received nothing from the settlement, despite his 16% interest in WCD. He did not even receive a return of the \$103,500 he advanced to WCD, or the \$50,000 TACC loan that he guaranteed.

86. From the outset, DeCicco used the Mayor to introduce him to the Sellers, to negotiate extensions to deadlines, to seek assistance with City approvals and to remove Cook from WCD. He knew that the Sellers would not cooperate with him unless the Mayor pressured them to do so.
87. DeCicco had access to the Mayor beyond that available to an ordinary resident. He used her influence to advance his private financial interests. He allowed her to believe that he was committed to building a hotel on the Lands, even when he himself had concluded that it was not feasible.

### **III. The Role of Emilio Bisceglia**

88. Bisceglia claims that he was no more than WCD's lawyer.<sup>105</sup> However, the evidence demonstrates that Bisceglia's role went well beyond that of legal counsel. He was also an investor and was deeply involved in many of WCD's important business decisions.
89. Bisceglia, through a family company, invested a total of \$61,000 in WCD from November 2007 to January 2008.<sup>106</sup> He came into the project with DeCicco, with whom he had a prior professional and commercial relationship.<sup>107</sup>

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<sup>105</sup> Testimony of Emilio Bisceglia, pp. 5529-5530 (Tab 95)

<sup>106</sup> Testimony of Emilio Bisceglia, pp.5494-5495 (Tab 68)

<sup>107</sup> Testimony of Emilio Bisceglia, pp. 5494-5495 (Tab 68)

90. Along with DeCicco, Bisceglia attended the first meeting that WCD had with Gupta, and was involved in negotiating the agreements between WCD and Easton's.<sup>108</sup> He also drafted the side letter that effectively relieved WCD of any obligations to Easton's.<sup>109</sup>
91. Bisceglia also attended meetings with architects and other contractors on behalf of WCD. One example is a meeting at Page and Steele's office on November 21, 2007.<sup>110</sup> The minutes from that meeting indicate that Bisceglia took an active role in instructing the architects and accepting responsibility for such non-legal tasks as co-ordinating the payment of fees to the City.
92. In addition, Bisceglia was included on e-mails sent by WCD's consultants informing the members of WCD of updates regarding the project.<sup>111</sup>
93. Even communications with Ernst & Young regarding potential purchasers of the Lands were handled by Bisceglia.<sup>112</sup> These discussions were of vital importance to DeCicco, who did not want to build a hotel, and were well outside the civil litigation focus of Bisceglia's legal practice.<sup>113</sup>

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<sup>108</sup> Testimony of Emilio Bisceglia, pp. 5503-5507 (Tab 96)

<sup>109</sup> Testimony of Emilio Bisceglia, p. 5508 (Tab 96)

<sup>110</sup> Exhibit 256 (E-mail from Scott Walker to Tony DeCicco, Emilio Bisceglia and others, dated November 22, 2007) (Tab 97)

<sup>111</sup> See, e.g., Exhibit 400 (E-mail from Scott Walker to Tony DeCicco, Emilio Bisceglia and Peter McCallion, dated May 1, 2008) (Tab 98)

<sup>112</sup> Exhibit 561 (E-mail chain involving Emilio Bisceglia, Tony DeCicco and Ray Drost, dated September 11, 2008) (Tab 91)

<sup>113</sup> Testimony of Emilio Bisceglia, pp. 5492-5493 (Tab 99)

94. Although the extent of Bisceglia's interest in WCD was never formalized,<sup>114</sup> it is clear that he was more than just WCD's lawyer. He was DeCicco's partner, an investor in the company, and was intimately involved in many of WCD's important business decisions.
95. Bisceglia did not have any contact with the Mayor or with any other City officials. However, his involvement with the project and close association with DeCicco strongly suggest that he was aware of the manner in which Peter McCallion and DeCicco were using the Mayor to advance their own interests.

#### **IV. Edward Sajecki and Marilyn Ball**

96. In January 2008, the City informed WCD that it was required to pay \$440,670.84 in site plan application fees. Given the quantum of the required fees, the City agreed to receive this sum in two equal instalments.<sup>115</sup>
97. WCD was told that its site plan application would not be circulated among City staff for comment until the first instalment had been received. Although neither instalment was ever received, Sajecki and Ball decided to circulate the application for comment anyway.<sup>116</sup>
98. The evidence of Sajecki and Ball makes clear that there was nothing improper about this decision.

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<sup>114</sup> Testimony of Emilio Bisceglia, p. 5536 (Tab 100)

<sup>115</sup> Exhibit 503 (Letter from Marilyn Ball to Barry Lyon dated February 28, 2008) (Tab 101)

<sup>116</sup> Testimony of Edward Sajecki, pp. 2767-2770; Testimony of Marilyn Ball, pp. 4219-4221 (Tab 102)

99. The application was circulated prior to receipt of the first instalment because: (i) the City had received assurances from credible consultants that the first instalment would arrive shortly; (ii) the City needed comments on the application in order to start preparing the accompanying agreements; and (iii) the City would be faced with tight timelines if it did not begin working on the application immediately.<sup>117</sup>
100. There is no evidence that this decision was made for improper reasons or as the result of improper influence.

#### **V. The Role of Mayor Hazel McCallion**

101. Elected officials must act impartially with regard to the interests of their constituents. In order to justify public trust, elected officials must not exercise their powers in a way that unfairly benefits or appears to benefit particular individuals.
102. The facts recounted above with regard to Peter McCallion and DeCicco document the extensive involvement that the Mayor had in the affairs of WCD and its principals. They also provide an answer to the question whether any City official engaged in misconduct, or had a conflict of interest, as raised by the Terms of Reference. In the case of the Mayor, the answer to that question is yes.
103. While Peter McCallion and DeCicco improperly took advantage of Peter McCallion's relationship to the Mayor, and exploited her office for their own ends, the Mayor was unfortunately a willing participant. It has been a longstanding goal of both Council and senior staff at the City to have a luxury hotel and convention centre built in the City

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<sup>117</sup> Testimony of Edward Sajecki, pp. 2767-2769 (Tab 102)

Centre.<sup>118</sup> However, even though the project that WCD presented to the Sellers was in line with the City's vision, this does not legitimize the efforts that the Mayor made to advance her son's project.

104. The Mayor encouraged Cook to join her son in WCD. She pressured Oxford to enter into an agreement of purchase and sale with a shell corporation with no track record operated by principal it had no experience with. The Sellers proceeded with the transaction despite their own doubts, indicating they did it primarily to placate the Mayor. Once the APS had been signed, the Mayor repeatedly sought amendments and concessions from the Sellers. She did all of this knowing that Peter McCallion stood to gain financially from her actions.
105. Even if she had believed that her son was merely WCD's real estate agent, her support for the company would nonetheless have been inappropriate. Whether as real estate agent or principal, her son's involvement with WCD and his ability to benefit financially from her actions placed her in a conflict of interest, and she should have been aware of that fact.
106. The Mayor did not violate the *Municipal Conflict of Interest Act*.<sup>119</sup> That statute is narrow and applies only to actions taken with respect to votes in meetings of council. Although she failed to comply with its provisions at the May 21, 2008 council meeting, as she did not declare a conflict of interest when the matter of WCD's application to remove the holding designation came up, her breach appears to have been the result of

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<sup>118</sup> Testimony of Edward Sajecki, pp. 1386-1387 (Tab 103)

<sup>119</sup> R.S.O. 1990, c. M.50 (the "MCIA") (Tab 104)

honest mistake. Accordingly, she would not be liable for sanction under the MCIA pursuant to the saving provision found at s. 10(2).

107. However, the fact that the Mayor did not substantively breach the MCIA does not lead to the conclusion that she did not act inappropriately, or in violation of a conflict of interest. The common law principles concerning conflict of interest co-exist with the MCIA, and provide guidance to determine whether the actions of a member of a municipal council are appropriate.<sup>120</sup>
108. The overarching purpose of rules governing conflicts of interest is to foster public confidence in elected officials.<sup>121</sup> The promotion of the financial interests of an official's child through the influence of the official's office undermines that confidence.<sup>122</sup> For the Mayor to be seen promoting a deal in which her son has a direct financial interest may lead the public to question whether she is acting for the good of the City, or solely the good of her family. Such conflicts must be scrupulously avoided, whether or not they are specifically prohibited by rules contained in statutes or codes of conduct.
109. Accordingly, the important question is not whether the Mayor's actions violated any applicable statute or rule. Rather, it is whether she acted in a manner which she knew or ought to have known would likely undermine the confidence and trust that the residents of Mississauga are entitled to have in their elected officials. The maintenance of the public trust is essential to good governance, and the Mayor must not engage in conduct that could reasonably erode that trust.

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<sup>120</sup> Testimony of Prof. David Mullan, pp. 5589-5590; Testimony of Dean Lorne Sossin, pp. 5592-5593 (Tab 105)

<sup>121</sup> Testimony of Dean Lorne Sossin, pp. 5583-5584 (Tab 106)

<sup>122</sup> Testimony of Prof. David Mullan, pp. 5591-5592 (Tab 107)

110. The Mayor's active role in supporting and promoting the business interests of her son and WCD threatened to undermine public confidence in both her office and the elected and administrative representatives of the City. Whatever her reasons for supporting WCD, they were unbecoming of an elected official.

## **VI. Recommendations**

111. Given the misconduct that has been identified as a result of the Inquiry, it is essential that steps are taken to prevent municipal officials from engaging in such conduct in the future. Five issues are examined here: the MCIA, the new Mississauga Council Code of Conduct, policies to ensure accountability and transparency in municipal activities, lobbyist registries and comfort letters issued by municipalities to third parties.

### *i) The MCIA*

112. This Inquiry has demonstrated three significant defects in the MCIA: its restricted scope, its limited remedies and the fact that enforcement is left to ordinary citizens.<sup>123</sup> In its current form, the MCIA addresses only pecuniary conflicts of interest, and applies only to matters that are the subject of discussion or a vote at a meeting of council or a local board.<sup>124</sup> If a court determines that a member of council has breached the MCIA, the court must disqualify that member and declare her seat vacant.<sup>125</sup> The court has no discretion to order a different remedy.

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<sup>123</sup> Testimony of Prof. David Mullan, pp. 5663-5664, 5686 (Tab 108)

<sup>124</sup> MCIA, s. 5 (Tab 104)

<sup>125</sup> MCIA, s. 10(1) (Tab 104)

113. The MCIA should apply to non-pecuniary conflicts of interest, as well as pecuniary conflicts. Public confidence is affected when a member of council acts on a conflict of interest, whether the interest is pecuniary in nature or otherwise. This amendment can be accomplished by simply deleting the references to “pecuniary” in the MCIA, thereby causing it to refer to “conflicts of interest” generally.<sup>126</sup>
114. Similarly, the scope of the MCIA should not be restricted to discussions and votes that occur in meetings. The application of the MCIA should apply generally to actions taken by members of council when acting or appearing to act in their official position.<sup>127</sup> Aside from her technical breach on the MCIA May 21, 2008, none of the support that the Mayor provided to WCD occurred in a meeting of council. However, this does not mean that her involvement with WCD did not threaten to diminish the public’s trust in the office of the Mayor. There is no principled reason to limit the applicability of the MCIA to council meetings, and the MCIA should be broadened accordingly.
115. If the scope of the MCIA was broadened in this way, it would capture the sort of conduct that the Mayor engaged in. The Mayor placed herself in a conflict of interest, but this conflict occurred outside of council meetings. If conduct like this should reoccur in the future, an amended MCIA would allow that conduct to be addressed by a court that has the power to disqualify a member of council.
116. However, while it is important that the MCIA continue to empower the court to disqualify a member of council, this should not be the only available remedy. The court

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<sup>126</sup> Testimony of Prof. David Mullan, pp. 5687-5688 (Tab 109)

<sup>127</sup> Testimony of Prof. David Mullan, p. 5692 (Tab 110)

should have the discretion to determine the appropriate remedy in the circumstances of a breach of the MCIA. Situations may arise in which the MCIA has been breached, but in circumstances that do not warrant disqualification.<sup>128</sup>

117. In its current form, actions under the MCIA must be initiated by an elector. Given the cost and complexities involved in legal proceedings, such actions are unlikely to happen. It is a rare citizen who has the resources to retain and instruct counsel to bring an action in which that citizen has no personal financial interest.
118. In order for the MCIA to be effective, an official must be empowered to commence actions under the MCIA. This power could be given to municipal integrity commissioners, who could bring an action at the request of an elector, subject to an investigation to ensure that that an action was justified. Alternatively, the power to commence proceedings under the MCIA could be vested in a provincial official, such as the provincial integrity commissioner. The provincial integrity commissioner may choose to initiate proceedings upon receipt of a recommendation from a municipal integrity commissioner or at the request of an elector of the municipality in issue.
119. Municipalities and the Province will have to discuss where the power to commence proceedings under the MCIA is best vested. At the present instance, what is needed is a recommendation from the Commissioner that such discussions take place. If enforcement of the provisions of the MCIA is left to electors, as it is currently, it is unlikely that it will be enforced at all.

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<sup>128</sup> Testimony of Prof. David Mullan, pp. 5692-5694 (Tab 110)

*ii) The Mississauga Council Code of Conduct*

120. Subsequent to the commencement of the Inquiry, the City took proactive steps to craft rules that would prevent the sort of misconduct that occurred in this case. This led to the adoption of the *Council Code of Conduct* in September 2010 (the “Code”).<sup>129</sup>
121. The Code is the product of a detailed review of codes of conduct adopted by other municipalities and extensive consultations with experts and City residents. It largely follows the format adopted by other Ontario municipalities such as Toronto and Vaughan, but is even more comprehensive in its scope.
122. Unlike the codes of conduct adopted by other municipalities, the Code contains substantive provisions that deal with conflict of interest and apparent conflict of interest.<sup>130</sup> This is in addition to the provisions that prohibit the improper use of influence.<sup>131</sup> These rules now make abundantly clear to all future Members of Council that the Mayor’s actions in this case were improper, thereby helping to ensure that misconduct of this sort does not occur again.
123. The Code is sufficiently general to deal with future concerns, and will be subject to future interpretation by the integrity commissioners retained by the City. The Code specifically provides that it is to be given a broad and liberal interpretation.<sup>132</sup>

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<sup>129</sup> Exhibit 708 (Tab 111)

<sup>130</sup> Code, Rules 1(b), (d)-(g) (Tab 111)

<sup>131</sup> Code, Rule 7 (Tab 111)

<sup>132</sup> Code, Framework and Interpretation, s. 1 (Tab 111)

124. The Code was not in place during the events under inquiry. However, if it had been, it would have clearly prohibited the actions that the Mayor performed on WCD's behalf. Rule 7 provides that "No member shall use the influence of his or her office for any purpose other than for the exercise of his/her official duties." The commentary to this rule clarifies that this includes "attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents." This is precisely what the Mayor did for WCD.
125. While the Code was widely praised by the experts called in the Inquiry, it is apparent that some improvements could be made to it. Several of those improvements related to Rule 1(b), which is a general rule concerning conflicts of interest.
126. Some concern has been raised that Rules 1(d)-(g) could be interpreted as exhaustive examples of prohibited conflicts of interest.<sup>133</sup> Rules 1(d)-(g) are not intended to be read in this manner, but it would be worthwhile to specify this in the body of Rule 1.
127. Rule 1(b) itself can be strengthened by rewording it from "Members of Council *should* be committed to performing their functions with integrity..." to "Members of Council *shall* be committed..."<sup>134</sup>
128. Finally, Rule 1(b) currently addresses preferential treatment given to "Family Members" only.<sup>135</sup> Although terms such as "friends" or "business partners" may present interpretive difficulties for future integrity commissioners, the connection between the Mayor and

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<sup>133</sup> Testimony of Prof. David Mullan, pp. 5646-5648; 5697-5698 (Tab 112)

<sup>134</sup> Testimony of Prof. David Mullan and Prof. Greg Levine, pp. 5648-5649 (Tab 112)

<sup>135</sup> Testimony of Prof. David Mullan and Dean Lorne Sossin, pp. 5699-5701 (Tab 113)

DeCicco in this Inquiry demonstrates the importance of applying conflict of interest rules to more than just family relations. In order to broaden the Rule and avoid definitional difficulties, it could be worded so as to apply to relations that a reasonable person would believe prevent a member from being impartial.<sup>136</sup>

129. Outside of the realm of Rule 1(b), the relationship between the Code and the MCIA, especially if the scope of the MCIA is broadened, can be helpfully clarified. The Code is necessarily subservient to the MCIA, but it is important that the Code can operate whenever possible. An amendment to the Code to specify that its procedures apply *unless* an action under the MCIA has actually been commenced would be an improvement.<sup>137</sup>

*iii) Accountability and Transparency*

130. While it is up to Council to craft policy, City employees are tasked with implementing it. The implementation of policy, particularly for senior staff members, can raise many of the same ethical concerns that are encountered by elected officials. It is vital that the City have policies in place that ensure that its staff are accountable to residents and its procedures are transparent to all.
131. The Inquiry confirmed that there was nothing improper about the Planning Department's decision to circulate WCD's site plan application for comment despite WCD's failure to pay the required fees. However, this incident demonstrates the important decisions that are made by senior staff on a regular basis. In this case, the familial relationship between

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<sup>136</sup> Testimony of Dean Lorne Sossin, pp. 5700-5701 (Tab 113)

<sup>137</sup> Testimony of Prof. David Mullan, pp. 5695-5696 (Tab 114)

the Mayor and Peter McCallion was well known to staff. Such a situation may cause staff discomfort in performing their duties, or leave them unsure about how to proceed.

132. For a municipality which holds accountability and transparency as its core values, optics can be as damaging as reality when the City deals with an individual who has a close relationship to a member of Council or senior employee. The City should adopt policies and procedures so that that the existence of such relationships are made transparent to the public, and staff have guidelines to follow to ensure that these relationships do not give residents reason to question whether the City is acting fairly and impartially.
133. At the current time, a number of different City policies address employee conduct. Of particular relevance is the policy concerning conflicts of interest.<sup>138</sup> The Policy is quite comprehensive, but differs from the more general approach taken by the Code. For example, it is not clear whether the Policy deals with apparent conflicts of interest, as the Code does. Additionally, simply by virtue of the fact that different language is used in the Code and the Policy, senior staff could reasonably believe that different standards apply to them than elected officials, even if this is not intended.
134. It would be beneficial if the City undertook to draft a set of policies applicable to senior staff in particular that mirrored, wherever appropriate, the obligations placed upon members of Council in the Code. For example, it would be beneficial if a stand-alone rule concerning the improper use of influence applied to senior staff, like that found at Rule 7 of the Code. While the Policy refers to the use of influence, it is only in the context of conflicts of interest. Because it is possible for an individual to improperly use

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<sup>138</sup> Mississauga Corporate Policy No. 01-03-02, dated July 5, 2006 (the "Policy") (Tab 115)

their influence in a situation where they do not have a conflict of interest, a policy that specifically deals with the improper use of influence would benefit the good governance of the City.<sup>139</sup>

*iv) Lobbyist Registry*

135. Toronto is the only municipality that has adopted a lobbyist registry. It is required to do so by statute.

136. It is too early to determine whether the benefits of the Toronto lobbyist registry justify its cost.<sup>140</sup> However, given the limited scope of that registry, and its voluntary nature, there is good reason to believe that its benefits will *not* justify its existence.<sup>141</sup>

137. A lobbyist registry would have done nothing to prevent the misconduct under inquiry. No lobbyist registry would have addressed the Mayor's communications with the Sellers, or her intervention into the internal affairs of WCD. It would be rash to begin the costly process of developing and implementing a lobbyist registry in response to the matters under inquiry.

*v) Comfort Letters*

138. During the expert testimony, it was suggested that the City could begin to provide third parties with "comfort letters", which would contain information regarding applicable

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<sup>139</sup> Testimony of Prof. David Mullan, Dean Lorne Sossin and Prof. Gregory Levine, pp. 5709-5716 (Tab 116)

<sup>140</sup> Testimony of Prof. David Mullan, pp. 5638-5639 (Tab 117)

<sup>141</sup> Testimony of Prof. David Mullan, pp. 5639-5640 (Tab 117)

ethical rules and procedures, relevant declared conflicts of interest or previous findings of misconduct by the integrity commissioner.<sup>142</sup>

139. A letter of this sort would have done nothing to address the misconduct that occurred in this case. While the Mayor was advancing the interests of WCD, the Sellers did not have any formal relation to the City regarding that deal. There would have been no reason for them to obtain a comfort letter. Indeed, until April 2008, when the Mayor first declared a conflict in Council, the letter would not have revealed any conflict of interest at all.<sup>143</sup>
140. While comfort letters might be used by third parties to establish that they carried out due diligence before proceeding with a transaction, this would do nothing to prevent misconduct from occurring.
141. As it is not clear exactly when third parties would seek a comfort letter from the City and there is no reason to believe that such letters would prevent misconduct, the cost of establishing a comfort letter program cannot be justified.

## **VII. Conclusion**

142. This Inquiry has performed an important public service for the residents of the City. Through the Terms of Reference, Council requested the Commissioner to investigate the circumstances surrounding the WCD project in order to determine whether any of the elected or administrative representatives of the City engaged in any misconduct in connection with WCD.

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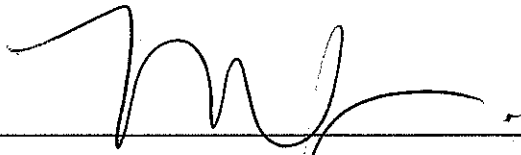
<sup>142</sup> Testimony of Dean Lorne Sossin, pp. 5718-5720, 5724 (Tab 118)

<sup>143</sup> Testimony of Dean Lorne Sossin, pp. 5723-5724 (Tab 118)

143. As a result of the documents produced and the evidence heard during the Inquiry, City residents have been provided with access to sufficient information to allow this question to be answered.
144. Peter McCallion used his relationship to the Mayor to advance his own financial interests, and actively solicited her support for his own private business dealings. DeCicco took advantage of Peter McCallion's relationship to the Mayor for his own purposes, and wrongly involved the Mayor in affairs that she had no business in.
145. For her part, the Mayor willingly provided Peter McCallion and DeCicco with all of the assistance they requested. She ought to have recognized that her actions were inappropriate for an elected official tasked with maintaining the confidence of the public.
146. That public confidence can only be maintained if the public is properly informed. The fact-finding aspect of this Inquiry has been of immense value, and the Commissioner's Report will ensure that all residents are able to learn from the evidence that has been heard.
147. While the City is anxious to hear the recommendations that the Commissioner has, it decided not to wait for those recommendations before taking steps to address the misconduct revealed by this Inquiry. The events under inquiry revealed that the statutory and code-based ethical rules applicable to Members of Council during the time under inquiry were insufficient. Mississauga's new Code changes that. Amendments to that Code, as well as the MCIA, would further help to foster public confidence in Members of Council.

148. The assistance that the Mayor provided to WCD was inappropriate and threatened to diminish the trust that the residents of Mississauga are entitled to place in their Members of Council. The City called this Inquiry to ensure that that trust is maintained and strengthened. It welcomes any recommendations that the Commissioner can provide that would ensure that City Council can continue to deserve and enjoy the trust and respect of its constituents.

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