LESSONS LEARNED?

Inquiries into Municipal Misadventures

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> "*We are going to be governed whether we like it or not; it is up to us to see to it that we are governed no worse than is absolutely unavoidable. We must therefore concern ourselves with politics, as Pascal said, to mitigate as far as possible the damage done by the madness of our rulers*." - Pierre Elliot Trudeau [1]

INTRODUCTION

It is said that those who forget their history are doomed to repeat it.[2] This paper describes and summarizes the reports of several inquiries held into misadventures involving municipal government. Such inquiries are rare. They are called in response to allegations or events which so alarm or outrage the public that an independent review and public report are required to clear the air. As Justice Bellamy said in her report, described in this paper, "The power of a judicial inquiry flows partly from its public nature and the public airing of the issues, and partly from the necessarily impartial voice speaking of the events examined."

Public inquiries are called to find out what happened, reassure the public, and provide recommendations to the political authorities to ensure the underlying causes of the problem are addressed both in the subject municipality and elsewhere. Essentially, these reports aim at restoring and promoting good government. The reports are made public for a reason. The lessons they teach should not be heeded and not forgotten.

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[1] Trudeau, Pierre Elliott *Vrai* 1958; *Approaches to Politics, 26*
- quote from *The Essential Trudeau* edited by Ron Graham (McClelland & Stewart, Toronto, 1998) p. 1

[2] Thucydides *History of the Peloponnesian War, Book 1* c. 423 – 400 B.C.
"I shall be content if those shall pronounce my History useful who desire to give a view of events as they really did happen, and as they are very likely, in accordance with human nature, to repeat themselves at some future time – if not exactly the same, yet very similar."

Samual Taylor Coleridge *Table Talk* 1835
"If men could but learn from history, what lessons it might teach us!
But passion and party blind our eyes and the light which experience gives is a lantern on the stern, which shines only on the waves behind us!"

George Santayana, *The Life of Reason*, vol. 1, ch. 12 (1905)
"Those who cannot remember the past are condemned to repeat it."

Vassily Kliuchesky, Russian historian
"History teaches nothing, but only punishes for not learning its lessons."

The following reports of inquiries and investigations are summarized in this paper:

- the Richmond Place Inquiry of 1985 by Mr. Justice Maurice of the Court of Queen's Bench of Saskatchewan;
- the Winnipeg Assessment Inquiry of 1996 by Mr. John Scurfield, Q.C.;
- the Walkerton Water Inquiry of 2000 - 2002 by Mr. Justice O'Connor of the Ontario Supreme Court;
- the North Battleford Water Inquiry of 2002 by Mr. Justice Laing of the Court of Queen's Bench of Saskatchewan;
- the Toronto Computer Leasing Inquiry of 2003 - 2005 by Madam Justice Bellamy of the Ontario Superior Court of Justice;
- the Investigation into the City of Sudbury Council Closed Meeting of February 20, 2008 of 2008 by Mr. Andre Marin, Ombudsman of Ontario;
- a Report for the Council of Strathcona County dated 30 September 2010 by Mr. George Cuff;
- the City of Mississauga Judicial Inquiry of 2010 – 2011 by Mr. Justice Cunningham of the Ontario Superior Court of Justice.

As much as possible, the words of the authors of these reports are quoted in the paper.

THE RICHMOND PLACE INQUIRY REPORT OF 1985

The City of Regina was preparing to develop a City owned 70 acre subdivision bordering on the beautiful Wascana Park. Regina City Council, at its evening meeting on 25 February 1985, approved civic marketing of its 254 lots on a first-come, first-served basis. When the Department of Buildings and Properties opened its doors the next morning, a member of the public was waiting to submit his application for a lot. To his surprise and chagrin, his application was entered as #5 on the list. Complaints from him and other disappointed members of the public, reported by an inquiring press, spurred an investigation which revealed members of the administration had taken Council's marketing policy of "first come – first served" as an opportunity to serve themselves first.

When Council, in response to public complaints, first asked the Administration for answers, the City Manager provided a report response. While the report was strictly accurate, it was not fully informative. The City Solicitor, Leslie Shaw, had become aware of facts not divulged in the Manager's report that implicated members of the Administration, including the City Manager. Mr. Shaw, who was appointed by Council but reported administratively to the City Manager, advised Council to retain outside counsel to investigate the allegations and report back directly to Council. G.L. Gerrand, Q.C., a prominent local lawyer, was engaged and quickly provided a report to Council recommending it ask the Attorney General to appoint a judicial inquiry.

Mr. Justice Maurice of the Court of Queen's Bench was appointed on 3 May 1985 by then Minister of Justice, Gary Lane, Q.C., at the request of Regina's City Council, to inquire into possible wrongdoing by civic officials in the marketing of lots in the Richmond Place subdivision of the city of Regina. Mr. Justice Maurice conducted this inquiry, hearing from witnesses, over the summer of 1985, before issuing his report on 17 September 1985.

In his report, Justice Maurice found that the city's marketing policy for lots in the city's development of Richmond Place was inherently unfair and "was interpreted and advantage was

taken of this interpretation by city employees [which] ensured that city employees would be more equal than anybody else." [3]

As it turned out, the City Manager, Bill Mann, and Assistant City Manager, Bob Moncur, were in competition for the best lot, Lot 13 in Block 12, a pie-shaped lot on Selinger Crescent backing directly onto Wascana Park. The Director of Buildings and Civic Properties, Colby Burns, had resisted their initial approaches, insisting that he could not accept any applications until Council approved the marketing policy. That position was taken literally. Immediately upon Council approval of the marketing policy, three envelopes were handed to Mr. Burns, while he sat at the Administration table in Council Chambers. Each application contained the required $1,000 deposit cheque and sought the coveted Lot 13 as the applicant's first lot choice. Yet even in this competition for place, respect for hierarchy, if not decorum, prevailed.

The City Manager was out of the City when Council approved the marketing policy on 25 February 1985, but had instructed his administrative assistant to sit beside the Director of Buildings and Properties at the Council meeting. As instructed, he delivered the first envelope, which Mr. Burns marked as #1. Next came one from the administrative assistant to the Assistant City Manager, who, being busy with the Council meeting as acting City Manager, had also instructed his administrative assistant to deliver his envelope, which was marked #2, followed by a third from the Manager of Audit and Reporting, Arvind Bubber.

The next morning found Williard Schoenroth waiting outside the offices of the Department of Buildings and Civic Properties. He was to be the first member of the public to apply for a lot in Richmond Place. Mr. Schoenroth, a lawyer, had inquired previously about the marketing of lots. He was told marketing policy would be considered by City Council on 25 February 1985, but not that applications would be accepted immediately upon Council approval. The Policy itself was silent on when marketing would begin. When the doors were unlocked and opened, Mr. Schoenroth presented his application for Lot 13. To his surprise, he learned he was number five on the list of applicants for a lot. (Who was #4? Despite speculation of a cover-up, Justice

[3] **Report of the Inquiry Concerning Richmond Place** September 17, 1985, by the Honourable Mr. Mr. Justice G.A.F. Maurice, at page 40

Maurice accepted that there was no #4 and a clerical error in making the list had created a phantom number 4.)

Ironically, the coveted Lot 13 would not be available to any of these early applicants, since Council had approved an amendment to the marketing policy allowing the person for whom a street was named to have first choice on any lot on that street. Selinger Crescent was named for Al Selinger, who had served on Regina's City Council from 1973 – 82. Mr. Selinger had called a member of Council just before the Council meeting of 25 February 1985 and suggested this amendment, which was then proposed and passed on the floor of Council. The next morning Mr. Selinger came to City Hall and submitted his application for Lot 13, trumping the other applications.

Following receipt of Justice Maurice's report, City Council cancelled all lot sales and fired the City Manager and Assistant City Manager. In his report, Mr. Justice Maurice commented on the inadequacy of Council's marketing policy, the role of the elected officials acting as City Council and Council's proper relationship with its administration, as well as the harm done by the improper conduct of some of those administrative officials.

> In spite of the problems that had occurred City Council made no change to the policy and allowed it to continue intact. That was the first mistake Council made in this matter.
>
> They made their second mistake when they neglected to ensure that the pre-marketing, first-come, first-served policy was implemented at a specific time and place. Their error was no doubt due, in large measure, to their reliance on their administration to develop and carry out a reasonable marketing policy.
>
> However, in the final analysis, City Council is the last bastion of defence for the public against bureaucratic incompetence and indifference. Members of City Council are elected to ensure that City employees do not act in a manner which is incompatible with their duties to the public. They abdicate this responsibility when they blindly accept policy recommendations from their administration. Members of City Council must have a cordial, business-like relationship with their administration. But that relationship should never become so close that proper scrutiny of the administration is foreclosed.[4]

[4] Ibid at page 10

Conclusion

> In spite of its failure to change its inherently unfair marketing policy and ensure proper timing of pre-marketing, I am satisfied that when the Council of the City of Regina passed a resolution providing for a policy of first-come, first-served marketing of lots in Richmond Place, it intended and expected everybody would have an equal opportunity to purchase a lot. The way the policy was interpreted and advantage was taken of this interpretation by City employees ensured that City employees would be more equal than anybody else.
>
> The reputation of the City has been sullied and public confidence in City Hall has been damaged because of the self interest and thoughtlessness of City employees. The citizens of Regina deserved better than what they received from those they employed to look after their interests.
>
> What result flows from this inquiry are in the hands of others, however, I am sure this inquiry will have a salutary effect on City Hall. Bureaucrats tend, after a while, to become insensitive to the interests of the people they serve. Because of this inquiry, City employees have been forced to look closely at themselves and at the manner in which they have been serving the public. No doubt, in the future, they will be more cognisant of their public service function and more responsive to the interests of the public. [5]

As related above, the City Solicitor, Leslie Shaw, played a key role in bringing this misconduct to light. While he could have stayed silent, he instead spoke up to ensure his client was fully informed and properly advised. In doing so, he put his duty to his client ahead of personal relationships, including that with the City Manager as his administrative superior. Mr. Shaw testified at the inquiry and Mr. Justice Maurice makes oblique reference to the professional and personal challenges which Mr. Shaw faced and met.

> **Leslie Shaw**
> Mr. Shaw is the City Solicitor for the City of Regina. Mann [the City Manager], and to a lesser extent, Moncur [the Assistant City Manager], seemed to feel that Shaw has been the author of their misfortune and embarrassment – by failing to obtain their side of the story before the resolution calling for this inquiry was passed by Council (on the assumption no inquiry would have been requested by Council, if Council had been told their version of the events) and by withholding

[5] Ibid at page 40

> information from them after the resolution was passed. After the propriety of the pre-marketing policy was raised at the Council meeting on March 11, 1985, Shaw investigated the matter. . . . He decided it would not be proper for him to interview his colleagues and that to do so would result in a conflict of interest. He advised Council to obtain outside legal counsel to investigate and render an opinion. This was done and based upon the opinion of outside counsel, the resolution calling for this inquiry was passed.
>
> Shaw testified that after the resolution was passed he provided the Commission and counsel for interested parties with all information relevant to the Inquiry; he said there was no attempt on his part to withhold information from anyone. I find no fault with Shaw's conduct. He conducted himself properly, in accordance with the ethics of his profession.
>
> Under the circumstances a public inquiry to ascertain the facts was necessary. Any attempt by the City to resolve this matter internally would have been perceived by the public as an insufficient response to a matter of public concern. People have suffered embarrassment and consternation as a result of this inquiry, but that was the price that had to be paid in return for public confidence in the investigation and for public acceptance of its fairness and completeness. [6]

Leslie Shaw continued to serve as City Solicitor of Regina until his retirement in 1999, at age 65, leaving a legacy of exceptional professionalism in public service.

[6] Ibid at pp. 16 – 18

THE WINNIPEG ASSESSMENT INQUIRY REPORT OF 1996

Winnipeg's City Council was shocked when it learned in 1996 that the cost to the City of tax refunds arising from the 1990 reassessment would be more than double than the fifty million dollar reserve set aside to pay refunds. The call for heads to roll began to be heard. The City Assessor resigned, but the finger pointing continued. Council appointed local lawyer John M. Scurfield, Q.C. to get to the bottom of the business. [7] Mr. Scurfield did just that, releasing a 150 page report on 22 July 1996.

The report provides a detailed review of what went wrong over a ten year period in which the City of Winnipeg lost in excess of $200 million in tax refunds resulting from assessment appeals. Some of his most significant observations pertain to the failure of both the elected and administrative officials to understand and accept their respective roles and to maintain a business-like model of administration.

Business Model of Administration

Mr. Scurfield described the business model of administration under which the City was supposed to operate as follows:

> The City of Winnipeg has adopted a business model of administration designed to efficiently deliver services to its citizens. Pursuant to the model, Council should be responsible for long range strategic planning and the development of policy. Elected officials should take care to create an environment in which administrators can implement the policy decisions of Council and attend to the financial management of the City's affairs without having to concern themselves with micro-management by politicians. In simple terms, those elected to govern should govern, and those appointed to manage should manage. [8]

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[7] Mr. Scurfield was appointed to the Manitoba Court of Queen's Bench in 2002, where he served with distinction until his death in 2009.

[8] **City of Winnipeg Property Tax and Assessment Inquiry** July 22, 1996, by John M. Scurfield, Q.C., at pages 3-4

Corruption of the Model

Mr. Scurfield also described the reality of civic government, where the administrative model had been distorted by political pressures.

> This administrative model has been distorted because senior administrators have become more concerned with providing politically sensitive advice to elected officials than with generating objective recommendations premised upon sound business logic.
>
> City Councillors, both past and present, must accept much of the responsibility for the distortion of the business model. Historically, elected officials have exerted considerable pressure on senior management to make "politically sensitive" decisions as opposed to good business decisions.
>
> In the result, political decisions are anticipated by administrators in order that elected officials are not faced with having to weigh recommendations that are politically unpopular against those that are politically attractive. This anticipatory decision-making process deprives Council of its administrators' best advice which, in turn, results in the inefficient operation of the business of the City of Winnipeg and reduces the accountability of the elected officials who are able to avoid making political decisions directly. [9]

Mr. Scurfield described the corrosive effects of political interference on the City's administration resulting in what he termed "Anticipatory Political Decision-Making" by managers.

> **<u>Anticipatory Political Decision-Making</u>**
>
> Unfortunately, there is an ongoing conflict between senior management at the City of Winnipeg and its elected political officials. In simplistic terms, management believes that it should be allowed to run the corporation of the City of Winnipeg in a businesslike fashion. This is a billion dollar business that requires the application of business skills in order to run it in an efficient manner. Administrators believe that City Council should function as a Board of Directors which sets broad policy objectives, and then allows its management team to function more or less independently within the policy framework. I confess that I am attracted to this model.
>
> From an efficiency perspective, it is clear that micro-management by politicians

[9] Ibid at page 4

does not contribute to the smooth and effective operation of the business machine. While a positive political impression may be generated by a Councillor phoning a foreman within the Councillor's ward and directing him to rectify a problem identified by a constituent, such direction is no doubt disruptive to the efficient operation of the business of the City of Winnipeg. I think it is also safe to say that there is a significant economic cost attached to micro-management by civic politicians. If, however, one accepts the model which management advances, we must also conclude that management has to accept responsibility for the management of the corporation and that, above all else, management must act in a businesslike manner. Unfortunately, this is not occurring at the City of Winnipeg.

Based on my interviews with numerous members of senior management of the City of Winnipeg, both past and present, it is absolutely clear to me that these managers are guilty of having made political decisions, as opposed to proper business decisions, in an effort to please their elected masters. In other words, when faced with a business decision, they do not simply apply business logic to the problem. In instances where objective indicators may have strongly suggested a particular business decision, department heads have confessed that they routinely factor in a consideration as to what they anticipate elected politicians would prefer them to do. In short, rather than recommend business solutions to politicians and allow them to make political or policy decisions, administrators apply their own political judgment and recommend options which may be far more costly than what might be indicated by a business analysis.

Administrators do this to ingratiate themselves, or at least to promote harmony, with the politicians to whom they report. In my view, this is wrong. Senior administrators cannot demand to be allowed to run the corporation and then proceed to run the corporation on a political basis. Clearly, management has a responsibility to be sensitive to decisions with a political flavour. Having done so, their job is to make a recommendation to Council or to the committee concerned before any decision is made, together with analysis that sets out the reasons which drive the business decision. If management anticipates that the politically correct decision is other than the business decision, its responsibility should go no further than to assess the business cost of that decision and present it as an alternative to the politicians.

One must be respectful of the right of politicians to make political decisions in appropriate cases, even when those decisions are not clearly supportable by business logic. There are obvious examples of situations where policy considerations will outweigh business values. Having said that, it is equally clear that a good civic administrator should not be required to shield politicians from their responsibility to make those decisions. If such decisions are going to be made, they should be transparent in the sense that the public has a right to know that these decisions are being made by the people whom they have elected.

Unfortunately, the process of doing business within the City of Winnipeg has

> been distorted by management's perception that it must anticipate political decisions. This, in turn, relieves politicians, if they approve, from responsibility for having made those decisions. If politicians do not approve administrators' political decisions, they will, of course, overrule them, often blaming managers who cannot then fall back on business logic to defend their position. Where politicians approve such decisions, but do not wish to be seen as doing so, they then have the luxury of claiming that they simply followed the advice of administrator, thereby lessening their accountability to the electorate. [10]

Mr. Scurfield noted how these pressures tended to promote a culture of “yes people”, rather than strong business managers.

> In plain terms, strong managers who approach their job from a business perspective are not rewarded. In their view, if they continue to take a consistent businesslike approach to their jobs, they are ultimately castigated, either privately or publicly, by their political masters. Elected officials expect political sensitivity from their department heads and commissioners, but do not appear to appreciate that this approach is inconsistent with the sound financial management of the civic corporation. In the result, the corporation breeds and cultivates a management team which is rife with "yes" people, or people who are forced to act in this manner. There is a perception that, in order to advance within the corporation, you must first be a good politician. You must be able to anticipate the best political decision. Political sensitivity will cause you to advance much more quickly than will a history of making strong business decisions, particularly if business logic is vigorously advocated in the face of political pressure from the elected officials. I heard several examples of elected officials attempting to intimidate senior management in order to suppress good business advice. Such behaviour corrupts the decision-making process and when it becomes an institutional practice, it inevitably leads to a weak and inefficient business operation. Every time a Councillor is tempted to threaten, coerce or induce a recommendation which is politically driven and not business driven, they damage the operation of the system as a whole.
>
> This problem is probably common to many forms of government service, but it is particularly evident in civic government where even administrative decisions are transparently public. [11]

[10] Ibid at pages 66-67

[11] Ibid at page 69

Stove-pipe versus Systems Thinking

Mr. Scurfield also commented how "stove-pipe thinking" had replaced "systems thinking", as a result of the same pressures.

> The Law Department allowed the Assessment Department to control the appeal process in circumstances where it should have been obvious that it was not well-equipped to do so in an objective and professional manner. This approach is consistent with the general culture at the City of Winnipeg. "Stove pipe thinking" means you simply do your own job and you do not accept responsibility for malfunctions in other parts of the system. This philosophy is an indirect product of the politicization of the civic service. [12]
>
> . . .
>
> Once again, what we see is the absence of systems thinking. If one department sees another department in trouble, department heads must be trained and encouraged to take action. While such intervention in the operation of another department may not be "politic", senior administrators and managers have a duty to take the steps necessary to the maintenance of the health of the whole corporate body, and not just that of their own department. [13]

Restoring Good Public Administration

Mr. Scurfield recommended Council take a hard look at its own practices if it wished to restore good administration of the City.

> Further, my interviews left me with the impression that morale is low as a result of the high level of conflict between elected officials of the City of Winnipeg and their senior administrators. In effect, City Council has expectations which are inconsistent. Political management should be restricted to the elected officials. Otherwise senior management become frustrated and confused. The corporate model which administrators were hired to advance, and the efficiencies for which they ultimately are accountable, cannot be properly attained in this environment. It becomes more and more difficult to attract and maintain professional managers. This is an important issue which Council must address openly and honestly. It must put internecine political conflict aside if it wishes to achieve the objective of conducting the affairs of the City of Winnipeg in a responsible and effective

[12] Ibid at page 123

[13] Ibid at page 124

> manner. Political decisions must be made by politicians and they must stop putting pressure on administrators to make those decisions for them. Politicians must honour strong business advice and encourage senior management to debate with them, and indeed stand up to them, when it comes time to make important decisions. Strong leaders, not sycophants, must be encouraged. The message must be clear. Council must demand that its administrators make the best business recommendations possible and argue the business case as strongly as they can. If, at the end of the day, Council decides to override the recommendations of its administrators for political reasons, Council still must respect its managers for having made strong business presentations and not criticize those managers for being politically insensitive. In turn, administrators must accept the decisions of elected officials without bitterness or recrimination.
>
> In order to encourage this process, it is absolutely clear that Council must take a hard look at its own practices and procedures and develop confidentiality protocols which will allow such positive exchanges to take place. If administrative recommendations are made the subject of constant political grandstanding by one faction of Council or another, then there is an enormous price to be paid at the end of the day. Clearly, the citizens of Winnipeg will pay that price in the form of higher taxes or the enjoyment of fewer services. This result flows from management of a civic corporation by politicized department heads instead of by department heads who are encouraged to manage their departments in a businesslike way. Nowhere is this problem better evidenced than in the Assessment Department. The failure to follow sound business practices and the failure to take strong leadership of the problem is a predictable result of the current relationship between Council and its managers. If the status quo is maintained, the City of Winnipeg will simply develop a generation of managers who are trained not to tell their civic emperors when they have no clothes. [14]

Mr. Scurfield recommended restoration of the business model of administration and faithful adherence to all it entails.

> In order for change to occur, strong leaders must impose change. They must identify what change is required and why, in order to obtain the respect and support of the work force. In current circumstances, the need for change must first be accepted at the top. City Council must reject a hands-on approach to management of the affairs of the City of Winnipeg and confine itself to the principal objectives of long-range, strategic planning and policy development. This model of governance is widely accepted in governmental and non-governmental institutions across North America and has met with some success. Achievement of this goal demands discipline on the part of individual Councillors

[14] Ibid at pages 70 – 71

> who will be tempted from time to time to attempt to induce or coerce individual managers into making recommendations which are political in nature and of interest to that particular Councillor.
>
> In order for this model of governance to work, it is critical that the City of Winnipeg employ a strong management team in whom it reposes trust and confidence. Elected officials must demonstrate that confidence by giving administration the latitude to make business decisions within defined areas of discretion. Council must be seen to support the obligation of administrators to make recommendations which are not necessarily consistent with the political will of Council.
>
> . . .
>
> Senior management must be evaluated on the basis of its performance in fulfilling the policy objectives established by Council, not by political correctness. I believe that voting taxpayers would endorse such an approach. The old way of doing things is not the only way of doing things. [15]

Need for Frank Advice

This model requires respect for the Administration's duty to inform and advise, especially when the message is unpalatable or unwelcome.

> Cultural changes must be undertaken. Fundamental to these changes is that the City of Winnipeg employ a strong management team in whom it reposes trust and confidence. Elected officials must demonstrate confident in administrators by giving them the latitude to make business decisions within defined areas of discretion. Council must be seen to support the obligation of administrators to make recommendations which are not consistent necessarily with the political will of Council. [16]

[15] Ibid at page 131

[16] Ibid at p. 8

The Emperor's New Suit

As Mr. Scurfield observed, this message is not new. Hans Christian Andersen's 1837 fable of *The Emperor's New Suit* taught the same lesson:

> The emperor marched in the procession under the beautiful canopy, and all who saw him in the street and out of the windows exclaimed: "Indeed, the emperor's new suit is incomparable! What a long train he has"! How well it fits him!" Nobody wished to let others know he saw nothing, for then he would have been unfit for his office or too stupid. Never emperor's clothes were more admired.
>
> "Buty he has nothing on at all," said a little child at last. "Good heavens! Listen to the voice of an innocent child," said the father, and one whispered to the other what the child had said. "But he has nothing on at all," cried at last the whole people. That made a deep impression on the emperor, for it seemed that they were right; but he thought to himself, "Now I must bear up to the end." And the chamberlains walked with still greater dignity, as if they carried the train which did not exist.

THE WALKERTON INQUIRY REPORTS OF 2002

An outbreak of illness in the community of Walkerton, Ontario occurred in May and June of 2000 in which several hundred people became ill and several persons died. In the course of investigating the cause of this outbreak, e. coli bacteria were found to be present in the town's water supply. The Government of Ontario responded to these events by establishing a commission of inquiry on 13 June 2000, with Mr. Justice Dennis O'Connor as commissioner. Following hearings, Mr. Justice O'Connor issued two reports, the first released in January 2002 and the second on 23 May 2002. These reports provide a comprehensive review of the events and recommendations to ensure the safety of drinking water in the future. The following is taken from Chapter 10 of Part 2, titled "The Role of Municipal Government".

Municipal Role

From the point of view of municipalities, one of the most important findings by Justice O'Connor was his acceptance of the responsibility of municipalities for continued public ownership of the water utility:

> Municipalities have historically played a central role in this area for good reason. Water is unique as a local service. It is, of course, essential to human life and to the functioning of the communities. In an urban environment, it is simply not possible to go without a communal water system. Water systems are also normally built around local water sources. As the Walkerton tragedy so clearly showed, the consequences of a failure in the water system tend to be most seriously felt by those who depend on it locally. Finally, the provision of drinking water is characterized by a high degree of natural monopoly. In other words, the service – in terms of both water treatment and distribution – can realistically only be provided by a single entity. The need to ensure the accountability of that entity is acute and, as such, it is understandable why municipalities have played a central role in the provision of drinking water.
>
> Municipal ownership, and the ensuing responsibilities, should provide a high degree of public accountability in relation to the local water system. In the event of mismanagement, municipal residents are in a position to hold those responsible accountable through the electoral process. I see this as a significant advantage to municipal ownership. Although it is open to municipalities to sell their systems, there was no suggestion during the inquiry that any municipalities are even

> considering doing so. Moreover, I heard nothing during the inquiry that led me to conclude that I should make recommendations about the ownership of municipal systems in order to address water safety issues. The recommendations in this report are therefore premised on continued municipal ownership. [17]

Justice O'Connor went on to make two significant recommendations:

1. That municipalities be required to have an accredited agency with an operational plan for the water system approved by the Province's ministry of the environment; and
2. That those responsible for exercising the municipalities oversight responsibilities be held to a statutory standard duty of care.

These recommendations are intended to ensure that the management and operating structure for the water system is capable of providing safe drinking water on a reliable basis. [18]

Alternative Service Models

Justice O'Connor recognized that there may be different structures to serve the needs of different municipalities, commenting "There is no one size fits all solution." [19] The report reviewed alternative structures, including operation of the utility by a municipal operating agency, as a municipal department, through a public utilities commission, a municipally owned corporation, through shared service as a regional or shared service delivery, or through an external or private operating agency. The Report recommended that:

> The Provincial Government should provide guidance and technical advice to support municipal reviews of water systems. [20]

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[17] Part 2 of **Report of the Walkerton Inquiry** by the Honourable Mr. Justice Dennis O'Conner, Chapter 10: *The Role of Municipal Governments* at page 279

[18] Ibid at 281-282 (10.2.3 Municipal Review of Water Systems: Recommendation 44)

[19] Ibid at page 292

[20] Ibid at page 298

Funding & Public Safety

The Report addressed financial issues, calling for a full cost accounting of the water system. The Report recognized the relationship between funding and safety.

> Municipalities need to ensure that their water systems are adequately funded. Over the long term, safety depends on stable and adequate financing to maintain the water system's infrastructure and its operational capacity to supply high quality water consistently. Without adequate resources, corners will inevitably be cut, whether in the day to day operation of the facility, or in its long term capital infrastructure. Ultimately, safety will be jeopardized. [21]

The report called for full cost recovery, including both operating and capital costs:

> Once the cost of safe water is known, a municipality must raise adequate funds to pay for it. In some municipalities, the pressure to keep water rates low may mean that sufficient revenues are not being generated in the first place. In other cases, the pressure to fund other municipal services and programs may lead council to redirect revenues from the water system to other purposes. Either scenario may result in under-funding of the water system. The purpose of a full cost recovery plan is for a municipality to determine how it will pay for the full costs of its water system from its local revenue sources, including how it will raise the money to pay for future capital costs, whether from cumulated reserves or from borrowing. [22]

Chapter 10 of the Report concluded with a discussion of the role of the Ontario Clean Water Agency ("OCWA"), and a comment that inferentially questioned the viability of individual small water systems:

> OCWA should continue to offer operational and maintenance services to Ontario municipalities, subject to the same safety, accountability and transparency requirements as applied to all other external agencies in the province. . . . It is apparent that OCWA offers the Provincial government a useful instrument to assist in the reorganization of small water systems that would otherwise have great difficulty meeting contemporary safety and quality expectations. [23]

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[21] Ibid at page 300

[22] Ibid at page 302

[23] Ibid at page 331

NORTH BATTLEFORD INQUIRY REPORT OF 2002

In April of 2001, several thousand residents of North Battleford and surrounding communities receiving water service from the municipal utility became ill. The parasite cryptosporidium parvum was found in the drinking water system around the same time. The Government of Saskatchewan ordered a commission of inquiry on 10 May 2001, appointing Justice Robert A. Laing of the Court of Queen's Bench of Saskatchewan. Justice Laing conducted hearings in North Battleford and issued his report to the Government of Saskatchewan on 28 March 2002. Justice Laing concluded that the outbreak of illness resulted from a contamination of the City's water supply by the crpytosporidium parasite, following a breakdown of the City's water treatment plant.

The water treatment plant drew water from the adjacent North Saskatchewan River. Unfortunately, the water intake was situated just downstream from the sewage treatment plant discharge, which at times found its way to the water intake. One might think this is taking recycling a step too far. And, indeed, Justice Laing recommended construction of a new sewage treatment plant at a location downstream of the water treatment plant intake. [24]

But, as Justice Laing found, the main cause of the contamination was the City's failure to maintain a "capable [water treatment] plant" by industry standards. [25] As in the case of the Walkerton Inquiry, Justice Laing again correlated consistent under-funding of the public utility, along with a lack of qualified personnel and training, with the inevitable systems failure which jeopardized public health.

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[24] **Report of the Commission of Inquiry into matters related to the safely of the public drinking water in the City of North Battleford, Saskatchewan** March 28, 2002 by the Honourable Robert D. Laing, at page 56: Findings 8 – 9

[25] Ibid, at page 70: Findings 10 and 11

Municipal Failings

The following quotes provide a flavour of the Report's findings:

> Budget requests would go to Mr. Douglas McEwen who was the then city commissioner. Mr. Berry [the City Engineer] indicated that any such request would invariably be met with a question as to whether the plants operation could get by for the coming year with its existing complement of personnel. Mr. Berry would answer "yes" and that was the end of the matter. Mr. Berry indicated fiscal restraint was always the reason offered for not increasing the staff. [26]
>
> Mr. Berry agreed that he and Mr. Katzell [the plant foreman] would have preferred to implement all improvements and modifications required for the plants sooner rather than later. He made the point that throughout his tenure, the policy of the city, as conveyed to him by Mr. McEwen, the city commissioner, and various members of city council, was to hold the line on taxes and not to spend any money unless it was absolutely necessary. He stated he and Mr. Katzell tried to do certain minor things within the budgets that were approved, and it fell to Mr. Katzell to hold things together in the face of such a parsimonious attitude at city hall. Mr. Berry testified that on the few occasions Council went to the rate payers to obtain approval for certain local improvements (unrelated to the plants), these initiatives were voted down.
> …
> Mr. McEwen testified that the City of North Battleford's revenue from the Province was reduced by $1,000,000.00 in the period between 1991 and 1995. He made it clear that he was proud of the fact that the city had absorbed this reduction without any increase in the mill rate. He stated all department heads had been conditioned to appreciate that the city could not afford large increases and, as a result, all that occurred were minor adjustments throughout the 1990s. He was constantly striving for efficiencies within the various civic departments. He also stated that throughout the 1990s, the City of North Battleford was one of the wealthiest cities in the province in terms of financial reserves on a per capita basis. [27]
>
> As far as the management component of the plants department is concerned, the evidence is that Mr. Katzell burned himself out acting as foreman over his 14 years. He went on stress leave in September of 1999, a year before his retirement, and when he retired he repeated why he was no longer capable of functioning as a foreman. There is nothing in the evidence that suggest that city administration

[26] Ibid at page 92

[27] Ibid at pages 95-96

looked upon this other than as a personal failing of Mr. Katzell's, which of course it was not. [28]

The unwritten city policies that may be inferred from the evidence outlined in the section on the plants department include:

(a) A policy to treat the plants department, which included the water treatment plants, exactly the same as all other public works departments as far as expenditures were concerned;
(b) A policy not to spend any money on equipment or infrastructure that was not absolutely necessary;
(c) A policy that regarded annual upgrade to the distribution system that delivered water as reasonably necessary, but did not extend to the two water treatment plants and the sewage treatment plant;
(d) A policy that regarded water utility rates as a tax, and therefore to be minimized as an end in itself;
(e) A policy to do without professional engineering in the operation, as opposed to the administration, of the public works department;
(f) A policy to leave matters of administration to the administrators without providing guidelines on how the administrators' jobs should be performed or what information council should receive;
(g) A policy of delegating the city's responsibilities to produce potable water to the foreman, and then directly to the operators to perform without providing knowledgeable supervisory or professional support;
(h) A policy of ignoring SERM's [Saskatchewan Environment and Resource Management, as the provincial regulator] request for action with respect tot he plants. This is evidenced in City's non-responses to SERM with respect to the sewage treatment plant, and after the September, 2000 coliform event, it's non-response to SERM's request to have a performance evaluation done on the surface water treatment plant. [29]

Justice Laing concluded:

There was a systemic failure on the part of the City of North Battleford to recognize its responsibility to produce safe drinking water. This failure was brought about by the city's collective lack of knowledge on what it takes to produce safe drinking water, and policies that discouraged the possibility it might acquire such knowledge. [30]

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[28] Ibid at page 177

[29] Ibid at page 196-197

[30] Ibid at page 198 (finding #38)

Provincial Responsibility

Justice Laing was also critical of the Province for effectively gutting its water inspection program and abdicating its responsibility to protect public health. The Report endorsed provincial oversight in this matter of public health, stating:

> The question may be asked whether the province is fulfilling its constitutional obligations with respect to public health and with respect to water quality by devolving onto the municipalities all responsibility to produce safe drinking water, without also providing a regulatory framework which gives some assurance to the public that the municipalities will carry out the devolved responsibility in a manner that will in fact provide safe drinking water. Any commentary I have read on this subject suggests the answer is a very strong "no". The reason the answer is "no", as the evidence in this inquiry indicates, is that not all municipalities have the knowledge, the skill, or the will to manage increasingly complex water treatment processes. At the municipal level, operators change, administrators change, city councils change, technology changes, knowledge in the industry changes, and it is simply too much to expect that every little municipality is going to manage its way through all of these changes without some form of effective supervision from senior government. [31]

False Economy?

Commenting on the motive of financial restraint which was the impetus for the Province's cutbacks, Justice Laing wrote: "The question may be asked if the Government is practicing false economy." [32]

[31] Ibid at page 282

[32] Ibid at page 281

THE TORONTO COMPUTER LEASING INQUIRY REPORT OF 2005

While reviewing the Council Agenda and Reports on the Sunday before the Monday 23 April 2001 meeting of Toronto City Council, Councillor Bas Balkissoon came across a reference to the purchase of photocopiers from the City's "current technology lease provider". When Councillor Balkissoon called the City Auditor at home, to ask who was the "current technology lease provider", he pulled on the thread that would eventually unravel a sordid tale of corruption and intrigue. The truth was eventually revealed through a judicial inquiry conducted by Madam Justice Denise Bellamy of the Ontario Superior Court of Justice.

Interrupted twice by unsuccessful attempts to halt the inquiry by those under investigation, the judicial inquiry took place over 3 ½ years and involved 214 public hearing days, 124,000 pages of documents, 156 witnesses, 22 parties with standing and over 60 lawyers, at a cost to Toronto taxpayers of over eleven million dollars. The Report submitted by Madam Justice Bellamy to Toronto City Council and made public on 12 September 2005 was issued in four volumes with over 2,000 pages (Volume 1: Facts and Findings, Volume 2: Good Government, Volume 3: Inquiry Process, and Volume 4: Executive Summary).[33]

Justice Bellamy actually conducted two inquiries: the Toronto Computer Leasing Inquiry; and the Toronto External Contracts Inquiry. The inquiries focused on six significant information technology transactions between the City of Toronto and outside suppliers occurring around the time the 1998 amalgamation of seven municipalities into the current City of Toronto and Y2K.

The mandate of the Toronto Computer Leasing Inquiry was to inquire into all aspects of leasing contracts for computers and related software between the City of Toronto and MFP Financial Services and between the City of Toronto and Oracle Corporation. The Commissioner was to inquire into the history of the contracts and their impact on the rate payers of Toronto.

[33] **Report of the Commision of the Toronto Computer Leasing Inquiry and The Toronto External Contracts Inquiry** September 12, 2005, by the Honourable Madam Justice Denise Bellamy

While one might have thought that this mandate would produce dry reading, the facts uncovered by Madam Justice Bellamy featured characters and a plot worthy of a television mini-series. The characters included the bright, young chartered accountant who, as protégé of the Mayor, quickly rose through the ranks to become the City Administrator of North York and then the first Chief Financial Officer of the amalgamated City of Toronto, with an annual budget of $9.5 billion dollars. In both capacities, she provided contracts to her close male friends, first to her lover, the older, married American consultant, and later to the charming sales representative, who also made payoffs in the underground City parking garage to the Council Budget Chairman. This sales representative lavished gifts and entertainment on civic officials, including, for the favored few, travel on a private jet to a National Hockey League (NHL) game featuring his brother, a Toronto Maple Leaf team star player.

And there was big money involved. Approved in July 1999, with a forecast cost of $43 million, the actual cost of the computer leasing program had almost doubled to $84 million by June 2001, when Toronto City Council halted the leasing program. The Inquiry's leasing expert forecast the total lease payments would have exceeded $100 million, had the program continued.

Many of the same characters played a part in the several transactions. The events Justice Bellamy recounts are intertwined. Condensing a report which is longer than Tolstoy's *War and Peace* must necessarily only provide the bare bones to a fascinating morality play in which pride, vanity, greed, power and lust all play a part. The Inquiry found both heroes and villains amongst Toronto's elected officials and administrators. The internal turmoil within a civic administration recently formed by amalgamation of different municipalities certainly played a part, as did a lack of proper process, pressures on staff resulting from a freeze on hiring to avoid tax increases, and lapses or lack of individual moral judgment.

Wanda Liczyk played a significant role. A chartered accountant, Ms. Liczyk joined the City of North York as a budget analyst at the age of 24. She soon came to the attention of North York's popular Mayor, Mel Lastman. With his support, she moved quickly up the management ladder to become the youngest female Commissioner of Finance and Treasurer, at age 31, and then, in 1996, City Administrator at age 35. Wanda Liczyk fit in well with the corporate culture promoted by the

flamboyant Mayor, who proclaimed North York as "the City with a heart". As Justice Bellamy described, Mayor Lastman

> set a tone for running the City, and it operated much like a large and busy family: caring, relaxed, informal and focused on getting most of the important things done without worrying too much about how.
>
> There was only one problem. City governments are not families. Families do not collect and spend the taxpayers' money. Families can shop where they like and favour whomever they like without having to justify their choices. Governments cannot. Governments have duties to discharge.
>
> Government decisions must be made fairly, and must be seen to be made fairly. Families can't be criticized for looking out for their own first. City government officials who put themselves first are failing in their duty to serve the community. The family atmosphere that defined North York as the City with a Heart would be the source of grave problems, years later, when it was transplanted to the newly amalgamated City of Toronto. [34]

When the provincial directed amalgamation incorporated North York into the new City of Toronto, the popular Mel Lastman was elected Mayor of Toronto – Canada's largest city. Wanda Liczyk followed him to the City of Toronto where, with his support, she became its first Chief Financial Official and Treasurer in 1998.

> Mayor Lastman supported Wanda Liczyk's meteoric rise, and she didn't disappoint him. North York was on budget every year she was Treasurer. He didn't care much about how things got done; he valued outcome not process. She took to this results-oriented, damn-the-torpedoes governance culture. She was in her element. Mayor Lastman and Treasurer Liczyk were a great match and ultimately, as we will see, a great liability for the taxpayers. [35]

While no one questioned the business acumen of Ms. Liczyk, her judgment in men was certainly suspect. Her romantic relationships at best clouded her judgment and at worst caused her to put personal ties before public duty to the detriment of her municipal employers. She met an American consultant, Michael Saunders, in 1986 when his company was doing business with the City of North York. Since Mr. Saunders did not testify at the inquiry, as he was beyond the reach of Canadian

[34] Volume 1: pages 43 – 44

[35] Volume 1: page 45

subpoena in the United States, the Inquiry had only her word that her sexual affair with Mr. Saunders began in 1989 and ended in 1991. Regardless, they clearly remained close. Telephone records subpoenaed by the Inquiry revealed close and continuing contact, including 174 telephone calls by Ms. Liczyk to Mr. Saunders' hotel room in Toronto between 1998 and 2001.

Working as a consultant for the City of North York, Mr. Saunders had enjoyed most favored status. Although he had no written contract, [36] he worked for over a decade with no restraints on his billing.[37] His relationship with the Treasurer and later Chief Administrative Officer created a role reversal.[38] A master of the art of kissing up and kicking down, Justice Bellamy described him as being "rude, arrogant, aggressive and verbally abusive to staff." [39] Although paid to develop tax billing software for the City of North York, he registered the copyright in the United States to

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[36] Volume 1: page 52

> "Regardless of how the decision was made to hire Michael Saunders, once the deal was done, surely one would have expected it to be formalized inside the four corners of a properly executed legal contract. It had to do with tax revenue, the fiscal lifeblood of every town and city. The designer of a system for collecting that revenue is potentially holding the City's viability in two hands. Our investigators conducted a painstaking search for such a contract but found no trace of one."

and at Volume 1: page 82 – 83

> "There is not a single piece of paper to show for the roughly eight years (1989 – 1997) Michael Saunders worked at North York (through Beacon Software) …Accountability suffers when records are not properly kept. Accountability always keeps close company with public trust."

[37] Volume 1: page 53 and 90

> "Michael Saunders became as much a fixture in the North York workplace as much as any salaried employee. There was a difference, however. On top of paying him an hourly rate in U.S. dollars, with no limit on the number of hours he could bill, the people of North York also picked up his tab for accommodation, meals, and airfare to and from his home in the United States." (page 53)

> "… for more than ten years, he was paid $100 per hour in U.S. funds, plus airfare back and forth to Rhode Island almost every week, plus hotel funds, plus hotel expenses in Toronto, plus meals, plus all the incidentals that he billed without restraint." (page 90)

[38] Volume 1: page 56

> "At times, Mr. Saunders wouldn't produce what the City wanted. Either he didn't agree with the City's request, or he felt that it was not worth his time. He was the consultant and the City was the client, but Mr. Saunders behaved as if the roles were reversed."

[39] Volume 1: page 54

himself personally, leaving the City's finances at his mercy. [40] After amalgamation, it appeared that a competing tax billing system already implemented and favored by most of the former municipalities would be implemented for the new City of Toronto. Once again, however, Mr. Saunders was able to triumph through the influence of Ms. Liczyk. Justice Bellamy wrote that:

> The triumph of TMACS [Mr. Saunders' tax billing system] is not a story of thoughtful mentoring. It is a story of arrogance, deceit, and abuse of power, all routed in a conflict of interest. [41]
>
> For more than a decade, Michael Saunders depended on one thing for his livelihood: Wanda Liczyk's approval of his proposals. Their close friendship guaranteed that the necessary approval would always be forthcoming and on his terms. ... Michael Saunders never had to compromise. Ms. Liczyk gave him everything he asked for, every time. [42]

The corrosive effect on the morale of City staff can hardly be overstated. Those who tried to stand on principle were either sidelined or removed. Those who wanted to get along learned to go along, whatever their private misgivings. Justice Bellamy commented on the harm inflicted by this ethically unhealthy environment:

> Wanda Liczyk's closeness to Michael Saunders played a role in the reason Toronto's tax bills are now sent out by TMACS software rather than TXM software. Wanda Liczyk's closeness to Michael Saunders also played a role in affecting the morale of a great many public servants. Both effects are important. Ethical lapses that affect government are matters of grave concern to all citizens,

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[40] Volume 1: page 88

> "Michael Saunders registered TMACS with the United States copyright office in 1992. Ms. Liczyk claimed she didn't know. If she was telling the truth, then Mr. Saunders deceived both her and the City. If she did know, then she was covering up for him. Either alternative is an unpalatable consequence of mixing public business with private intimacy.
>
> "When Guilana Carbone phoned Mr. Saunders to tell him that he wouldn't be doing any more work for Toronto, he made a reference to the ownership of the software that shook her: 'I hung up that phone, I thought, "Oh my God, don't tell me we don't own that system."' The City was vulnerable because Ms. Liczyk didn't settle the ownership issue."

[41] Volume 1: page 81

[42] Volume 1: page 84

> but of no less concern are ethical lapses that have day-to-day harmful effects on individual people just doing their job. [43]

Ms. Liczyk's relationship with Dash Domi, sales representative for MFP Financial Services, which was awarded the computer leasing contract that resulted in the first Inquiry, again played a part. Ms. Liczyk even appeared in a testimonial in MFP's 2000 Annual Report, cited by Justice Bellamy as "a clear example of her compromised judgment in her dealings with MFP." Mr. Domi used other methods to influence key decision makers, including the head of the Information Technology Department for the City of Toronto, Jim Andrew.

> Attentiveness and friendship had worked on Wanda Liczyk, but Dash Domi had a different tactic for Jim Andrew: the trough. It overflowed with hockey tickets, basketball tickets, golf games, lunches, and dinners - and it worked … Jim Andrews' prodigious appetite for corporate freebees was not limited to MFP's offerings. Between 1998 and 2001, he averaged at least one outing a month courtesy of other suppliers: golf, hockey games, a ski day, parties, lunches, dinners, cocktails. And then there were the big trips. … The message he sent by accepting all of this corporate entertainment is clear and troubling: Jim Andrew, a public servant, was for sale.
>
> Key decision makers at the City were almost pathetically vulnerable to sales tactics in the guise of entertainment and favors. The existing culture offered no resistance. [44]

Perhaps the most infamous example of this influence peddling was the 2 May 1999 chartered jet flight to Philadelphia for a Stanley Cup play off game hosted by Dash Domi, brother of Toronto Maple Leafs star Tie Domi. Amongst the influential Toronto officials and businessmen was veteran City Councillor and Budget Committee Chair, Tom Jakobek.

Considered the third most powerful elected official, after the Mayor and Deputy Mayor, [45] Mr. Jakobek later ran for Mayor and, but for the judicial inquiry, might well have succeeded Mel Lastman as Mayor of Toronto. Instead, his reputation lay in tatters. Mr. Jakobek was known to

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[43] Volume 1: page 95

[44] Volume 1: page 29

[45] Volume 1: page 270

bully and berate City staff and attempted to interfere inappropriately in matters of administration, including hiring. [46] When a report came before the Toronto Policy and Finance Committee on 20 July 1999 recommending award of a computer leasing contract to MFP, Councillor Jakobek moved an amendment to provide greater flexibility. While the other members of the Committee likely thought this amendment innocuous, it was the lynchpin which allowed other staff influenced by MFP to convert a computer leasing contract with a fixed term and cost to a *de facto* leasing monopoly with ample scope for increased sales.

What also became clear is that MFP had a leg up on its competition from confidential information obtained through its sources inside both Council and the civic Administration, in particular Councillor Jakobek and Jim Andrew, who Justice Bellamy described as a "mole" for lobbyists. [47] The assistance was rewarded. As stated above, Jim Andrew had a "prodigious appetite for corporate freebies" which was fed by company sales representatives and lobbyists. [48] Nor did Councillor Jakobek's assistance to MFP go unrewarded. Between October 1999 and December 2000, over $90,000 appeared in Councillor Jakobek's bank accounts, the source for which could not be accounted.

Justice Bellamy concluded that Dash Domi had paid off Jakobek. [49] This included a $25,000 payment made in the underground parking garage beneath Nathan Phillips Square, the site of Toronto City Hall. Although both Domi and Jakobek denied making or receiving any payments, Justice Bellamy was scathing in her evaluation of their testimony. She wrote that Councillor Jakobek "could lie with disarming smoothness" [50] and was "caught in a web of lies" [51], accusing him

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[46] Volume 1: page 271

[47] Volume 1: pages 203, 233 and 280

> "Through Tom Jakobek, MFP sales representative Dash Domi had penetrated to the heart of the City's confidential decision-making process." (page 280)

[48] Volume 4: page 29

> "The message he sent by accepting all of this corporate entertainment is clear and troubling: Jim Andrew, a public servant, was for sale."

[49] Volume 1: pages 364 and 376

[50] Volume 1: pages 272

of "serial lying", [52] and describing him as a "notorious liar", [53] a "habitual liar", [54] and his testimony as "a performance worthy of Pinocchio". [55]

But even with the advantage of inside information, how was MFP able to not only outbid its competitors but also assure itself of an exorbitant profit? Justice Bellamy explained their strategy for financial success:

> So they bid low – so low that it seemed MFP stood to lose nearly $1.5 million. It didn't make sense, on the surface.
>
> Lease pricing has two components – a front end (the lease rate) and a back end (the residual value). A leasing company will typically price its proposal attractively at one end or the other, but rarely at both. But MFP saw room to manoeuvre. ...
>
> In an admittedly unusual and risky move, MFP squeezed both ends. On paper, it looked like a loss, but based on typical customer behaviour, MFP knew it could enhance the deal later if it won. How? Through lease rewrites, additions to leased assets, changes in asset groupings, early termination, end-of-term decisions, and penalties – or perhaps by extending the term of the lease. So MFP was not likely to lose money on the deal. Actually, it was in line to make a huge profit. [56]

Justice Bellamy was critical of civic administrators in their development of the request for quotes and the administration of the contract, describing it as "the tale of massive bureaucratic

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> "In the course of the inquiry, he told an astonishing number of lies, drifting from one to another, improvising as he went along. He lied to his own lawyers, to five reporters and through them to the public, and to me under oath. There are liars who lie even when they are telling you they are lying. Who can believe anything they say?"

[51] Volume 1: pages 178 and 179

[52] Volume 4: pages 32 and 33

[53] Volume 1: page 277

[54] Volume 1: page 358

[55] Volume 1: page 361

[56] Volume 4: page 44

mismanagement that ended up costing the City millions of dollars." [57] What made this bungling even more aggravating was the fact that the Provincial Auditor had produced a report in 1998 criticizing the provincial government for the same mistakes that Toronto was about to make.

> According to the Provincial Auditor, the Province had made many of the same mistakes that the City was about to make, such as signing a contract without a complete analysis of requirements (leading to adjustments that meant added cost), extending leases without making sure the rates would remain competitive, not getting early legal advice to protect the government's interests, adding to the deal without a proper competitive process, and leasing for five years assets that had a useful life of three years, thus having to pay a premium to upgrade during the term of the lease – and thus ensuring continued dependence on the leasing company without any assurance that its prices would remain competitive. [58]

Unfortunately, as Justice Bellamy found, none of the Toronto City staff had read that report.

Not content with its success in converting a fixed cost lease to an unlimited leasing monopoly, MFP later rewrote all the City leases, adding an additional $2.5 million to the cost. Mr. Domi's relationship with Ms. Liczyk was so familiar that, in July 2000, he brought the new lease documents directly to her office which she signed without any review by civic staff. [59] Dash Domi, a former hairdresser who acknowledged he had no understanding of the procurement process or training in the complexities of computer leasing when hired as MFP's sales representatives, [60] nonetheless used his ability to make connections to earn $1.2 million from sales commissions on the MFP contracts with the City of Toronto. [61]

The above summary captures only some of the stories and characters described in the Toronto Inquiry Report. Even so, it should provide a flavour of the egregious conduct uncovered. The miscreants had betrayed not only the trust reposed in them by the people of Toronto, but also their

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[57] Volume 1: page 323

[58] Volume 1: page 238

[59] Volume 1: page 336 – 337

[60] Volume 1: page 150

[61] Volume 1: page 349

colleagues on Council and in the civic administration. Innocent public servants suffered guilt by association, even though most had served with integrity.

Justice Bellamy made 241 recommendations to Toronto City Council, covering many aspects of municipal government. In addition, she offered advice in the body of her Report. Some of this advice is reproduced below.

Reports to Council

Justice Bellamy commented on the flawed reports to Toronto City Council and its committees. Not only was pertinent information downplayed or omitted, conflicting opinions were not revealed:

> Its not a problem if staff have different views on an issue. It can lead to debate, and that's healthy. The problem here was that only one view found its way into the Report to Council, so no debate was possible. [62]

Separation of roles in the Procurement Process

Justice Bellamy emphasized the need to separate the role of elected officials from that of the administration in the procurement process:

> The Toronto taxpayer has a right to expect both elected officials and City staff to adhere to the highest standards in conducting public business. To that end, elected officials can set general procurement policy, and debate particular procurements in public in committee or the Council Chamber. But that is all. They must never intervene in active, ongoing tenders or other procurements. To remain above reproach, they should rely on the professional staff who work within approved procurement policies and processes. For their part, to earn and maintain the public's trust, staff must spend the taxpayers' money where it will buy the best goods and services at the best price, without political pressure of any kind. Staff must have the sole motive of serving the public interest. Perhaps the taxpayers will not agree with all of their decisions, but they have a right to expect that each decision will be made for the right reason. [63]

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[62] Volume 1: page 39

[63] Volume 1: page 202

Legal Review

Justice Bellamy commented on the failure of the civic administration to use its lawyers effectively. When the workload exceeded the capacity of Toronto's in-house counsel, external counsel was retained. Even then, the administration failed to involve the lawyers early enough to allow for meaningful review, resulting in what Justice Bellamy described as "quick legal scrubbing".

> Understandably, and like many lawyers, Mr. Fecenko preferred to be brought into such discussions early, not at the last minute as he was in this case. Ideally, he would liked to have been brought in while the tender document was being prepared and to have been fully versed on the business deal the client was seeking to obtain. That didn't happen here. [64]

> Months earlier, when Mr. Power negotiated the MFP master lease agreement, he had treated the advice of legal counsel as mere 'legal scrubbing,' apparently not something to be taken seriously. He applied the same philosophy when it came to the necessity for legal review of the Oracle contract. Mr. Power treated legal advice as a formality rather than as an opportunity to get good advice. He ignored questions from both lawyers, which is especially troubling considering the dubiousness of the approval. [65]

Dealing with Conflicts of Interest

Commenting on "the dramatic examples of Wanda Liczyk's bad judgment in favour of her close friend" Michael Sanders, Justice Bellamy provided advice on dealing with such conflicts of interest:

> Objectivity requires detachment, and detachment does not co-exist with strong emotional bonds. Even if it could, how is detachment to be verified where a personal relationship is involved? That is why the appearance of conflict is important. That is why the simple devices of disclosure and recusal from decisions involving friends and relatives play a central role in sound decision making in municipal government and elsewhere. Disclosure and recusal preserve our capacity to be, simultaneously, fully human, autonomous in our private emotional lives, and wisely governed. [66]

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[64] Volume 1: page 299

[65] Volume 1: page 387

[66] Volume 1: page 94

> As one witness noted, Wanda Liczyk rose far and fast. She ascended the professional ladder without the setbacks that so often mature and refine the sense of judgment. The most important lessons from this Inquiry are not directed at individuals. They are directed at improving City government. More particularly, they are about avoiding and dealing with conflicts of interest that can impair the judgment of decision makers. The major lessons are these:
>
> - Conflicts of interest are inevitable. They can arise without wrongdoing by anyone. Plans must be made to deal with them.
> - When and how a conflict may arise is as unpredictable as the paths of the heart, and it is not possible to legislate feelings. We need rules, but rules are not enough. The availability of confidential advice is also essential. The slightest concern should prompt us to seek advice, because we are not very good at recognizing conflicts of interest in ourselves. We are far better at seeing them in others.
> - To help ensure that seeking advice on potential conflicts is the rule, not the exception, it must be made clear to all that having a conflict of interest is not necessarily cause for censure or alarm. Only failing to deal with it is.
> - Early disclosure and/or recusal can solve the problem, and it is always safer to over disclose than to under disclose.
> - Late disclosure and recusal is undesirable, but it is far better than not doing it at all. [67]

"A Man of Integrity"

In contract to the villains of the story, Justice Bellamy described the ethical environment created by the City's Purchasing Manager, Lou Pagano, who she praised as a role model.

> … in the midst of the disarray of amalgamation, the new City was fortunate that Lou Pagano was a man of integrity. …. Lou Pagano would discuss conflict of interest issues at meetings with his managers and would ask them to convey the substance of these discussions to staff. This is likewise a commendable practice. It takes persistence to maintain an ethical working environment. It is not enough to post policies on the wall and assume they will gain a life of their own. The policies must be brought to life repeatedly, in day to day discussions about how the department's work gets done. Only then will sound ethics become as deeply rooted in a department as they need to be. [68]

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[67] Volume 1: page 95

[68] Volume 1: pages 225 and 226

THE SUDBURY ELTON JOHN TICKET SCANDAL OF 2008

The announcement of an Elton John concert on 2 March 2008 at the Sudbury Community Arena was a big deal for the city of Sudbury, Ontario. On 1 February 2008, 6,000 tickets went on sale and the concert quickly sold out. While most tickets were sold on-line, around 200 people lined up for tickets at the Arena box office. Most went away disappointed, since only 50 tickets were sold there. People began asking questions and, when asked by a local reporter from the Sudbury Star newspaper, the Mayor confirmed that members of City Council had received preferential treatment in obtaining concert tickets. That sparked a local controversy that led to a request for an investigation into what went on in a closed Council meeting on 20 February 2008.

The Legislature of Ontario had amended *The Municipal Act, 2001*, effective 1 January 2008, to entitle citizens to request an investigation as to whether closed meetings of a municipal council had been properly held under section 238(2) of the *Act*. The basic rule, in Ontario and in other jurisdictions, is that all municipal council meetings must be held and decisions made in public session, unless the item being discussed falls within one of the statutory exemptions to the open meetings rule. Of course, for people on the outside who don't know what was discussed, it is difficult to gauge whether the rule and exemptions are being properly applied. The amendments were intended to allow for an objective assessment. This case then became one of the first instances of such an investigation and assessment, when the Ombudsman of Ontario, Andre Marin, issued his report on 24 April 2008, titled "Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal", with the more formal sub-heading "Investigation into the City of Greater Sudbury Council Closed Meeting of February 20, 2008".

The Ombudsman's Investigation revealed that it was the concert promoter's practice to offer tickets for advance sale to arena staff and local politicians. In the case of the Sudbury concert, the promoter set aside 200 tickets for area staff and City Council. As it turned out, the 13 members of Sudbury's City Council did not hesitate to take advantage of this offer. The Mayor decided how the tickets should be distributed with senior staff, in this case a General Manager, coordinating the distribution. Although the Mayor said a limit of 8 tickets per member of Council was to be employed, based on his understanding of the maximum ticket purchase

available to the public when the tickets went on sale, a total of 120 tickets were purchased by members of Council. As the Ombudsman observed, that calculated to 9.33 tickets/member of Council. And indeed, when the Mayor offered to return his tickets, in response to public outcry, he admitted to having acquired eleven tickets.

On 20 February 2008, all members of Council attended a scheduled meeting of Council's Priorities Committee. As was the custom, several members had supper together before the evening meeting, during which there was some discussion about the ticket controversy. After the formal meeting ended, 11 of the 12 councillors retired to the lounge where a 10 minute discussion over the tickets began again. Municipal staff who had stayed behind to clean up were asked to leave, since councillors were concerned about recent leaks of information to the media. The General Manager of Community Development, Catherine Munson, was, however, summoned to the meeting to answer questions about how tickets might be returned and how the councillors would be reimbursed.

71 of the 120 tickets purchased by members of Council were subsequently returned, but that did not end the controversy. Rumours began to circulate about this closed door meeting, resulting in a complaint to the Ombudsman on 26 February 2008. That triggered the Ombudsman's Investigation, which began on 26 March 2008 and concluded with his Report on 25 April 2008. Shortly before the Report was issued, Council, on a 7 – 6 vote, adopted a policy to do away with its "long-standing practice" of accepting preferential treatment for members of Council on tickets for events at the Sudbury Community Arena.

The Ombudsman concluded that the councillors' discussion in the lounge did not constitute a "meeting of a council, of a local board or of a committee of either of them" within the meaning of *The Municipal Act, 2001* and, therefore, did not engage the requirements of section 238. The Ombudsman accepted that there was no discussion or decision about the policy of accepting these kind of benefits.

> 37 I am satisfied from their evidence, however, that councillors did not engage in these kinds of discussion, and therefore their lounge meeting was in compliance with the law – *but only barely so*. This case perfectly illustrates the

> principle that open meetings engender public trust, while closed meetings breed suspicion. Municipal councillors, in the heat of a scandal in which they were believed to have used their positions as public officials to gain an advantage over the citizens they represent, waited for the public to clear out of a public meeting, asked staff to leave, and closed the door to talk about the very tickets that had sparked the controversy. No wonder there was so much backlash against them in the community – and enough distrust to inspire a complaint to my office.
> [emphasis in original]
>
> 38 As one Ontario judge captioned in an open-meeting case, the actions of public officials "must not only be above board, but should be seen to be above board." All that saves council's actions from censure in this case is that the meeting did not involve the exercise of municipal power.
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> 39 If Sudbury council is getting off the legal hook here, it is not because it acted wisely or respected the important principle of the appearance of acting above board. It is because of the kind of reasons that tend to resonate with lawyers: Contrary to common sense, sometimes a meeting is not a "meeting".
>
> Opinion
> 40 This is not a case where vindication should be claimed. It is a case where councillors should reflect on their actions from the vantage point of the ordinary constituent, and ask themselves whether, in the throes of a controversy such as this one, they should have closed the door. [69]

Although this Investigation concerned the legality of the private meeting, rather than the conduct of the members of Council, the Ombudsman also offered comment on its propriety and the legitimacy of public expectations for high standards of ethical conduct by elected officials.

> It is always worrisome when elected officials appear to be gaining personally from their positions, or where they appear to prefer their own self-interest to that of the people they serve. Municipal councillors hold positions of trust. They are elected to wield significant power and it is expected by the public that they will use their positions in the public interest, not to benefit themselves. This expectation applies not just to such blatant things as contract kickbacks or expensive gifts from suppliers – any perk derived from elected office may be viewed with suspicion. The dollar amount at stake may be small, but the concern is not. [70]

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[69] ***"Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal"*** **Investigation into the City of Greater Sudbury Council Closed Meeting of February 20, 2008** 25 April 2008, by Andre Marin, Ombudsman of Ontario, at pp. 8 – 9

[70] Ibid at p.2

THE COUNTY OF STRATHCONA REPORT OF 2010

Following a friendly meeting at the Alberta Legislature at 12 noon on 7 September 2010, between the Mayor, Deputy Mayor and Chief Commissioner of the County of Strathcona and two Members of the Legislative Assembly (MLAs) representing the Sherwood Park/Strathcona County area, the County of Stratchcona issued a media release on 7 September 2011, reporting on encouraging signs in the County's pursuit of a hospital facility. Another member of Council, Councillor Gariepy, on reading the media release, issued a response by email early the next morning to 919 email addresses, including County employees and two media outlets. The Councillor's email took issue with the County's media release and expressed his concern with the lack of progress in getting a firm provincial commitment for the hospital.

From here on, events seemed to spiral. It is perhaps worth noting that general municipal elections were scheduled for 18 October 2010 -- these events then taking place in the pre-election period sometimes referred to by those in municipal government as "the silly season".

The Councillor who had sent the email next took it upon himself to castigate a County employee he thought responsible for the County's press release. This encounter took place in the County's Communications Office at 8:15 a.m. on 8 September 2011. According to eyewitness accounts, "there was considerable tension in the voice and manner of the Councillor who approached the staff member in what was described as an agitated and aggressive manner and who left the office with a parting remark which called into question the staff member's competence and continuance in that position." [71]

The County Commissioner, Robyn Singleton, who was out of town at a meeting, was contacted around 10:30 a.m. with reports of both the Councillor's email and staff encounter. After speaking with the Mayor, the Commissioner directed his staff to disable the Councillor's computer account, having regard to possible violations of the County's policies on use of communications devices and respectful workplace. When the Councillor learned his blackberry and email privileges had been suspended, he called the County Commissioner, who agreed to

[71] Cuff, George **A Report for the Council of Strathcona County** 30 September 2010, at page 5

restore their use, pending a special Council meeting he requested for 14 September 2010. At that meeting, Council passed a motion asking for an independent investigation and report on the issues. George Cuff was retained and promptly provided his report on 30 September 2010. [72]

Mr. Cuff's report provides a thoughtful discussion on proper practices for effective municipal government, especially with respect to the importance of Council providing formal direction and the appropriate relationship between Council and the Administration.

> **3. Policy guidance particularly on major issues**
> Council is expected to function by policy or bylaw. These instruments of decision-making provide substantive direction to the Chief Commissioner as to what the Council wishes to see happen on issues which are major or repetitive or both. Approved policies and bylaws dictate that action will follow. They set out the expressed wishes to this Council which may in fact differ from its predecessors. Thus, as a part of a new Council getting its mandate underway, it will review current policies and determine if these reflect what this Council has been elected to accomplish or carry out.
>
> Policies on major issues are important. They determine next steps, what public pronouncements will be made by those in authority and how resources will be deployed. Without such policies being developed by this or any Council the organization will drift and any elected official will be able to express without restraint "what they think". Such a reaction on major topics is foolhardy and dysfunctional to good governance. [73]

Mr. Cuff recommended Council develop clear policies capable of application to the realities of municipal government.

Mr. Cuff was candid in his assessments, admonishing a number of the participants.

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[72] George B. Cuff, FCMC, is an experienced consultant and author on municipal governance, writing a monthly column in *Municipal World*. He served 12 years as Mayor and is a Past President of the Alberta Urban Municipalities Association (1982-83) and the Federation of Canadian Municipalities (1988-89).

[73] Cuff, George ***A Report for the Council of Strathcona County*** 30 September 2010, at pages 9 - 10

The Mayor, Deputy Mayor and County Commissioner were criticized for attending the meeting with the MLAs and issuing a press release without prior notification to other members of Council. [74]

Council was criticized for creating "the climate whereby events of this nature … might have been expected". [75]

> Familiarity can breed contempt (for people and for the rules). In this instance some Council members have become overly familiar with members of their administration and this familiarity has resulted in Councillors bypassing the chain of command and at times engaging in discourse which should be viewed by all as unacceptable. [76]

Mr. Cuff criticized the Councillor for sending out the offending email, failing to promptly withdraw it, and for his uncivil behaviour towards the County Communications staff person. [77]

> No member of Council has the right to personally challenge or embarrass a member of mid-management staff or any member of the administration. Such conduct is not fitting for a member of an elected office given the tremendous power differential that an elected official holds over an employee. This is not a level playing field. Unless a physical confrontation occurs, employees are virtually powerless to respond to such incidents whether they occur in Council Chambers or in their offices or elsewhere. Given the attention and focus placed on schoolyard bullying and intimidation in the workplace, one would like to

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[74] Ibid, at page 20

> "Common courtesy would suggest that no press release would be publicly circulated until a meeting had been held, a strategy had been developed and Council's policy on the matter consulted. This did not occur."

[75] Ibid, at page 17

[76] Ibid, at page 18

[77] Ibid, at page 15

> "The issuance of this mass e-mail in response to the County's press release was a poor and unnecessary way of responding. Sending one's personal reaction to a County-authorized news release (regardless of how un-newsworthy it might have been) to 919 County employees, County Councillors and 2 media outlets represents, in my opinion, a gross-overreaction. Not withdrawing the e-mail for the ensuing 2 hours simply ensures that it is taken at face value by the recipients. I also question the inclusion of employees in the distribution list."

> believe that an organization created and devoted to public service could hold itself to a higher standard. This should be the case and should be pursued through Council governance policies and the exercise of discipline by the Mayor and Councillors based on those policies and code of ethics. [78]

Mr. Cuff recounted reports from both Council members and County employees on "a marked decrease in the level/civility of discourse between Councillors and management during meetings of Council." As he went on to observe, "Corporate and public governing bodies which are supportive of good governance are also those who understand the need for respect." [79] Mr. Cuff distinguished between nastiness and the need for healthy debate and differing opinions:

> Just to make one matter very clear: any member of Council can express their opposing views on decision, issues and projects almost at any time. …Views of all members should be solicited before any decision. Vigorous debate should be welcomed rather than resisted. Most communities are divided on the big issues and thus the fact that the Council is should not come as any surprise or be viewed as a mark of a poor Council. Dysfunctional Councils are characterized by nasty behaviour towards each other or the administration and not by divided views on the key policy issues. [80]

While finding he acted in good faith and expressing admiration for the County Commissioner's courage in standing up to the Councillor, to send "a message that aggressive, demeaning behaviour by a Councillor towards a staff member will not be tolerated", Mr. Cuff concluded that the County Commissioner had "over-stepped his authority in this instance". [81] Mr. Cuff also commented that it was wrong to expect the head of the administration to discipline any member of Council:

> Asking the Chief Commissioner to 'police' Council is foolish. He does not have that authority or that many lives. [82]

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[78] Ibid, at page 19

[79] Ibid, at page 16

[80] Ibid, at page 16

[81] Ibid, at page 22

[82] Ibid, at page 11

It was for Council to discipline itself and its members. Mr. Cuff concluded the issue of the Councillor's conduct "should have resulted in an immediate referral to a special meeting of Council or at a minimum a trip to the Mayor's office. …The Mayor as leader of Council should have taken the matter upon herself." [83]

[83] Ibid, at page 25

THE CITY OF MISSISSAUGA JUDICIAL INQUIRY OF 2010/11

After questions were raised about the involvement of the Mayor's son in a civic land development deal, Mississauga City Council on 11 November 2009 voted 7 – 3 to seek an independent judicial inquiry under section 274 of *The Municipal Act 2001*. Mr. Justice J. Douglas Cunningham of the Superior Court of Justice was appointed Commissioner and held public hearings in 2010 and 2011. The Inquiry began hearing evidence on 25 May 2010 and concluded hearings with closing submissions on 8 February 2011. The hearings were broadcast on Rogers cable television.

The Inquiry was conducted in two phases: first, dealing with issues in connection with the December 2000 Enersource Shareholders Agreement to which the City was a party; and, second, with the acquisition by the City of Mississauga of approximately 8.5 acres of land in the city centre for the development of a downtown campus for the Sheridan Institute of Technology and Advance Learning.

While the hearings were underway, general municipal elections were held across Ontario on 25 October 2010. Any local controversy over this Inquiry did not harm the incumbent Mayor of Mississauga at the polls. 89 year old Hazel McCallion, first elected as Mayor in 1978, was returned to her 12th term in office as Mayor with 76 % of the votes cast, although this was down from the 92% of the vote she had garnered in the previous two municipal elections.

On the last day of the hearings, 8 February 2011, Justice Cunningham put a pointed question to counsel for Mayor McCallion about the power of political influence and the propriety of its use for private aims:

> Do you think that Mr. Nobrega, OMERS, Oxford would have paid any attention at all to WCD, this shell company, coming out nowhere with no apparent assets and unknown principals, that's ALS, coming forward with a proposal to develop a hotel convention centre, condominium project, no history of having ever done any of this kind of work previously?

> And this isn't something that OMERS, Oxford, AIMCo had put out for tender. This was something that came out of the blue from this company. Now, Mr. Lax would characterize it as the Mayor having created this one horse race. But putting that aside, without the involvement of Peter McCallion and the Mayor, do you really think that these large entities would have paid any attention to WCD?

The answer to this and other questions should be provided when Justice Cunningham issues his report, expected in the Fall of 2011.

AFTERMATHS

Much that is good can result from these public reviews, especially if there is a willingness to learn. The inquiries and reports described above were all necessary and useful. But, as Mr. Justice Maurice commented in his 1985 report on the Richmond Place Inquiry, there is also a necessary price to be paid when such misconduct is brought to light, if public confidence in government is to be restored.

Anyone personally familiar with these or similar events will be aware of the inevitable and, at times, unfortunate aftermath. The public expects action when wrongdoing is revealed. Someone must be to blame. And as one City Solicitor once said to me, in relation to municipal scandals, "Council can never be wrong." And while the electorate may view things differently in the next election, in the short run that is generally the view that prevails, at least amongst some members of Council. Public controversies may bring about calls for heads to roll and for organizational reform.

Sometimes people are only embarrassed. Other times careers are ended or opportunities reduced. Reputations are sullied. And it is not only the wrongdoers who suffer. Dedicated public servants may suffer guilt by association. Some may become collateral damage in the ensuing changes. Both good and bad administrative officials may be sacrificed in the rush to appease the public's sense of outrage. The same holds true of elected officials swept away by a tide of public dissatisfaction at any elections which closely follow these reports, regardless of past contributions and service to their community.

Incoming Councils, elected on a reform agenda, feel a pressing need to make changes, but may find themselves uncertain or unable to determine what changes are required. Management of large organizations is a complex and challenging undertaking, not susceptible to easy or quick fixes. While change is easy to make, improvement is more difficult to achieve. In the heat of public controversy, there may be insufficient attention or concern with this distinction. There is a danger of doing as much or more harm than good, which further diminishes employee morale. "Change agents" who offer easy answers may be brought in to work their magic, like some

modern-day alchemist. Often the applied formula is the old five-step "R" program: 1. remove; 2. replace; 3. reorganize; 4 rename; and 5. redecorate. While the faces, names and furniture may be different, things may otherwise remain much the same as before.

The adverse consequences that may be brought about by improper conduct, both large and small, should cause both elected and administrative officials to think twice before risking their reputations and the public good for some transient advantage or avoidance of difficulty.

CONCLUSION

What lessons should be learned from these inquiries? Some common themes emerge from the reports.

Problems inevitably emerge in an unhealthy environment, especially in a morally compromised organization. Continuous efforts to encourage ethical behaviour are vital.

Municipal government exists to create and maintain communities in which people want to live. Municipal government operates best when members of council and the administration understand and respect their separate roles and duties. Their relations should be business-like, characterized by consistent courtesy and frank, but always respectful, dialogue.

The business of government and public administration is different from that of private enterprise. Private business models, based on the profit-motive with a share price/dividend yardstick for success, are generally inappropriate for the public sector. Both elected and administrative officials should gain a firm understanding of the public sector model, traditions and ethics.

Council and its members are impressed with a public trust. [84] While Council (and the Administration) should be considerate of private interests, it is the public interest which is paramount and which should prevail in public decision-making. Neither elected officials nor civil servants should let their private interests interfere with their pursuit of the public interest. At a minimum, they must always abide by the law. When faced with competing interests and hard choices, they should seek to do what is best for the community.

The Mayor and Councillors must act only through open Council meetings to provide policy direction and make political decisions. Transparency in public decision-making is a critical

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[84] *Bowes v. City of Toronto* (1858) 14 E.R. 770 (Privy Council)

> We are of the opinion however, that neither the governing character nor the deliberative character of the Corporation Council makes any difference, and that the Council was in effect and substance a body of trustees for the inhabitants of Toronto; trustees having a considerable extent of discretion and power, but having also duties to perform, and forbidden to act corruptly.

feature of municipal government that supports ethical conduct. It is not only improper, but bad business, for individual members of Council to attempt to privately direct or pressure municipal employees.

One of President Dwight Eisenhower's saying is worth repeating: "Organization cannot make a genius out of an incompetent. On the other hand, disorganization can scarcely fail to result in inefficiency." The municipal administration should be headed by the City Manager, or equivalent position, and staffed with capable managers and professionals committed to the ethics of professional management.

The City Manager model of municipal administration was introduced to promote professional administration, avoid the politicization of municipal administration, and curb municipal corruption. Despite occasional failures, it remains the proven model for effective municipal administration. A model which provides checks and balances on the exercise of power may avoid the excesses of power. The direct appointment by and accountability to Council of the City Auditor, City Clerk, City Manager and City Solicitor, with appropriate security of office to promote independence, is the best way to balance an independent and professional administration with sufficient reporting to and direction from Council.

The Administration must respect Council's right to decide, but must also recognize their duty to ensure that Council's decisions are properly informed. Senior administrative officials and management must have the integrity and intellectual honesty to provide frank advice and accurate information to Council, however unpalatable or unwelcome.

The late Peter Drucker is properly regarded as one of the great thinkers on modern management. His statement of the ethical responsibility of managers to confront and make known problems within the organization applies to both public and private business:

> There are important areas where managers, and especially business managers, still do not realize that in order to be permitted to remain autonomous and private they have to impose on themselves the responsibility of the professional ethic. They

> still have to learn that it is their job to scrutinize their deeds, words and behaviour to make sure they do not knowingly do harm.
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> . . . The manager who fails to think through and work for the appropriate solution to an impact of his business because it makes him "unpopular in the club" knowingly does harm. He knowingly abets a cancerous growth. That this is stupid has been said. That this always in the end hurts the business or the industry more than their little temporary "unpleasantness" would have hurt has been said to. But it is also gross violation of professional ethics. [85]

It is not the Administration's role to please everyone or relieve Council of its obligation to make tough decisions. Council is free to overrule the municipal administration, within the limits of the law, but should do so only after seeking and carefully considering its advice. Councillors must take care not to discourage administrators from providing frank advice or bad news. If they shoot the messengers, then warnings will inevitably come too late, if at all.

Proper process should not be undervalued. It promotes good decision-making and protects the institutions of good governance and public administration. Many processes in municipal government are mandated by the enabling legislation, providing consistent and uniform methods. Attention to proper process in mundane and minor matters can help to set the right tone in public institutions. And it is usually just as easy to do it the right way as the wrong way. It is said that good character is the result of the formation of good habits. Good government is much the same. If you do it the right way the first time, it is more likely you will continue doing it the right way in the future. Good governance habits protect everyone. But when bad habits are formed, they can only be changed by determination to change on the part of the person with the bad habit and constant correction from those they respect and to whom they will listen.

And just as taking short-cuts in process can cause problems, so too will short-changing the funding of public services and public works. Most of us learn in life, you get what you pay for.

Government costs. Good government costs more. Council, acting on behalf of the public who are both consumers and funders of public services, controls the purse strings. Budget decisions dictate the compromise between the scope and quality of public services to the community and

their cost to the taxpayers. But Council, administrators and the public should all be aware and beware of false economies.

Under-funded services and public works do not provide good value. Cost and quality are related. Good administration cannot compensate for inadequate funding. Sooner or later systems will fail and problems will emerge.

Municipal governments typically borrow in two ways: 1. through loans secured by debentures, within establish debt limits; or 2. by deferred investment in and maintenance of public works. The latter method of borrowing is common, but dangerous, in that the true cost is usually hidden, resulting in unexpected and unpleasant consequences. As the Walkerton and North Battleford inquiries showed, those consequences can include compromising public health and safety. That result is inexcusable. Where public safety is at stake, provincial oversight and regulation are necessary to ensure consistency and uniformity in standards of municipal services and works and to reduce the risks created by municipal under-funding or other neglect.

While there are dangers in applying private sector models to the public sector, there is a basic lesson about value and cost that is too often overlooked in the provision of public services. Cost-cutting which reduces funding for public services and public works without commensurate reductions in the scope of those services and works is no bargain. Trying to do the same or more work with less funding inevitably results in substandard services and products. People rationally resent paying for inferior services or products. But people will pay a premium for quality services and products. Both elected and administrative leaders in public service owe it to the public they serve to be frank about the cost of providing good public services and public works.

These are some of the lessons which may be learned from the reports summarized in this paper. It is the author's hope that reminding readers of these important reports and the lessons they offer will promote the good governance and administration of municipalities.

Neil Robertson, Q.C.

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[85] Drucker, Peter F. ***Management: Tasks, Responsibilities, Practices*** 1974, at p. 369

ACCESS TO REPORTS

This paper is intended to provide a summary of these important reports, lest they and the lessons they teach be forgotten. In reading these summaries, some may become interested in reading the full reports. The reports of the Inquiries were all made available to the public.

The North Battleford Commission of Inquiry Report was published by the Queen's Printer for Saskatchewan, with copies made available at no cost to the public. This well-written report remains available for order in bound version for $5.00 or on-line through the Queen's Printer website at www.qp.gov.sk.ca.

The Walkerton Commission of Inquiry Report is published by the Queen's Printer for Ontario and is available on the Publications Ontario web site at www.gov.on.ca/mbs/english/publications. The report quoted in this memo is found at www.attorneygeneral.jus.gov.on.ca/html/cad/walkertonrpt2.htm.

The entire report is voluminous and was released in two parts. The Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report was published in four volumes. Altogether, it is over one thousand pages. It is available at www.torontoinquiry.ca.

The Report for the Council of Strathcona County is available at www.georgecuff.com.

The report of the Mississauga Judicial Inquiry will be available at www.mississaugainquiry.ca.