

CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH LLP  
BARRISTERS SOLICITORS

474 Bathurst Street  
Suite 300  
Toronto, Ontario M5T 2S6  
Telephone: 416-964-1115  
Facsimile: 416-964-5895  
Email: [contactus@cavalluzzo.com](mailto:contactus@cavalluzzo.com)  
Website: [www.cavalluzzo.com](http://www.cavalluzzo.com)

**In Association with Patrice F. Band**

**Please refer to:**

Direct Line:  
Email:

Assistant:  
Assistant's Email:  
File No:

**Freya Kristjanson/  
Amanda Darrach**  
(416) 964-5520/5511  
[fkristjanson@cavalluzzo.com](mailto:fkristjanson@cavalluzzo.com)/  
[adarrach@cavalluzzo.com](mailto:adarrach@cavalluzzo.com)  
Irene Urbanavicius  
[iurbanavicius@cavalluzzo.com](mailto:iurbanavicius@cavalluzzo.com)  
112328

January 26, 2012

Councillor Joe Mihevc  
100 Queen Street West  
Suite B35  
Toronto, Ontario  
M5H 2N2

Dear Councillor Mihevc:

**Re: Transit City**

You have asked us whether Mayor Rob Ford had the authority to cancel Transit City without authorization from the Toronto City Council. We have concluded that he had no such authority. This opinion is organized as follows:

A. Executive Summary .....	2
B. Background to Transit City.....	3
1. The Development of Transit City .....	3
2. City Council's Role.....	4
3. Mayor Rob Ford's Role .....	7
C. Legal Framework .....	9
1. Background: Municipal Governance .....	9
2. The Role of Council.....	10
3. The Role of the Mayor as Head of Council .....	11
D. The Conduct of the Mayor Regarding Transit City .....	14
E. Conclusion .....	18

### **A. Executive Summary**

Throughout the period 2007 to 2010, the Toronto Transit Commission (the “TTC”) and the Toronto City Council (“City Council” or “Council”) received reports, considered, and voted on aspects of what was commonly known as Transit City. They designated four priority projects. They voted funding allocations for these projects. City Council declared Transit City its first priority with respect to transit.

On December 1, 2010, newly elected Mayor Ford, without the approval of City Council, purported to cancel Transit City. He directed that work on Transit City be stopped, and that resources be allocated to other projects as he directed. The TTC followed this direction. On or about March 31, 2011, again without the approval of City Council, Mayor Ford purported to enter into a Memorandum of Understanding (the “Mayor’s MOU”) on behalf of the City of Toronto with the Province of Ontario and Metrolinx, the province’s transportation agency. Under the Mayor’s MOU, Mayor Ford purported to confirm the intent of the City of Toronto to end Transit City, make alternative transit plans, and reimburse Metrolinx for non-recoverable sunk costs associated with the direction of City Council to implement Transit City. There are two major issues with respect to Mayor Ford’s conduct with respect to Transit City. First, he did not follow the proper procedure for obtaining City Council’s authorization to rescind Transit City and develop and approve an alternate plan. Second, he purported to enter into the Mayor’s MOU on behalf of the City of Toronto without City Council’s approval, and, more importantly, appears to have acted on the Mayor’s MOU without first obtaining the authorizations the document itself requires to be operational.

As we further discuss below, Mayor Ford did not have the authority, without the approval and direction of City Council, to:

1. Cancel Transit City;
2. Direct the TTC Chief General Manager to redirect resources away from Transit City initiatives;
3. Direct the TTC to develop a new transit plan; and
4. Sign the Mayor's MOU purporting to establish the intent of the City of Toronto to end Transit City and make alternative transportation plans, when Council's intent to date as established by Council resolutions is to support Transit City.

City Council, of which Mayor Ford is a part, has the authority to do those things. It has not done so. The Mayor has not taken these initiatives for approval to City Council.

Under the *City of Toronto Act*, the power of the City resides in City Council. The Mayor of Toronto has very little independent authority beyond his role as head of City Council. Unless specific power is delegated to him, the Mayor does not have the authority to speak for the City independently.

Below, we discuss the history of Transit City, with particular focus on the steps taken by City Council to approve and implement the program. We then discuss the municipal legal framework with respect to the authority of the Mayor of the City of Toronto. We conclude by examining the steps taken by Mayor Ford since December 1, 2010 to determine whether he had the authority to do the acts he has purported to do.

## **B. Background to Transit City**

### **1. The Development of Transit City**

The transit program known as Transit City was proposed by then-Mayor David Miller and then-Chair of the TTC Adam Giambrone on March 16, 2007. It called for, among other things:

- Seven (7) new light rail (“LRT”) lines
- Upgrading and extending the Scarborough rapid transit (“RT”) line
- Bus rapid transit lanes
- Changes to schedules on high-priority bus routes

On March 21, 2007, this Transit City Plan was approved by the TTC. On June 15, 2007, the Province of Ontario announced its Move Ontario 2020 plan, which included Transit City.<sup>1</sup>

## 2. City Council’s Role

City Council considered and voted on elements of the Transit City proposal throughout 2007-2010.<sup>2</sup> For example:

1. On July 16, 2007, Council adopted the motion that City Council should, as part of a Climate Change, Clean Air and Sustainable Energy Action Plan:
  - (a) “Direct the initiation of appropriate environmental and engineering studies for the Transit City plan and request the General Manager of the Toronto Transit Commission to submit to the Executive Committee in 2007 a schedule for the completion of aforementioned studies and a financial plan including funding sources and revenue tools”

---

<sup>1</sup> Office of the Premier, Press Release “McGuinty Government Action Plan For Rapid Transit Will Move The Economy Forward”, (June 17, 2006) online:

<http://www.premier.gov.on.ca/news/event.php?ItemID=4019&Lang=En>

<sup>2</sup> Committees of Council, including the Executive Committee, the Budget Committee, the Planning and Growth Management Committee and the Economic Development Committee all considered different elements at different periods of time. Discussion at the committee level is beyond the scope of this letter.

- (b) Prepare in 2007 a Sustainable Transportation Implementation Strategy, that draws from and is consistent with existing policies and plans (e.g.... Transit City Plan...)

2. On March 3, 4 and 5, 2008, Council adopted the motions:

- (a) That the Greater Toronto Airports Authority, Metrolinx, GO Transit and the TTC should be requested to develop a strategy that might involve “the possibility of bringing one or more of the Transit City light rail lines to the airport.
- (b) That City Council forward the Sheppard Corridor Study to the TTC for consideration during the Transit City, Sheppard East Light Rail Line Class Environmental Assessment Study.”

3. On July 17, 2008, City Council approved the motion that “City Council approve the recommendations of the Sheppard East LRT Environmental Assessment study to allow staff to begin detailed design as soon as possible, and be in a position to begin construction of this first Transit City light rail line in 2009.”

4. On January 27, 2009, City Council adopted the motion to direct the City Manager and Chief General Manager of the TTC to commence discussions with Metrolinx, the Province of Ontario, York Region and Government of Canada “for the purposes of securing the appropriate funding and service agreements on the basis of the following requirements:

- (a) Metrolinx be requested to prioritize the Downtown Relief Line within its 15-year plan, noting that Transit City is the first priority for the Toronto Transit Commission and the City of Toronto.” The motion as originally brought stated

only that Metrolinx be requested to prioritize the Downtown Relief Line. On motion from Suzan Hall, passed by a majority of City Council, including then Councillor Ford, the additional language “noting that Transit City is the first priority for the Toronto Transit Commission and the City of Toronto” was added.

5. On September 30 and October 1, 2009, City Council voted to:
  - (a) increase the 2009-2012 Approved Capital Budget and Plan by \$134.5 million gross, “to continue work on the priority Transit City lines, with \$124.8 million gross to be funded by the Province through Metrolinx and the balance of \$8.7 million for environmental assessments for other Transit City lines to be funded through offsets within the TTC’s 2009 Approved Capital Budget...”<sup>3</sup>
  - (b) authorize the City Manager to enter into a Memorandum of Agreement on behalf of the City, with Metrolinx and the TTC...
  - (c) request that the TTC and Metrolinx report back in November 2009 on process to implement LRT technology to match and work with Transit City, on the extension of the Scarborough Rapid Transit line...consistent with Transit City.
  
6. On February 23, 2011 City Council approved cash flow funding of \$0.738 million in 2011 for studies on future Transportation/Transit City lines.

---

<sup>3</sup> In November 2007, four (4) priority projects were identified by the TTC: the Eglinton Crosstown LRT, the Finch West LRT, the Sheppard East LRT and the Scarborough RT.

### 3. Mayor Rob Ford's Role

Rob Ford was elected Mayor of Toronto on October 26, 2010. On December 1, 2010, his first day in office, Mayor Ford announced: "Ladies and Gentlemen, the war on the car stops today ... Transit City is over."<sup>4</sup> Mayor Ford called a meeting with TTC Chief General Manager Gary Webster. Mayor Ford reported that the goal for this meeting was "to make it quite clear that [Webster] understood that Transit City's over and the war on the car is over and, all new subway expansion is going underground."<sup>5</sup> Mr. Webster told reporters that the 150 staff assigned to work on Transit City would be reassigned to work on a new, Mayor Ford-directed, transit plan. Mayor Ford acknowledged that City Council's support would be needed to make the change to the project.<sup>6</sup>

Since that date, Mayor Ford has not brought the matter of Transit City to City Council. Despite that, it was announced on March 31, 2011, that the City of Toronto, the Province of Ontario and Metrolinx had entered into the Mayor's MOU regarding the a new transit plan under which the existing Sheppard subway would be extended (the "Toronto Projects") and an underground Eglinton-Scarborough LRT (the "Metrolinx Project") would be built.<sup>7</sup> The Mayor's MOU is discussed in more detail below.

In essence, the Mayor's MOU purports to establish intent on the part of the City of Toronto to cancel Transit City, funnel remaining funding to another project, and recompense Metrolinx for sunk costs related to Transit City. It has been widely reported that the cost of

---

<sup>4</sup> Tess Kalinowski and David Rider, "'War on the car is over': Ford moves transit underground", *Toronto Star* (December 2, 2010) online: <http://www.thestar.com/news/article/899641--the-war-on-the-car-is-over-ford>

<sup>5</sup> *Ibid.*

<sup>6</sup> "Rob Ford: 'Transit City is Over'" (December 1, 2010) online: <http://www.cbc.ca/news/canada/toronto/story/2010/12/01/toronto-ford.html>

<sup>7</sup> [http://www.toronto.ca/mayor\\_ford/improving-transit.htm](http://www.toronto.ca/mayor_ford/improving-transit.htm)

cancelling Transit City could be as high as \$65 million.<sup>8</sup> While the Mayor's MOU acknowledges that the Mayor does not have the authority to execute the document, and that City Council and other approvals are necessary, the Mayor's MOU has nonetheless been acted upon.<sup>9</sup>

In May 2011 the TTC revived a pre-established subsidiary, Toronto Transit Infrastructure Ltd. ("TTIL"), which is charged with exploring the development of the Sheppard subway. That organization has internally described the purpose of the Mayor's MOU as follows: "the Mayor of Toronto and Metrolinx have recently agreed on a proposal to make changes to the [Transit City] Plan in order to achieve the Mayor's goal of substituting subway lines for the surface light rail lines originally contemplated in the plan."<sup>10</sup>

In addition, the TTC website now states:

Mayor Ford has requested that the TTC develop a new transit plan consistent with his platform. Work on a new plan is underway. For more info on the current plan see the Metrolinx website at <http://www.metrolinx.com>.<sup>11</sup>

As we further discuss below, Mayor Ford did not have the authority to:

1. Cancel Transit City;
2. Direct the TTC Chief General Manager to redirect resources away from Transit City initiatives;
3. Direct the TTC to develop a new transit plan; and

---

<sup>8</sup> Elizabeth Church, "Cost of cancelling Transit City could hit \$65 million", *The Globe and Mail* (December 13, 2010) online: <http://www.theglobeandmail.com/news/national/toronto/cost-of-cancelling-transit-city-could-hit-65-million/article2270358/>

<sup>9</sup> See: [www.thecrosstown.ca](http://www.thecrosstown.ca)

<sup>10</sup> [http://www3.ttc.ca/About\\_the\\_TTC/Subsidiaries/Toronto\\_Transit\\_Infrastructure\\_Ltd/2011/June\\_24\\_2011/Meeting\\_of\\_Directors/Reports/TTIL\\_-\\_Report\\_from\\_t.pdf](http://www3.ttc.ca/About_the_TTC/Subsidiaries/Toronto_Transit_Infrastructure_Ltd/2011/June_24_2011/Meeting_of_Directors/Reports/TTIL_-_Report_from_t.pdf)

<sup>11</sup> [http://www3.ttc.ca/About\\_the\\_TTC/Projects\\_and\\_initiatives/Transit\\_city/Transit\\_City\\_Details/index.jsp](http://www3.ttc.ca/About_the_TTC/Projects_and_initiatives/Transit_city/Transit_City_Details/index.jsp)

4. Sign the Mayor's purporting to establish the intent of the City of Toronto to end Transit City and make alternative transportation plans, when Council's intent to date as established by Council resolutions is to support Transit City.

### **C. Legal Framework**

It is important to understand the statutory scheme under the *City of Toronto Act* with respect to the roles of Council, the Mayor, and staff.<sup>12</sup> In all of these respects, the relevant provisions of the *City of Toronto Act* are identical to those of the *Municipal Act*<sup>13</sup>, which applies to every other municipality in the province. Therefore, while we have generally followed the *City of Toronto Act* in this opinion, reference has been made to case law and commentary regarding both Acts.

#### **1. Background: Municipal Governance**

Ontario has a “weak Mayor/strong Council” system of municipal governance, as described by Commissioner Bellamy in the Toronto Computer Leasing Inquiry Research Paper on Municipal Governance.<sup>14</sup> Generally, executive and legislative powers rest with full Council. The only additional independent duties given to the Mayor, as compared with any other councillor, arise from his or her role as head of Council. Other less tangible expectations may include providing leadership to the Council, representing the municipality at official functions, and carrying out various procedural duties as head of Council.<sup>15</sup>

As Commissioner Bellamy states, “[c]onsistent with the history and culture of municipal affairs in Ontario, the province’s *Municipal Act, 2001* enshrines a “weak Mayor/strong Council”

---

<sup>12</sup>*City of Toronto Act*, 2006, S.O. 2006, Ch. 11, Schedule A.

<sup>13</sup>*Municipal Act, 2001*, S.O. 2001, c. 25.

<sup>14</sup>Toronto Computer Leasing Inquiry Research Paper, *Municipal Governance, Volume 1: Overview of Approaches*, November, 2003.

<sup>15</sup>*Ibid.* See discussion at p. 16.

model of municipal governance.”<sup>16</sup> The Transit City matter must be analysed within the statutory framework of the weak Mayor/strong Council model.

## 2. The Role of Council

The key defining feature of municipal governance in Ontario, under both the *Municipal Act* and the *City of Toronto Act*, is that municipal power and authority is generally exercised by City Council, and the Mayor has very little formal authority outside of chairing City Council meetings. As Commissioner Bellamy states:<sup>17</sup>

The most important ground rule is that Council is the source/primary locus of almost all authority with relatively few exceptions, including all legislative authority. Council makes the decisions with respect to whether and to what extent to delegate this authority to others, including the Mayor, various standing or other committees, and the administrative staff. The statutory authority of the Mayor/head of Council is actually quite limited, with a strong emphasis on the responsibility to chair Council meetings.

The role of City Council is set out in the *City of Toronto Act* as follows:

### Role of city council

131. It is the role of city council,

- (a) to represent the public and to consider the well-being and interests of the City;
- (b) to develop and evaluate the policies and programs of the City;
- (c) to determine which services the City provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

---

<sup>16</sup> *Ibid.* at p. 44.

<sup>17</sup> *Ibid.*

(e) to ensure the accountability and transparency of the operations of the City, including the activities of the senior management of the City;

(f) to maintain the financial integrity of the City; and

(g) to carry out the duties of council under this or any other Act.

In order to carry out its roles, City Council has the following powers:<sup>18</sup>

#### **Powers of city council**

**132.** (1) The powers of the City shall be exercised by city council.

#### **Same**

(2) Anything begun by one council may be continued and completed by a succeeding council.

#### **By-law**

(3) A power of the City, including the City's capacity, rights, powers and privileges under section 7, shall be exercised by by-law unless the City is specifically authorized to do otherwise.

#### **Scope**

(4) Subsections (1) to (3) apply to all of the City's powers, whether conferred by this Act or otherwise.

Specifically with respect to the TTC, City Council appoints the councillors of the TTC as well as approves its budgets.<sup>19</sup>

Accordingly, the powers of the City reside in City Council and it is City Council that has the authority to act on behalf of the City. City Council may delegate certain of its powers to another party, but such delegation must be specifically in a by-law.<sup>20</sup>

### **3. The Role of the Mayor as Head of Council**

---

<sup>18</sup> *City of Toronto Act* at s. 132.

<sup>19</sup> *Toronto Municipal Code*, c. 279.

<sup>20</sup> *City of Toronto Act* at s. 20.

The Ministry of Municipal Affairs and Housing describes the role of the Mayor as follows: “[D]ecisions of the municipality are made by council as a whole. The head of council does not have any more power than any other member of council to make decisions on behalf of the municipality.”<sup>21</sup> The Mayor does have certain very limited responsibilities as head of Council. Section 133 of the City of Toronto Act provides that the duties of the mayor in that role are as follows:<sup>22</sup>

**Role of the mayor as head of council**

133. (1) It is the role of the mayor of the City, as the head of council,

- (a) to act as chief executive officer of the City;
- (b) to preside over meetings of council so that its business can be carried out efficiently and effectively;
- (c) to provide leadership to council;
- (d) to represent the City at official functions; and
- (e) to carry out the duties of the head of council under this or any other Act.

Same

(2) Without limiting clause (1) (c), the mayor’s role includes providing information and making recommendations to council with respect to council’s role under clauses 131 (d) and (e).

Substitution

(3) The City may, with the consent of the head of council, appoint a member of council to act in the place of the head of council on any body, of which the head of council is a member by virtue of being head of council.

---

<sup>21</sup> *The Municipal Councillor’s Guide*, Ministry of Municipal Affairs and Housing, Queen’s Printer for Ontario, 2007, also available on the internet at [www.mah.gov.on.ca](http://www.mah.gov.on.ca)

<sup>22</sup> *City of Toronto Act* at s. 133.

The mayor is also the chief executive officer of a municipality, with duties under section 134 of the *City of Toronto Act* as follows:<sup>23</sup>

134. As chief executive officer of a municipality, the head of council shall,

(a) uphold and promote the purposes of the municipality;

(b) promote public involvement in the municipality's activities;

(c) act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and

(d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

In accordance with these sections, the Mayor generally presides over council meetings unless absent or excused from doing so by circumstances provided in the *Act* or other legislation. Other statutes may also assign responsibility or authority, including the *Emergency Management and Civil Protection Act* which allows the head of council to “declare that an emergency exists” and to “...implement the emergency plan of the municipality...”<sup>24</sup>

There are no other sections in the *City of Toronto Act* granting the office of Mayor any powers beyond those of a member of council generally. As the City of Toronto described the powers of the Mayor under the City of Toronto Act:

1. No new powers were given to the Mayor of Toronto in the *City of Toronto Act*.

---

<sup>23</sup> *Ibid.* at s. 134.

<sup>24</sup> *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, section 4.

2. The Province of Ontario also updated the *Municipal Act* and it mirrors the *City of Toronto Act* in all respects except taxing powers and the mandatory requirement for the City of Toronto to have accountability officers (Auditor General, Ombudsman, Integrity Commissioner and Lobbyist Registrar). Therefore, Toronto's Mayor operates under the same statutory provisions as every other mayor, reeve and warden in Ontario and, like every other member of a municipal Council, has one vote on all matters.

3. The power to appoint Chairs of Committee was given to the Mayor of the City of Toronto by Toronto City Council through the Council procedures bylaw and not the City of Toronto Act.

4. The Mayor does not appoint the members of the City's executive committee. Toronto City Council has a procedural bylaw that sets out how members of the Executive Committee are selected. The procedural bylaw states that Chairs of the City's committees (which the Mayor appoints) sit on the Executive Committee and City Council also appoints four members-at-large who also sit on the committee.<sup>25</sup>

Consequently, the Mayor has no power to act for or legally bind the City of Toronto without other members of council constituting a quorum.<sup>26</sup>

#### **D. The Conduct of the Mayor Regarding Transit City**

There are two major issues with respect to Mayor Ford's conduct with respect to Transit City. One, he did not follow the proper procedure for obtaining City Council's authorization to rescind Transit City and develop and approve an alternate plan. Second, he purported to enter into the Mayor's MOU on behalf of the City of Toronto without City Council's approval, and,

---

<sup>25</sup> Press Release, City of Toronto, August 6, 2009:

<http://wx.toronto.ca/inter/it/newsrel.ns/82f55f14f8d6b46285256ef500408475/4DA3A3783E5DD9298525760A00694EF9?opendocument>

<sup>26</sup> *The Town of The Pas v. Porky Packers Ltd.*, [1977] 1 S.C.R. 51, 65 D.L.R. (3d) 1 at p. 68.

more importantly, appears to have acted on the Mayor's MOU without first obtaining the authorizations from City Council that the document itself requires to be operational.

First, Mayor Ford did not follow proper procedure with respect to rescinding Transit City and allocating resources to his new transit plan. As can be seen from our discussion of the implementation of Transit City, large scale transit programs like these are implemented through a process of funding environmental assessments and other type initiatives, approving the work of the TTC in design and development, and funding proposals for the actual work to be done. Each individual element is voted on at City Council. Transit City came to Council as part of the Climate Change, Clean Air and Sustainable Energy Action Plan in 2007. After that, City Council considered and voted on the necessary elements of the program as they came before Council. The process was granular, because this is how City Council does its work.

A specific example of City requirements is January 27, 2009, where City Council authorized the City Manager to commence discussions with Metrolinx and the Province of Ontario, among others, to secure funding. This authorization culminated in a Memorandum of Agreement dated December 22, 2009. Thus, the practice of the City of Toronto in respect of entering MOUs which purport to bind the City is to pass a resolution. No such authorization was given to Mayor Ford to enter into the Mayor's MOU, or to enter into discussions leading to the Mayor's MOU.

As noted above, the City of Toronto, defined as "Toronto" in the Mayor's MOU, is a party to the MOU. Mayor Ford signed the Mayor's MOU on behalf of the City of Toronto as a party. The relevant provisions of the Mayor's MOU are as follows (emphasis added):

Recitals:

1. **The Mayor of Toronto and Metrolinx have brought forward a proposal** to make adjustments to the Metrolinx transit plan known as the "5 in 10 plan" (the "Metrolinx Plan")...

2. **Toronto and Metrolinx have been in discussions** to develop a revised plan since December 2010;

7. The parties are, therefore, entering into this non-binding MOU in order to provide a framework for the negotiation of agreements to be approved by their respective governing bodies.

1 (b) The “Initial Projects” means the light rail projects known as Sheppard East, Finch West and Eglinton Crosstown Light Rail Projects as well as the replacement and extension of the Scarborough Rapid Transit line...

### 3. Project Responsibilities

The parties agree that the adjustments to the Metrolinx Plan as contemplated in this MOU shall, subject to the approval of their respective governing bodies, **require the cancellation of the Initial Projects and the undertaking of the Metrolinx Project and the Toronto Projects** as follows:

3.3(e) Metrolinx agrees to stipulate in a letter to the Toronto Transit Commission (TTC) that any and all costs being incurred pursuant to the Memorandum of Agreement dated December 22, 2009 between TTC, Toronto and Metrolinx only continue to be incurred for the Metrolinx Project.

3.3 (f) Subject to section 5.6, **Toronto acknowledges that Toronto will be responsible for reimbursing Metrolinx for all reasonable net losses, penalties, damages and other costs for work (collectively “Losses”)**...related to the suspension of, change to, or cancellation of any portion of the Initial Projects including, but not limited to, (i) Losses related to the design of the surface portion of the Eglinton LRT, the Finch West LRT and Sheppard East LRT; and (ii) amounts payable to vendors pursuant to contractual commitments that must be altered as a result of the suspension, change or cancellation.

Metrolinx acknowledges that Toronto will not be responsible to repay any Losses relating to Metrolinx general overhead including Metrolinx staff time. Metrolinx undertakes to work with Toronto and with project contractors and vendors to minimize Losses.

The amount and terms of Toronto’s repayment of such Losses shall be agreed by Toronto and Metrolinx acting reasonably.

#### 4. Approvals

The parties agree that **they shall each independently seek all necessary approvals from their respective authorities and governing bodies** as required for any agreement resulting from this MOU.

**Toronto will be solely responsible for securing necessary approvals from Toronto City Council and the TTC.**

#### 5.6 Non-Binding

The parties agree that this MOU is to establish a statement of intent and proposed set of guiding principles. The parties confirm that this MOU is not intended to create any legally binding permissions or obligations. The parties agree, **subject to the approval of their respective governing bodies, to proceed in good faith to finalize definitive legal agreements consistent with these principles** as soon as practicable.

IN WITNESS THEREOF the parties hereto have executed this Memorandum of Understanding through their duly authorized officers and, in the **case of Toronto, by the Mayor as indicating his desire that the parties give consideration to this proposal.**

Mayor Ford was not given the authorization to enter into discussions leading to, or to sign, this Mayor's MOU. Under the Mayor's MOU, he has undertaken, on behalf of the City of Toronto, to establish the intent of the City of Toronto to cancel Transit City (the "Initial Projects") and to reimburse Metrolinx for costs incurred in pursuing Transit City. The Mayor's MOU also raises the question of whether Mayor Ford was authorized to a) unilaterally divert funding previously allocated by City Council for one purpose to another or b) establish the intent of the City to undertake to reimburse Metrolinx for its sunk costs, particularly where the City of Toronto would have otherwise received goods and services for those funds. Put another way, it is not clear whether Mayor Ford's actions have caused higher costs for the City of Toronto than would otherwise have been the case if Transit City had continued.

It has been ten (10) months since the Mayor purported to enter into the Mayor's MOU, yet he has not brought it to Council. Despite the fact that the Mayor has not obtained, nor even sought, Council's approval as envisaged by the Mayor's MOU, it appears that work has begun on the projects envisioned therein. These projects have not been undertaken with Council's authority, and are not a valid exercise of the Mayor's authority. Arguably, the failure to seek the required approvals in a timely manner could be considered a breach of the Mayor's MOU by the Province.

#### **E. Conclusion**

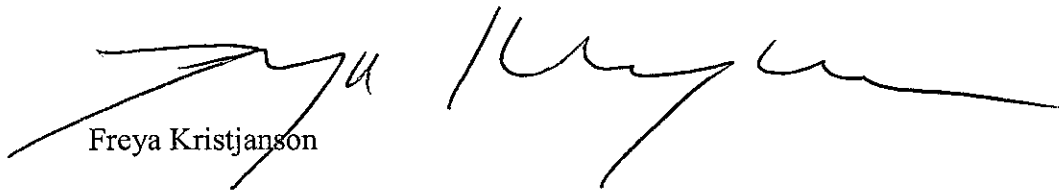
As described above, Mayor Ford has no independent authority to bind the City. The history of Transit City pre-Mayor Ford is an example of how such initiatives are lawfully pursued. Studies and assessments, and the associated funding for these studies, were proposed to and approved by City Council. The majority of the deliberative work took place at Committee or at the TTC, but it was at all times pursuant to the directives of City Council.

The Mayor of Toronto only exercises powers if the authority is delegated to him by Council. No delegation with respect to Transit City has occurred. The Mayor was not given any specific legislative or management responsibility with respect to the implementation or rescission of Transit City. Accordingly, he did not have the authority to rescind any of the Transit City directives or enter into the Mayor's MOU.

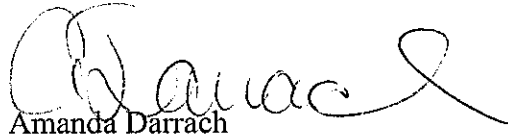
Since December 1, 2010 the TTC has been acting on the directives of Mayor Ford, without the authorization and oversight of City Council. While the Mayor of Toronto has a large part in Toronto's civic life, he cannot act without the approval and authority of City Council in these matters

Yours truly,

**CAVALLUZZO HAYES SHILTON  
McINTYRE & CORNISH<sup>LLP</sup>**

A handwritten signature in black ink, appearing to read 'Freya Kristjanson', written in a cursive style.

Freya Kristjanson

A handwritten signature in black ink, appearing to read 'Amanda Darrach', written in a cursive style.

Amanda Darrach