



Joe Pantalone

Councillor
Trinity Niagara

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City Hall, 2nd Floor

Suite 3

100 Queen Street West

Toronto ON M5H 2N2

Saturdays 9-11am

559 College Street (Basement)

M E M O

DATE: February 12, 1999

TO: Mr. John D. Morand, Director of Strategic Planning,
The Toronto Harbour Commissioners

FROM: Richard Decter, EA, Councillor Joe Pantalone

SUBJECT: Exhibition Place Title Issue

Councillor Pantalone asked me to forward to you this self-explanatory communication regarding the matter raised at this morning's meeting. Anything you can do to help would be appreciated.

Sincerely

Richard Decter
EA, Councillor Joe Pantalone

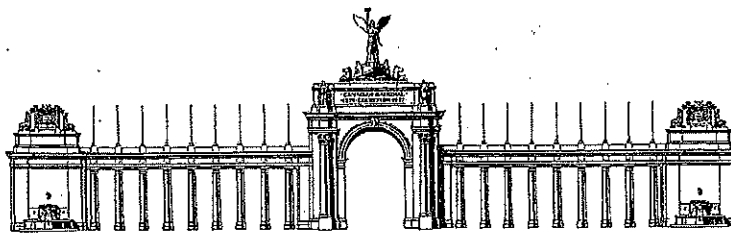
attachment

The foregoing report was reviewed by the Executive Committee at its meeting held on February 19, 1999 and is referred to the Board of Governors for INFORMATION.

JPrd rdhdt:rdwork/explace/TitleMem

- Fax: (416) 392-4100 Email: jpantal@city.toronto.on.ca
- For help or information call my City Hall office at 392-4009
- Informação em português: Carmen Carvalho 392-4011
- Per informazione o assistenza in italiano, mettetevi in contatto con il mio ufficio, 392-4009
- 有關市府事宜 閣下可用中文致電翻譯員 電話 392-7307





EXHIBITION PLACE

Thursday, February 11, 1999

Mr. Paul Bedford
Executive Director Chief Planner
City Planning Division
22nd Floor, Metro Hall
Toronto, ON

Dear Mr. Bedford,

I am forwarding the attached report to follow up on our recent discussion regarding the title issue at Exhibition Place. This report outlines precisely what the issue is and how it negatively impacts on the City's freedom to have private leases with private sector partners at Exhibition Place.

As we discussed, the City must obtain a total release from the Federal Government on the lands in question as part of any negotiations or settlements between the City, Federal Government, Port of Toronto and TEDCO.

Thank you for your efforts in this regard and please keep me informed of the discussions around the various responses to our request.

Sincerely,

Joe Pantalone
Chair, Board of Governors, Exhibition Place
JP:ab:tle

cc. Mr. Vince Nigro, Mayor's Office, Second Floor City Hall

**DELIVER****METRO LEGAL****H.W. Osmond Doyle, LL.B., LL.M.**
*Metropolitan Solicitor***Albert H. Cohen, LL.B.**
*Deputy Metropolitan Solicitor*55 John Street
Stn. 1260, 26th Fl., Metro Hq.
Toronto, ON, M5V 3C6
Fax (416) 397-5624
Telephone (416) 392- 8053**METRO MEMO****Date:** July 20, 1994**File No.:** 455-4400.031.**To:** Councillor Joe Pantalone
Chairman
Board of Governors of Exhibition Place**From:** John S. Sillers**Re:** Exhibition Place - Title Problem

This is a report on the apparent defect in Metro's title to the lands at Exhibition Place and on the options available to correct the defect, in particular, as it affects the BCL proposal.

Background

The Exhibition Place lands, including the Gore and certain other lands lying south of Lake Shore Boulevard West, were assumed by Metro from the City of Toronto by Metro By-law No. 2719, effective December 1, 1965, passed pursuant to what is now section 229 of the Metro Act. That section provides that "... the enactment of such by-law shall vest in the Metropolitan Corporation a full, clear and absolute title to the lands..." Most of the Exhibition Place lands and a portion of the Gore were acquired by the City from the Federal Crown by a grant dated May 17, 1909, and registered on title on June 4, 1909, as Instrument No. 46916J. Attached hereto for ease of reference, is a sketch, prepared at my request by Glenn Miller, Metro Planning Department, showing the Exhibition Place Lands, including the Gore, outlined in yellow and the lands conveyed to the City in 1909 outlined in red.

The 1909 grant to the City contains the following provisions:

"TO HAVE AND TO HOLD the same unto the Corporation, [i.e., the City] its successors and assigns, upon and subject to the following trust and condition, namely: that the site of the Old Fort situate upon the said lands shall, as far as possible, be restored to its original condition, as shown on the attached copy

of a plan of it, prepared by G. Nichols, Government Engineer, and dated Quebec, 24th June, 1816 and that the same shall be preserved and maintained in such condition forever...

Provided that upon the breach by the Corporation its successors and assigns of the trust and condition to which the Grant hereby made is subject as aforesaid, such Grant shall immediately become and be null and void and it shall be lawful for Its, Our Heirs, Successors and Assigns [i.e., the federal government] in to and upon the said lands hereby granted (or any part thereof in the name of the whole) to re-enter and to have again, possess, and enjoy as of our former estate therein anything contained to the contrary notwithstanding."

The BCL proposal for the Amphi-Arena was approved by the Board on August 30, 1993 and by Metro Council on September 15, 1993. By letter dated September 17, 1993, McLean and Kerr, solicitors for BCL, submitted a number of requisitions, as part of their due diligence process, requesting, among other things, that the trust and condition imposed in the 1906 grant to the City be released in so far as they may relate to the Metro-owned Exhibition Place lands. Such a release was requested by letter dated September 27, 1993, addressed to the Property Law Section, Department of Justice, Ottawa. A formal response to such request was received by letter dated May 18, 1994, wherein E. T. Homma, Associate Manager, Real Property Consulting Group, advised that Public Works and Government Services Canada "... has agreed in principle to release the trust, condition and proviso for re-entry on the approximately 8 acres of land proposed for the Amphi-Arena site..." subject to certain provisos, including the following:

- "2. In addition, given the potential of further development of these lands, Metro should be made aware that should PW-GSC be approached in the future for release of any further parcel within the remaining holdings Metro has, a more comprehensive review of the issues involving Old Fort York, Environment Canada - Parks and Federal Heritage Review Office will be required. This is to deter further 'ad hoc' requests and to ensure the preservation of Fort York. As I had indicated previously, Metro and the Crown should begin discussion on this matter as soon as possible.
3. The release of this portion of the property is not to be seen as a precedent and any future requests would obviously need to deal with the continued obligation of Metro to Maintain Old Fort York for ever."

BCL have indicated that neither their investors nor their lenders would be satisfied with just a release of the Amphi-Arena site itself because, if the Federal Crown ever did take over the balance of Exhibition Place, BCL could not be assured of access to their site nor that the provisions applicable to the balance of Exhibition Place (e.g. maintain at least 5,000 parking spots, comply with non-competition restrictions, etc.) would be honored.

Discussion

Since the receipt of Mr. Homma's letter and BCL's negative response to the same, discussions have continued with federal officials with a view to achieving a solution which would not prejudicially affect the Board/Metro's interests but would enable BCL to commit to the project and sign the Master Agreement free of any condition respecting the title to the lands. The following is a brief summary of where those discussions have taken us to date.

At a meeting on May 26 last, it was proposed that in addition to a release of the trust and condition contained in the 1909 grant to the City, the federal government permit a right of access to the amphi-arena site over certain specified areas to be determined, in consultation with BCL, including (presumably) the existing road system within Exhibition Place. At a meeting on June 16 last, we advised that BCL was prepared to accept this proposal provided that the federal government would also enter into a non-disturbance agreement wherein the rights to be granted under the Land Lease, in particular, sections 2.6, 6.2, 9.4 and Articles 8 and 19 thereof, which deal with access to the Amphi Arena, restrictions on competing users, insurance, parking and maintenance standards for Exhibition Place, would be honoured so long as BCL is not in default in its obligations. At that time, we advised that in order to preserve the original deal, without prejudicing the interests of the Board/Metro, the Master Agreement (and related documents) should be finalized and executed by July 15 and that, given this time frame, it was necessary that we receive a favourable response to this suggestion by July 6, to be followed by a firm written commitment by July 15. The sense we had at the meeting was that the federal officials were sympathetic to this suggestion. Our position was formally communicated to Mr. Homma by letter dated June 23, 1994, copy attached. Following a voice mail message received from Mr. Homma on July 6 advising that there was a "stumbling block", a further meeting was held on Monday, July 11, at which time we were advised that the federal officials were not prepared to recommend the execution of a non-disturbance agreement since such an agreement would impose positive obligations on the federal crown in the event that it exercised its apparent right to re-enter the lands upon the default of the City to restore and maintain Old Fort York. Various options were discussed in an attempt to resolve this impasse including a suggestion made by the federal officials that perhaps a "self-help" agreement could be made whereby Metro would be given the right to cure any default by the City in its obligations to maintain Old Fort York. Mr. Homma was to discuss this possibility with his legal counsel at the Justice Department in Ottawa and advise.

Examination of Alternatives

In summary, three potential solutions to the title issue have been identified and discussed with the Federal Public Works Department. These are:

1. a full release of the trust and condition from the entire Exhibition Place grounds;

As indicated in Mr. Homma's letter of May 18, 1994, any release of the entire site would involve a more comprehensive review of the issues involving Old Fort York. To date, the Crown has identified two concerns with respect to such a release, namely:

- (a) that a release of the entire Exhibition Place site would effectively result in a loss of the Federal Crown's leverage against the City of Toronto to maintain Old Fort York. As it currently stands, they feel that with the risk of Metro losing Exhibition Place, there is no way that the City would fail to maintain the Fort. On the other hand, if the risk was only of losing the Fort itself, then the City might decide not to maintain it;
- (b) the potential right of the Crown to a reversion of the lands is regarded by them as an asset. If they were to release Exhibition Place, pursuant to Treasury Board Regulations that would amount to the disposition of an asset and they would need to determine the value of that asset and be satisfied that they were receiving appropriate compensation.

Accordingly, while the response is not entirely negative, the prospect of a quick resolution under this alternative is not good.

2. a release of the trust and condition from just the amphi-arena site and from several identified access routes to that site combined with a "non-disturbance agreement" from the Federal Crown in favour of BCL, its assigns, etc.:

As indicated above, federal officials are not prepared to recommend this alternative because it would impose future obligations on the Crown. Accordingly, resolution of this solution would also likely not be promptly forthcoming, if at all;

3. an agreement which would permit Metro to itself step in and preserve and maintain Old Fort York if the City or its successors in title do not do so, in order to prevent title to Exhibition Place from reverting in the Federal Crown;

To date, BCL has not been advised as to this potential solution because it raises certain issues for Metro's consideration, namely:

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- (a) it is the City of Toronto which currently has the right to maintain Old Fort York. Accordingly, the concurrence of the City of Toronto would be required to permit Metro a right of entry for such purpose;
- (b) Metro would undoubtedly be obligated to covenant with both BCL and its lenders that if the City did fail to maintain Old Fort York, Metro would in fact exercise its right to step in and maintain it;
- (c) Metro might well require an indemnity from the City of Toronto to reimburse Metro fully for its costs, expenses and damages that might result if the City failed to maintain Fort York; obtaining such an indemnity might prove to be difficult and time-consuming. To date, the City has not been alerted as to the issue.

Recommendation

Achieving any one of the above alternatives should resolve the title issue to the extent required to permit Metro to finalize and enter into the Master Agreement with BCL. However, since it appears that none of the alternatives can be accomplished quickly, and because the title issue is one that will continue to affect the balance of Exhibition Place (and other transactions that pertain to it), I would recommend that Metro attempt to obtain an outright release of the trust and condition from the entire Exhibition Place grounds.

This report has been prepared in consultation with Janet Ross of this department and the Board's outside counsel, Robert T. Bauer, Davies, Ward & Beck.

JSS:cec

c.c. (w. encl.)
Councillor Maureen Prinsloo
Council Members Offices
Metro Hall

Peter J. Moore
Chief General Manager
Exhibition Place

Robert T. Bauer, Davies, Ward & Beck

Janet A. Ross



JOHN S. SILLERS
Senior Solicitor

**METRO LEGAL**

55 John Street
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Toronto, ON, M5V 3C6
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H.W. Osmond Doyle, LL.B., LL.M.
Metropolitan Solicitor

Albert H. Cohen, LL.B.
Deputy Metropolitan Solicitor

BY FAX AND ORDINARY MAIL

Reply to: John S. Sillers

File No. JSS.455-4400.031

June 23, 1994

E.Terry Homma
Associate Manager
Public Works and
Government Services Canada
Ontario Region
4900 Yonge Street
Willowdale, Ontario M2N 6A6

Dear Mr. Homma:

Re: Inquiry re Letters patent issued May 17, 1909
The Municipality of Metropolitan Toronto;
Exhibition Place Amphi-Arena; Part of the
Ordinance Reserve (Block 14), City of Toronto, Ontario

Further to our conference call meeting on Thursday, June 16 last, I am writing you at this time primarily for 2 reasons. Firstly, I wish to thank you again for being able to convene a meeting, which included the requisite federal officials, on such short notice. Secondly, I wish to confirm in writing, in accordance with your earlier request, that the BCL Group are not prepared to accept a release of the trust, condition and proviso for re-entry contained in the 1909 conveyance to the City with respect only to the Amphi-Arena and a grant of access to the site over certain specified areas to be determined as discussed at our meeting on May 26 last.

As Bob Bauer advised at our meeting last Thursday, the BCL Group would be prepared to commit to the project and sign the proposed Master Agreement provided the Amphi-Arena site is released from the burden of the trust, etc., contained in the 1909 conveyance, the BCL Group is granted the access rights mentioned above and the federal government enters into a non-disturbance agreement wherein the rights granted under the Land Lease, in particular, sections 2.6, 6.2, 9.4 and Articles 8 and 19 thereof, will be honoured so long as the BCL Group is not in default in its obligations. In order to preserve the original deal, without prejudicing the interests of Metro and the Board of Governors, the Master Agreement, including the other related documents to be as attached schedules thereto, should be finalized and the Master Agreement executed by

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E.Terry Homma

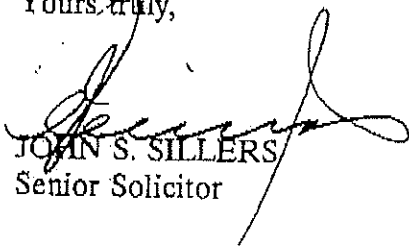
July 15 next. Given this time frame, it is essential that we be advised by July 6 whether you will be recommending that the matter be resolved in the manner acceptable to the BCL Group, as noted above, and, if so, that we receive a firm commitment to that effect by July 15.

As I advised Dan McClurg during our meeting, I did circulate the draft Quit Claim Letters Patent, which he forwarded to me by fax on May 2, 1994, to the appropriate Metro/Board officials and the solicitors for the BCL Group. From the Metro/Board perspective, it has been suggested that the recitals in the draft be amended to make specific reference to the details of the registration of the 1909 conveyance to the City and Metro By-law No. 2719, by virtue of which the Exhibition Place lands were assumed from the City of Toronto and title thereto vested in Metro under the provisions of the Municipality of Metropolitan Toronto Act. In addition to the requirement that the release be amended to apply to the entire Exhibition Place site, BCL Group's solicitors have suggested an amendment which would have the effect of ratifying and confirming that the 1909 conveyance to the City constituted a grant by Letters Patent. We would like to discuss the latter point with Dan McClurg at the appropriate time.

There is one other matter that I would like to pursue at this time, namely, a process to deal with the resolution of the overall title problem relating to the obligation to maintain Old Fort York in so far as it applies to all of the Metro-owned lands contained in the 1909 conveyance to the City. I would appreciate receiving any guidance or assistance you may offer in this regard.

I look forward to hearing from you again at your early convenience.

Yours truly,

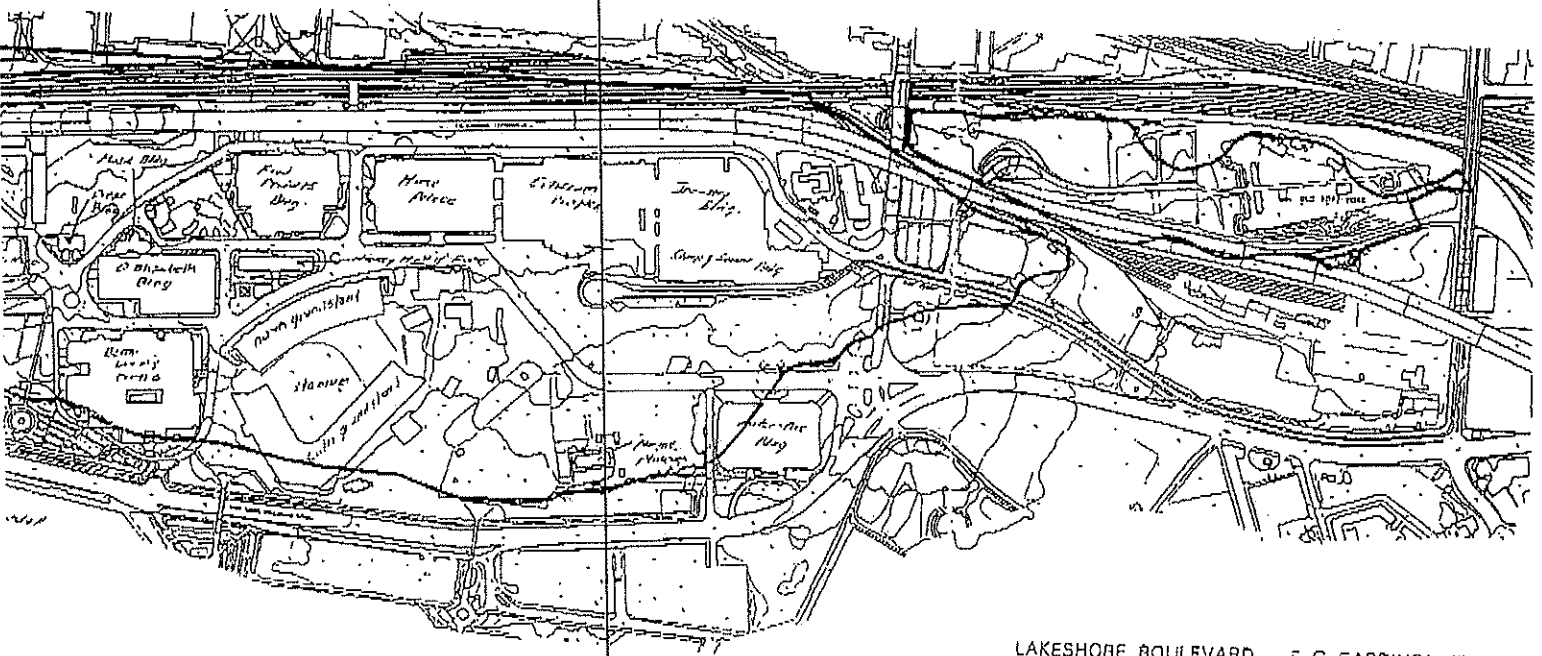

JOHN S. SILLERS
Senior Solicitor

JSS:cec

c.c. BY FAX ONLY

Daniel L. McClurg
Counsel, Property Law Section
Department of Justice, Ottawa

Peter J. Moore, Chief General Manager, Exhibition Place
Robert T. Bauer, Davies, Ward & Beck



LAKESHORE BOULEVARD - F.G. GARDINER EXPRESS
DUFFERIN STREET TO BATHURST STREET
SCALE 1:1000

SKETCH OF EXHIBITION GROUNDS, SHOWING
ORIGINAL LAND GRANT FROM FEDERAL
GOVERNMENT. (20/07/94)

(not full map)

**METRO****OFFICE OF
THE CHAIRMAN**

55 John Street
Stn. 1070, 7th Flr., Metro Hall
Toronto, ON, M5V 3C6
Fax: (416) 392-3799
Telephone (416) 392-8001

Alan Tonks
Metropolitan Chairman

March 3, 1995

The Honourable David C. Dingwall, P.C., M.P.
Minister of Public Works & Government Services
and Minister for the Atlantic Canada Opportunities Agency
Place du Portage, Phase 3, 11 Laurier Street
Hull, Quebec
K1A 0S5

Dear Minister:

I am in receipt of your letter of February 22, 1995, concerning the land title at Exhibition Place.

As suggested in my letter of February 9, 1995, it would appear that Federal and Metro staff have not been able to negotiate a permanent solution to this land title issue. However, as I indicated, Metro staff have put forward an interim solution which would involve a release by the Federal Government of its interest on the amphi-arena site and access routes to the site. Furthermore, the Federal Crown would enter into a non-disturbance agreement with respect to all the obligations, terms and conditions of the Board of Governors of Exhibition Place in its leasehold agreements with Ballard/Cohl.

I have indicated to the Board of Governors of Exhibition Place that I would urge you to reach a decision on this matter in the next two weeks. If the Federal Government can accept the interim solution, could you please outline in your letter the process that must be followed to complete this transaction and a possible timeframe. Federal staff have suggested that this may include a need for Treasury Board and Cabinet approval.

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COPY

The Honourable David C. Dingwall
March 3, 1995
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Certainly, while I put forward this interim solution, I must reiterate that the best and final resolution of this matter is a quit claim from the Federal Government of its interest in all the lands of Exhibition Place. Regardless of the interim solution, we will have to continue addressing a permanent resolution of this matter in order to protect the long-term development potential of these lands.

Thank you for your attention to this matter and I trust that I could receive your response in the next two weeks.

Yours truly,

ORIGINAL SIGNED BY
ALAN TONKS
METRO CHAIRMAN

Alan Tonks
Chairman

c.c. The Honourable Art Eggleton
Mr. Barry Campbell

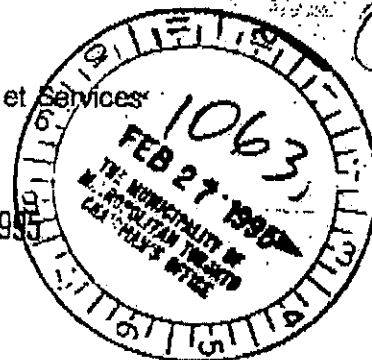
b.c.c. Councillor Joe Pantalone
Peter Moore
John Sillers
Janet Ross
~~Bob Bauer~~
Bill Ballard

2/rb
455-06-05

Minister of
Supply and Services



Ministre des
Approvisionnement et Services



FEB 22 1995

Mr. Alan Tonks
Chairman
Office of the Chairman
The Municipality of Metropolitan Toronto
55 John Street
Station 1070, 7th Floor, Metro Hall
Toronto, Ontario
M5V 3C6

Dear Mr. Tonks:

Thank you for your letter of February 9, 1995,
regarding the land title at Exhibition Place in Toronto, Ontario.
I appreciate being made aware of your concerns.

The matter you have raised is now being reviewed by a
member of my staff. Please be assured that I will be responding
to this matter as soon as possible.

Yours very truly,

David C. Dingvall

**METRO****OFFICE OF
THE CHAIRMAN**

55 John Street
Stn. 1070, 7th Flr., Metro Hall
Toronto, ON, M5V 3C8
Fax: (416) 392-3799
Telephone (416) 392-8001

Alan Tonks
Metropolitan Chairman

February 9, 1995

The Honourable David C. Dingwall, P.C., M.P.
Minister of Public Works & Government Services
and Minister for the Atlantic Canada Opportunities Agency
Place du Portage, Phase 3, 11 Laurier Street
Hull, Quebec
K1A 0S5

Dear Minister:

Further to my letter of January 12, 1995, concerning the land title issue at Exhibition Place, I have been advised by Metro Legal staff that a meeting was held with representatives of the Federal Government on January 20, 1995.

While Metro staff are responding to the issues raised at the meeting, I thought it also necessary to forward my views on the initial position being taken by the Federal Government. As I understand it, the Federal position is that the Metropolitan Corporation, the City of Toronto and the Federal Government enter into a tri-partite agreement whereby the City of Toronto would retain responsibility for the ongoing maintenance of Fort York but if the City of Toronto defaults, the Metropolitan Corporation would be required to fulfill the City's obligations under the agreement. In addition, Metro would be required to secure these obligations by way of some form of financial guarantee.

As Chairman of Metropolitan Toronto Council, my reaction is that this proposal is unacceptable. As outlined in my letter of January 12, 1995, the Metropolitan Government, within our Official Plan and Waterfront Plan, have adopted policies securing Fort York as a historic site within the entire Garrison Common. I assure you that within the context of its legislative mandate, Metro will insist on the fulfillment of these policies and plans.

However, the question that appears to be at issue is which level of government should ultimately be responsible for a default by the City of Toronto with respect to maintenance of Fort York. As you are aware, the condition presently registered on the title to these lands would allow the Federal Government to take possession of Exhibition Place and Fort York, if Fort York is not maintained as an historic site. If that condition is released with respect to only Exhibition Place, this would not limit the right of the Federal Government with regards to Fort York as set out in the condition. Therefore, it would appear that the protection being proposed through a tri-partite agreement is already held by the Federal Government through the condition on title.

COPY

The Honourable David C. Dingwall
February 9, 1995
Page 2

As suggested previously, there is some urgency in settling this matter and in this regard I have attached for your reference a recent letter from Mr. Cohl suggesting that the viability of the agreement between Ballard Cohl Associates and Exhibition Place is in some jeopardy. I must reiterate that the Ballard Cohl proposal adopted by Council would allow for the construction of a new amphitheatre at Exhibition Place at the sole cost of the private sector. The failure to finalize this public/private sector arrangement would be a major loss to Exhibition Place. Furthermore, as the present Stadium at Exhibition Place deteriorates, any future business losses that may result from the lack of use of this Stadium could result in tax impacts to our residents.

Given this urgency and the time-frame for our negotiations, I understand an interim solution is being put forward by Metro staff. This proposal would involve a release of the Federal condition from just the site of the future stadium and the access routes to it as well as a "non-disturbance" undertaking from the Crown. While this interim proposal may solve the immediate matter of the Ballard Cohl agreement, it would not resolve the detrimental effect that the Federal condition creates with respect to any future public/private partnerships relating to the lands at Exhibition Place. In these times of financial restraint, the condition is a serious impediment to development of this prime location for the benefit of all our taxpayers and residents.

Accordingly, I would appreciate your response to my assessment and your opinion on the possibility of a negotiated settlement of this matter.

Yours truly,

ORIGINAL SIGNED BY
ALAN TONKS
METRO CHAIRMAN

Alan Tonks
Chairman

Attachment

c.c. The Honourable Art Eggleton
Mr. Barry Campbell

b.c.c. Councillor Joe Pantalone
Peter Moore
John Sillers
Janet Ross
Bob Bauer

2/rb
455-04-04

