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March 13, 2008

**Private and Confidential**

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File: 87006.0001

Dear Ian:

**Re: Municipal Conflict of Interest**

Further to your instructions, we are writing this letter as an opinion on whether there is a potential for a conflict of interest in your role as chair of the Downtown Coordinating Committee (the "DCC") given your ownership of a business located on Baker Street.

In giving this opinion, we have examined the following:

1. the *Municipal Conflict of Interest Act*;
2. the mandate of the DCC which you provided to our firm; and,
3. the 2007 to 2011 Downtown Guelph Investment Action Plan (the "Plan"), contained in City report 07-27.

We also refer you to our previous opinion letter dated April 18, 2007 which discusses the nature of your obligations under the Act generally.

The DCC is considered to be a "committee" or "board" for the purposes of the Act. Therefore, you have the same obligations under the Act in your role with the DCC as you have while sitting on council.

The main function of the DCC is to implement the Plan. The Plan itself is expressed as an eight-point action plan. While most of the points in that action plan can be characterized as administrative/managerial tasks (eg. points 1, 2, 4, 7, 8), other points involve the recommendation to Council for the allocation of public monies (points 3, 5 and 6) and its ultimate distribution toward projects related to the economic development of the downtown.

The Act requires that a councillor evaluate the nature of each decision that the councillor is asked to make. It is our opinion that, generally speaking, in the implementation of the administrative/managerial tasks of the Plan, there would be no conflict of interest because you would not have the requisite pecuniary interest in the performance of those functions distinct from any other downtown business owner. However, in the implementation of the points 3, 5 and 6, where the DCC decides on the recommendation it is to give to council with respect to which projects are to receive public money, there is a potential that you will have a pecuniary interest that is distinct from the general downtown business owner group. It is impossible to state that every such decision will or will not involve such a pecuniary interest. Therefore, you will have to evaluate those particular decisions on a case-by-case basis. Where the matter to be decided can be seen to benefit your particular business in a way that is distinct from the benefits which will accrue to other downtown business owners, then it is likely you have a pecuniary interest that is distinct which triggers the obligations of disclosure and withdrawal under the Act.

Below are some examples of where the courts have found a conflict of interest due to the presence of a pecuniary interest which was distinct from a general class of the populace:

- improvement of access to a shopping centre in which the councillor operated a business
- funding of a highway extension when the councillor owned land through which the highway was to pass
- an application for the establishment of a recreational facility where the councillor owned a neighbouring business

As stated in our previous letter to you, in making this evaluation, the public perception is of utmost importance.

Yours truly,

MILLER THOMSON LLP

Per:

Robin-Lee Norris

J. Scott Galajda  
JSG/