



City of Windsor

**Report to Miller Thomson LLP
The 400 CHS Internal Audit
Process**

December 21, 2009
This report contains 21 pages
Privileged and confidential



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1 Introduction

On August 18, 2008, Miller Thomson LLP, on behalf of its client the Audit Committee of the City of Windsor (the "Audit Committee"), engaged KPMG Forensic to assist in advising the Audit Committee with respect to the completion of a draft audit report.

We understand Miller Thomson's engagement is to provide assistance to the City of Windsor's Lead Internal Auditor in completing a draft "Post Construction Audit Report on the 400 City Hall Square Building".

We understand that the former City Auditor drafted a report dated April 5, 2007 with his findings and recommendations from a review of the 400 City Hall Square construction project. We understand that certain of the findings in that draft report were disputed by the City of Windsor's Management and Administration. We further understand the City Auditor left the employ of the City of Windsor before the report could be finalized. KPMG was requested to assist in determining whether the findings in the report are supported by appropriate documentation.

We have also been asked to provide this report with our observations on the audit process, as well as our recommendations to assist in future internal audit projects. This report should be read in conjunction with the Parts I and II reports of the Auditor General's Office of the City of Windsor (the "AGO") on the 400 City Hall Square Building ("400 CHS") project.

2 Summary of findings and recommendations

Based on the scope of review and subject to the restrictions and assumptions outlined in this report, our findings and recommendations are summarized as follows.

2.1 Findings

- 1 In our view, many of the problems with the audit process are rooted in the failure of the City Auditor to gain the sponsorship of the City's former Chief Administrative Officer ("CAO") for the project. The former CAO does not appear to have provided his support for the project, and the City Auditor was never able to get access to the records required to complete his audit before preparing his April 2007 draft report.
- 2 We found a number of instances demonstrating a strained relationship between the former CAO and the City Auditor as well as between the former CAO and the Audit Committee. In our view, these strained relationships may have contributed to the delays in the completion of the audit report.
- 3 The April 2007 draft report was noted as being subject to significant scope limitations. Two of the scope limitations related to project documentation that was requested but not received and the lack of a final financial analysis of the project. Given that approximately almost eighteen months had elapsed since the start of the audit project, we would expect that information to be available.
- 4 In spite of the difficulties in obtaining access to information, there is little evidence that the City Auditor reported these issues to either the former CAO or the Audit Committee, who may have been able to assist.
- 5 The audit found serious legal issues with respect to the request for proposal and tendering processes for the procurement of both the building and its fit ups. In our view, it would have been prudent for the City Auditor to seek legal advice on these issues to assist in the preparation of his report.
- 6 We found no evidence of the mayor or council intervening in the audit process.
- 7 The comments in this report relate mainly to the conduct of the audit process from October 2005 to April 2008. We have noted that the issues noted in this report with respect to the relationship between the City Auditor's Office/AGO and Administration do not appear to be evident today. The former City Auditor retired in December 2007 and the former CAO left the City in September 2009. In our experience, the working relationship between the AGO and current CAO and senior Administration appears strong.

2.2 Recommendations

- 1 Each year, the City Auditor (now the AGO) prepares an audit plan for review by the Audit Committee. In our view, Administration's sponsorship of audits to be undertaken by the AGO would be enhanced if that audit plan was developed by the AGO in collaboration with Administration and the Audit Committee
- 2 Best practices for internal audits suggest that an "entrance meeting" be held between the AGO and the CAO. The purpose of an entrance meeting is to gain the support of the CAO for the project, discuss resources required of Administration and establish reasonable timelines. We recommend that an entrance meeting be held at the start of each AGO audit, and that those discussions be documented
- 3 After the entrance meeting between the AGO and CAO is held at the start of an audit project, the CAO should issue a memo of support for the project to the AGO and Administration



3 Restrictions on use

We understand that our report is intended to assist Miller Thomson LLP and the Audit Committee of the City of Windsor in examining, understanding and resolving this matter. Our report is confidential and is not intended for general use. We understand that in this case, our report may be provided to City of Windsor Administration. We consent to such uses of our report, however it is not to be published, circulated, reproduced or used for any purpose without our prior permission in each specific instance, except as noted above.

We will not assume any responsibility or liability for any costs, damages, losses, liabilities or expenses suffered by Miller Thomson LLP or the City of Windsor as a result of circulation, publication, reproduction, use of or reliance upon our report contrary to the provisions of this section. We will not assume any responsibility or liability for any costs, damages, losses, liabilities, or expenses incurred by anyone else as a result of circulation, publication, reproduction, use of or reliance upon our report.

We reserve the right to amend this report and advice accordingly, in the event that, in our opinion, new material information comes to our attention that may be contrary to or different from that which is set out in this document. Comments in this report should not be interpreted to be legal advice or opinion. The contents of this report reflect our understanding of the facts derived from examination of documents provided to us and interviews conducted by us. We have not audited or otherwise independently verified the accuracy of the information provided to us.



4 Scope of review

Our comments in this report are based on our review of the documents noted in the Parts I and II reports in this matter prepared by the AGO.

In addition, we have discussed this matter with certain members of Administration and the Audit Committee, as well as the members of the AGO and the former City Auditor.

Certain former members of Administration who may have been able to provide further information to confirm or refute the concerns presented in this report were not available for interview. As such, our comments in this report are subject to any modification or alteration that may be caused by future information received from any other sources.

5 Timeline of events

The following is a timeline of the events related to the 400 audit:

February 28, 2005

A draft audit plan for 2005 is produced which includes "Income Security Building Post Construction Audit" as one of the potential tasks for the City Auditor's Office.

September 29, 2005

The following motion is passed at an Audit Committee meeting:

"That the City Auditor PROCEED in accordance with the 2005 Audit Workplan task with an initial report outlining the scope of the task SUBMITTED to the Committee by October 21, 2005 and that a full report GIVEN by the first Audit meeting in January 2006.

It was generally agreed that the scope of the Audit Task be forwarded to City Council for information purposes"

October 11, 2005

CAO receives a proposal from Brodel Management to review the City's performance with respect to project planning and implementation of the 400 CHS building.

Early October, 2005

The CAO and City Auditor meet to hold an audit entrance meeting. It is uncertain whether this happened before or after the Brodel proposal was requested by the CAO. The purpose of an audit entrance meeting is for the auditor to explain the scope of the project, answer questions, discuss expected deliverables, staff time commitment required and timelines and to gain the support of the CAO for the project.

It is clear that this required support was not received. It appears that the relationship between Administration and the City Auditor was strained, which may have resulted in a lack of active cooperation being provided by Administration to the audit process.

October 13, 2005

Audit issues request for copies of project documentation to Corporate Projects. This information was requested by the Audit office to gain a background understanding of the project. The following records were requested:

- Steering committee minutes and agendas
- Working committee minutes and agendas
- Communications of the resource committee members
- In-camera council reports.

In our view, it would be expected that these types of records would be readily available, requiring minimal time or resources from Administration to produce.

The response from the former City Engineer was:

“There are simply no resources available to assist with the audit at this time or at any time in the foreseeable future. My best projection is that we may be in a position to assist sometime in the early new year, after the project is completed and depending on workload demands and available staff resources. I would request that you contact me in January to re-visit this.”

October 14, 2005

The Audit office issued a request to the City Clerk's office for documentation. The Clerk's office provided the information it could but noted that much of the information requested would only be available from Corporate Projects or the CAO.

The City Auditor went to the CAO's office and returned with the CAO's files.

October 17, 2005

The engagement of Brodel is authorized by City Council.

The City Auditor prepares a progress report for the Audit Committee with respect to the Post-Construction Audit. We understand this report would have been forwarded to Administration via the Audit Committee agenda package on or around October 21.

The details of the audit plan were noted in the report as follows:

- Phase I: Gathering and reviewing all relevant information.
- Phase II: Analysis of the project methodology (planning, organizing, monitoring, controlling and reporting).
- Phase III: Analyzing the records of the construction to obtain sufficient, appropriate verification of whether the project had met its objectives, whether contract requirements had

been met, whether due dates and budgets had been met and whether best practices could be identified for future projects.

The City Auditor noted that council reports and steering committee minutes had been received. It was also noted that phases II & III “would not commence until the project records are completed and financial books are closed, which should be early in the new year.” It was also noted that the audit would be more in-depth and substantive but still complementary to the Brodel review.

It did not appear that Administration raised any concerns with respect to the scope or timing of the internal audit process to the Audit Committee.

November 1, 2005

At a meeting of the Audit team, it is identified that at least 21 in-camera Council reports still needed to be obtained. Audit staff was working to close the information gap through other sources because assistance from Corporate Projects was apparently still not available.

Mid-October to mid-November

At some point during this time frame, a representative of Brodel interviewed approximately twenty City Administration and management staff, including representatives of Corporate Projects. These interviews appear to have been authorized by the CAO. It appears inconsistent that all of these individuals could be made available to assist with the Brodel review when they were not available to assist with the Audit process.

February 17, 2006

The access of the City Auditor to certain records being sought in another audit raises a concern for the CAO. The CAO advises that he would contact Freedom of Information coordinator and City Solicitor for advice on the matter. It is decided that an outside legal opinion would be sought.

April 3, 2006

The external legal opinion is received. The letter states that the City Solicitor had requested the opinion on behalf of the Audit Committee. The external counsel had been asked to opine on the following:

- What information can the City Auditor access without having to use a Freedom of Information request?
- Are audit staff considered City staff, which would perhaps allow them open access to such information?

- What is the right of access of the CAO (and other senior management) to the audit files of the City Auditor?

The opinion suggested that:

- While the internal auditor may provide reports to the Audit Committee, he should report directly or indirectly to the CAO.
- Audit staff, as with any city employees, should only have access to records on a need to know basis.
- The CAO would have access to all of the files of the internal auditor.
- The "need to know" basis applies to the Audit Committee.

While this opinion was sought in connection with another audit being undertaken by the City Auditor's Office, it appears to be indicative of an atmosphere of mistrust between Administration and the City Auditor. It also had the effect of straining relations between Administration and the Audit Committee.

April 4, 2006

Lead Auditor of the City Auditor's Office meets with Project Administrator of the Corporate Projects department to gather financial and project information. Between April 4 and 11, Corporate Projects provided Audit with project records, including binders containing council reports, financial records to date, committee minutes construction photos.

April 18, 2006

In response to a query from the CAO, the City Auditor notes that the audit is nearing completion of fieldwork. A draft report of findings and recommendations was expected to be submitted to senior management for review and comment by end of May/first of June. The goal was noted to be the delivery of a final report with management comments to Audit Committee by its July/August meeting and subsequently to Council.

May 5, 2006

Apparently in response to the April 18 emails, Corporate Projects advises the City Auditor that the project accounting has not been completed. They expressed the expectation that this would be taken into account in the expected draft report and that they be given a chance to review and comment on the draft report.



The City Auditor responds that it is standard practice that the draft report be provided and that management's comments and remarks would be incorporated into the final report.

We note that this correspondence also shows confusion on the part of Corporate Projects as to the scope of the audit. It questions whether the audit is financial, compliance or comprehensive. This may be indicative that the scope of the audit had not been well communicated by the City Auditor to the CAO, or by the CAO to Administration and Management.

June 1, 2006

Lead auditor meets with the former Manager of Corporate Projects to discuss RFP issues noted, business case analysis, project management methodology and the status of the project accounting/financial review.

The project accounting is not complete. It was noted to be a priority of Corporate Projects.

June 7, 2006

The chair of the Audit Committee prepares a memo to the members of the Audit Committee regarding the legal opinion noted above. It is his view that the lawyer who wrote the opinion was not provided with all relevant information, including the Council resolution establishing the duties and responsibilities of the City Auditor and the Audit Committee. He also noted that lawyer appeared not to have received the Council resolution that the City Auditor would be "functionally and administratively independent from City Administration" and be responsible to Council through the Audit Committee.¹

The Audit Committee at its meeting of June 14 decides to ignore the legal opinion.

June 13, 2006

CAO is advised by copy of an email from the City Auditor that the financial records from Corporate Projects are required before the report can be completed.

July 4, 2006

Audit inquires of Corporate Projects as to the status of the financial records. The response was that progress was being made but they were still working through finalizing the project accounting. Audit and Corporate Projects continue to correspond through July with respect to other items such as the project work plan, project management methodology and contract information.

¹ Council Resolution CR314/2004 approved by City Council on April 13, 2004



August 3, 2006

Audit emails Corporate Projects inquiring about status of 400 CHS financial records.

August 14, 2006

City Auditor prepares a memo to the Audit Committee on the annual work plan progress.

With respect to the 400 CHS audit, he notes "The field work has been completed and the draft report has been written except for finalizing the financial results. We are currently waiting on Corporate Projects to advise that they have finished posting the closing adjustments for the project."

The final report was completed in three sections: A, B & C. A & B were noted as being complete at that time, and C was in progress awaiting administrative completion of the financials.

September 25, 2006

Lead Auditor emails the former Manager of Corporate Projects and the Project Administrator of Corporate Projects with a "final request to obtain the date of completion or final financial details of the expenditures for the project 400 CHS". The email notes that if no response is received, Audit would proceed with the information available. On October 2, a response is received that completion was targeted for the end of the year.

December 21, 2006

The draft 400 CHS report is finalized. It appears that it was decided by City Auditor to issue this report for Administration comment at least in part to provoke a response. The City Auditor had been waiting a number of months for the final project accounting. He was also under some pressure from the Audit Committee to produce the report, since the audit process had started more than a year prior.

We note that from May to December, 2006, Audit was waiting for Corporate Projects to finalize the project accounting. Audit was corresponding with Corporate Projects regularly requesting that information. However, except for an email on June 13, 2006, we found no evidence that the CAO or the Audit Committee were informed of this impediment to completion of the draft report. While it was the City Auditor's belief that the CAO was not supporting the audit process, we would expect that had the Audit Committee been informed, the completion of the project accounting might have become a higher priority.

January 11, 2007

At an Audit Committee meeting, the City Auditor advises that a draft 400 CHS report would be provided to the CAO this week, then brought to Committee in March of 2007. The minutes also



note that the City Auditor expected to provide draft reports on two other projects to the CAO in February and March. This indicates the Audit office had a significant workload at the time.

At this meeting, the Audit Committee also reviews the 2007 Audit workplan prepared by the City Auditor. The committee is concerned that among other issues, the workplan does not illustrate a collaborative effort to include Administration's input.

January 17, 2007

A draft copy of the 400 CHS audit report dated January 2007 is provided to the CAO. The CAO asks the City Auditor if there are any restrictions on copying the document and providing it to the General Managers ("GM's") for comment. The City Auditor replies that he has no objection if the CAO wishes to distribute the report to the GM's for comment, but the GM's should control any further distribution.

January 30, 2007

At an Audit Committee meeting, it is noted by Administration that the CAO has received the draft 400 CHS report and will meet the deadline for comment of five weeks.

February 4 - 6, 2007

A series of emails are exchanged between the CAO and City Auditor. The CAO states the concern that other members of Administration who have detailed knowledge of the activities and events cannot be called upon to respond because of previous instructions. City Auditor advises that GM's should exercise discretion in what to share and with whom. The final result is that the City Auditor is given permission to meet with appropriate staff to discuss the report's findings and recommendations. In our view, this series of emails further demonstrates the strained working relationship between the City Auditor and CAO.

February 7, 2007

City Auditor issues report to members of Administration. Certain members of Administration received the full report; others received only the sections that the City Auditor felt were appropriate. From February 12 – 19, the City Auditor met with these individuals to discuss the report and receive their comments. Written responses are received from all but Corporate Projects.



February 26, 2007

The comments of the CAO and the GM's of Community and Protective Services, Corporate Services, Public Works and Social and Health Services on the draft report are provided to the City Auditor.

April, 2007

The comments of the CAO and GM's, as well as the other members of Administration are incorporated into the draft report, and a final draft report is prepared by the City Auditor. This report was titled "Post Construction Audit Report, 400 City Hall Square East, Draft For Audit Committee Discussion (April 2007)".

It was noted in this draft report that it had been completed under a significant scope limitation, where the Auditor had limited access to documentation and project staff required to provide answers to the Auditor's questions. One scope limitation noted was that a complete financial analysis of the project had not been received.

July 2007

The City Auditor prepares a new financial update report reflecting project expenditures recorded in the City's PeopleSoft financial system as at June 29, 2007.

November 26, 2007

The City Auditor tables at an Audit Committee meeting (in-camera), the original audit report with the July financial update. Administration is provided with a copy and discussion on the report is deferred by the Audit Committee until a special meeting scheduled for December 14, 2007.

December 2007

The City Auditor prepares another financial update report reflecting project expenditures recorded in the PeopleSoft financial system as at November 21, 2007 with limited comments from Corporate Projects. The audit at this point has resulted in three separate reports consisting of the original draft document and two additional draft financial update reports.

December 14, 2007

The draft audit reports are discussed at an Audit Committee meeting with City Auditor and Administration in attendance. On December 31, 2007, the City Auditor was retiring. At the December meeting, the Audit Committee assigns the Lead Auditor, to update and complete the 400 CHS file.



At this meeting, the committee asks the City Auditor to consolidate the Post Construction Audit Report (including all financial updates of the City Auditor's Office, and upon its completion, the Project Management Team report) into one final report. The Audit Committee also requests, pending the advice of City Legal, that either (i) a Public report be sent to Council or (ii) that an In-camera report be sent to Council accompanied by a summary report for the public session that includes the financial issues, project management issues and the request for proposals process. The Audit Committee asks the City Auditor's Office to prepare a final report with current financial project values in a format that would be clear to the reader.

Also at this meeting, Administration requests permission to revise the management comments to the audit draft to reflect any changes made to the audit report. This was intended to make certain the views of Administration were adequately and appropriately represented within the final audit report.

December 31, 2007

The City Auditor retires

March 5, 2008

Windsor Star article with respect to delay in release of audit report leads to a series of emails in March and April between councilors on the Audit Committee and the CAO, as well as further press reports. There appears to be a strained relationship between the Audit Committee and CAO.

March 11, 2008

Consolidated draft audit report delivered to Administration for comment

March 20, 2008

Chair of Audit Committee emails CAO in support of Administration's recommendation that the legal advice requested by the Audit Committee at its December 14, 2007 be sought from external rather than in-house counsel.

April 3, 2008

Legal opinion with respect to release of audit report received. The opinion suggested that the report as currently written could not be considered in-camera. However, the opinion suggested that if the report were split into three, two of the three could be considered in closed session.

April 13, 2008

Administration is concerned that the Audit Committee did not intend to meet to consider this legal opinion prior to release of the report. The CAO seeks to include the legal opinion on the agenda for an April 14, 2008 in-camera City Council meeting. The mayor also apparently reviews a copy of the draft audit report around this time. The mayor apparently decides to leave the decision with respect to release of the report with the Audit Committee, and the legal opinion is not discussed at the Council meeting.

April 16, 2008

Administration's final comments on the findings and recommendations in the draft audit report delivered to Lead Auditor.

In addition, Administration provides 2 large binders documenting in-camera and open-session council reports and meeting minutes covering the entire timeline of the project. This information included a significant number of council records and steering committee agendas, reports and minutes that had not previously been found by the audit team. Administration identified and made accessible individuals not previously interviewed by Audit.

April 18, 2008

Following review of the information provided by Administration, the Lead Auditor is concerned that the new information received could have a significant impact on the findings in the draft audit report, and that not all findings in the draft audit report were supported by the City Auditor's files. Lead Auditor advises Administration that the draft audit report would not be discussed at the upcoming Audit Committee meeting, but that the legal opinion with respect to report dissemination would.

April 23, 2008

The Lead Auditor reported to the Audit Committee that it was her opinion that to comply with audit standards, the 400 CHS draft report was required to be sent back to the fieldwork stage. The audit team needed to conduct the necessary work to determine the impact of the new information on the draft audit findings through the completion of interviews and through seeking further new and relevant information from interview sources.

The Audit Committee passed the following motion:

“That the Lead Internal Auditor BE REQUESTED to consider the comments and information received from Administration to determine the effects that the findings and recommendations will have on the 400 City Hall Square review and further, that the review BE DEFERRED until



the Lead Internal Auditor is satisfied that the findings and recommendations are supported by proper evidence.”

June 16, 2008

Administration submits a report to council entitled, 400 CHS Project Completion Report. One of the major scope limitations identified in the April 2007 400 CHS audit draft was that as of the conclusion date of audit fieldwork, Corporate Projects had not yet completed the closeout of the project financials.

This document was therefore a source of clarification to many of the outstanding questions raised by the former City Auditor within the 400 CHS draft (April 2007) audit report.

July 29, 2008

The Lead Auditor reports to the Audit Committee that she has engaged Miller Thomson LLP to assist by advising with respect to the legal issues in the 400 CHS review.

August 16, 2008

Miller Thomson engages KPMG to assist by providing audit oversight role.

August 21, 2008

While interviewing project staff, Audit was informed of the existence and location of a large number of 400 CHS project files.

September 9, 2008

Audit obtains 11 boxes of project paper files and a computer disc containing 74 electronic files from Corporate Projects. A large percentage of this information is found to be new and important to the audit review. The following is an analysis of the information received and its impact on the final reports:

Project timeline and the estimated % of files that filled information gaps. ¹	What Was Available in April 2007 vs. New Information and Impact on the Completion on the File
Project start to September 2002: the RFP selection process 26%	These records were new to the Auditor and had a major impact on the completion of the reports. The relevance of the new information was significant, as the data related to the more serious outstanding questions of the Auditor for the RFP and the procurement process portion of the audit review.
October 2002 - August 2003: Post Selection / Pre construction 26%	These new records to the Auditor were mostly all relevant having major impact on the completion of report I and II. i.e. project construction schedules and communication documents were found, which caused changes to previously reported findings.
September 2003 to September 2005: Construction Phase 71%	Most information was not previously provided. Mostly all relevant having major impact on the completion of report I and II. i.e. project schedules and list of change orders, progress billing, project schedule progress, in-camera documents, which caused changes to previously reported findings.
October 2006 to finish: Project Closeout 48%	Much of this information was not previously available because it did not exist. i.e., the project financials were not closed out until June of 2008.

¹ There were thousands of pages reviewed. Many individual records covered multiple topics - the column will not accumulate to 100%. The percentage calculation is the estimated percentage of the information in the boxes and electronic files that was new and relevant

September 2008 - January 2009

AGO reviews further records provided and conducts interviews with assistance from KPMG. Draft Part I report prepared, reviewed by Administration and January 2009 report finalized.

February 17, 2009

Part I of the updated audit report "Management of the 400 CHS Construction Project" is released by the Audit Committee



March – November 2009

Legal review of RFP and contracting processes for the building construction and furniture tenders prepared by Miller Thomson. Audit reports prepared concurrently.

November 2009

Administration reviews and comments on legal reviews and audit reports.

December 2009

Final Part II reports issued to Audit Committee



6 Conclusions

This report contains our findings and recommendations with respect to the audit process followed by the City Auditor's Office/AGO of the City of Windsor. We acknowledge the support received from the AGO and City of Windsor Administration in the preparation of this report.

We believe that we have prepared our report in an independent and objective manner. Our fees for this engagement are not contingent upon our findings or any other action or event resulting from the use of this report.

A handwritten signature in black ink that reads "Paul Ross". The signature is written in a cursive, flowing style.

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