

TORONTO EXTERNAL CONTRACTS INQUIRY
FINAL SUBMISSIONS OF JEFFERY S. LYONS, Q.C.

February 28th, 2005.

A. Introduction

1. As stated in his final submissions to the Toronto Computer Leasing Inquiry, Mr. Jeffery S. Lyons, Q.C., is sixty-four years of age and lives in the City of Toronto. Married for over thirty years to Ms. Sandra Lyons, they share three grown children.

2. Mr. Lyons has been a lawyer and member of the Law Society of Upper Canada since 1966. Mr. Lyons practiced in the field of civil litigation, specializing in class actions and insurance defence work. He was named Queen's Counsel in 1977, and was elected Benchers to the Law Society of Upper Canada from 1983 to 1991.

3. Mr. Lyons has also served a variety of public organizations, including directorships with Ontario Place, Via Rail, the Toronto International Film Festival, the Toronto Police Services Board, the Toronto Transit Commission, the Toronto Police Benefit Fund and the Chinese Cultural Centre of Greater Toronto, among many others.

4. From 1995 onward, Mr. Lyons served as a lobbyist primarily in the City of Toronto, acting for clients before a variety of municipalities and government institutions.

B. Campaign Contributions

5. For decades, Mr. Lyons has been an active and prominent volunteer fundraiser, both in the charitable and political fields. Given his demonstrated abilities, Mr. Lyons was actively sought out to raise funds for such charitable organizations as the Jays Care Foundation, the Homes First Foundation and the Daily Bread Food Bank. Mr. Lyons also served as a prominent fundraiser for political leaders at every level of government, including a former Prime Minister, being The Right Honourable Joseph Clark, a former Premier of Ontario, being the Honourable Michael D. Harris, and a former Mayor of the City of Toronto, being His Worship Mel Lastman.
6. With personal and professional sacrifice, Mr. Lyons contributed countless hours raising funds. These efforts have been overshadowed by the relentless media attention paid to an unremarkable event involving Mr. Hsu, Mr. Lyons and Mr. Lyons' executive assistant, Ms. Susan Cross; ("Ms. Cross").
7. Throughout most of the 1990s, Mr. Lyons professionally acted as a lobbyist on behalf of an information and technology company named EDS. Through his

representation of his client, Mr. Lyons worked closely with Mr. Bill Carten; (“Mr. Carten”), who served as EDS’ Director of Sales, Public Sector.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at paras. 1 – 5.

8. Through his professional relationship with Mr. Carten, Mr. Lyons’ attention was eventually directed to one of EDS’ sub-contractors, being Mr. Hsu. Mr. Lyons initially approached Mr. Hsu to support his “Brother Jeff” golf tournament, in aid of prostate cancer research. To the best of Mr. Lyons’ recollection, Mr. Hsu did purchase a four-some to his tournament.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 9.

9. Later, on the further advice of Mr. Carten, Mr. Lyons arranged an informal dinner with Mr. Hsu, occurring in Collingwood, Ontario, during the early months of 2000. As Mr. Lyons testified, the dinner was merely to expand his network and to meet a significant business associate of EDS.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 11

10. At the dinner, both Mr. Hsu and Mr. Lyons were accompanied by their respective spouses, and shared a conversation that was largely dominated by financial planning and investments.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at paras. 14-15.

11. During this time period, Mr. Lyons was an active fundraiser for a variety of City candidates, including Mayor Mel Lastman. With these responsibilities came the pressure to constantly find new contributors.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at paras. 15 & 17.

12. In March of 2000, shortly after the ‘Collingwood dinner’, Mr. Lyons contacted Mr. Hsu. Mr. Lyons sought to canvass the idea of political contributions with Mr. Hsu and follow-up as the election neared, in the fall of 2000.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para 18.

13. During that conversation Mr. Hsu explained that he had not contributed to municipal candidates in the past, but was interested in doing so.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 19.

14. Given Mr. Hsu’s unfamiliarity with contributions, Mr. Lyons provided a broad range of possible campaign contributions. Thereafter, Mr. Hsu set his political contribution budget at \$15,000.00.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para.19.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 114.

15. During the said conversation, Mr. Hsu did not expressly discuss his motivation for making such contributions to Mr. Lyons. Mr. Lyons testified that he inferred that Mr. Hsu’s motivation was to demonstrate his support of EDS, which historically did make political contributions to municipal candidates.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 20.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 113.

16. At this point, Mr. Lyons had conducted himself in a manner without remark. Through his efforts Mr. Lyons had identified a potential donor, canvassed the

matter with him, and secured his support. Had the narrative ended there this matter would have passed into obscurity.

17. During the said conversation, however, Mr. Lyons was informed by Mr. Hsu that he was leaving imminently for an extended business trip to China. Although Mr. Lyons was not familiar with Mr. Hsu's exact departure and return dates, his impression, under oath, was that it would be for a significant period of time. Mr. Lyons' belief is corroborated in his contemporaneous comments provided to Ms. Cross, which are forwarded in her sworn affidavit. Further corroboration is evidenced by the testimony of both Mssrs. Andrew Lok and Jim Andrew verifying Mr. Hsu's extended business trips to China. It is respectfully submitted that it is above dispute that Mr. Lyons verily believed that Mr. Hsu was making an extensive and lengthy trip to China during this time period.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 21.

Affidavit of Susan Cross, sworn January 6th, 2005, at para. 4.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at p.120.

Testimony of Jim Andrew, TECI, January 24th, 2005, at pgs. 112-113.

Testimony of Andy Lok, TECI, January 18th, 2005, at pg. 100.

18. Many political campaigns had not officially declared by March 2000, meaning that they were unable to accept political contributions at the time Mr. Hsu was intending to depart. Mr. Lyons had discovered a new and willing political contributor, but he believed that any potential contribution would be impossible

given Mr. Hsu's long-term and imminent departure. As Mr. Lyons testified, the knowledge of Mr. Hsu's imminent departure, 'threw him off'.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 22.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 121.

19. Mr. Lyons testified that his involvement in the matter was contained to approximately one (1) day. Documents entered into evidence demonstrate that this matter was largely dealt with between March 9th and 15th, 2000. (TEC 024108, TEC 024109, TEC 024110 and TEC 024111).

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005 at pg. 135.

20. Faced with the dilemma of a willing donor on the eve of a lengthy departure, Mr. Lyons tried to find a reasonable solution. Based upon his knowledge of its widespread practice for over twenty (20) years, Mr. Lyons instructed Mr. Hsu to deposit his intended contributions to the trust account of Morrison Brown Sosnovitch; ("MBS"), Mr. Lyons' law firm at the time. Mr. Lyons testified that this action was based upon both his belief of its legality, and that Mr. Hsu's funds would be demonstrably held in trust or like arrangement.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 24

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 123.

21. Soon-after, however, MBS informed Mr. Lyons that it did not want to participate in such a politically overt manner. As Mr. Lyons testified, the 'breaking-point' for MBS revolved around the fact that Mr. Hsu was not a client of the firm.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 25.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005 at pgs. 126-130.

22. Eventually Mr. Lyons broached the matter of having Ms. Cross hold such funds. Ms. Cross willingly accepted this responsibility. Mr. Lyons chose Ms. Cross because he believed her to be an organized and responsible person. Although Ms. Cross was an employee of Mr. Lyons, Mr. Lyons brought no pressure to bear upon her, nor did he make it a condition of her employment. In fact, Ms. Cross was willing to coordinate the matter for Mr. Lyons. Mr. Lyons' testimony in this regard is undisputed.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at paras. 27 & 29.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 139.

23. Thereafter, Ms. Cross opened a separate bank account, in her name, in which Mr. Hsu's \$15,000.00 was deposited. Mr. Lyons testified that at no time did he believe that such funds belonged to Ms. Cross, rather, it was his belief that a trust or like arrangement had been constructed on behalf of Mr. Hsu.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 38.

24. At no time did Mr. Lyons believe that he had broken or frustrated any law. At no time did Mr. Lyons conduct himself or instruct Ms. Cross to conduct herself in a manner to protect the identity of Mr. Hsu.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 36.

25. At all times Mr. Lyons believed that \$15,000.00 was the total amount Mr. Hsu wished to contribute to the political process. As verified by Commission Counsel on January 17th, 2005, as a result of investigations made by Commission staff, no parallel or competing contributions occurred.

TECI, January 17th, 2005, at pgs. 153 – 154.

26. Respectfully, it must be re-stated that Mr. Lyons was extensively investigated by the Ontario Provincial Police; (“OPP”), throughout 2001, with regards to the political contributions involving Mr. Hsu. The OPP investigation centred on alleged violations, by Mr. Lyons, of Ontario’s *Municipal Election Act*; (“the Act”), specifically section 74(1). The OPP eventually held that, “[t]he investigation revealed that there was no basis for charges under the *Ontario Municipal Elections Act*.” Therefore, it is respectfully submitted, according to Mr. Lyons’ rights, as prescribed by the *Charter of Rights and Freedoms*, that he is presumed innocent and deemed not to have violated any provision of the said Act.

OPP Press Release, December 10th, 2002; Bedgoc #23559.

27. Respectfully, the said contributions made on behalf of Mr. Hsu must be deemed to have been legally arranged, given the final determination by the OPP. Although rumour and speculative media accounts may state otherwise, Mr. Lyons was duly investigated and cleared of any wrongdoing through the absence of any charges. Mr. Lyons freely and candidly testified about the assistance he provided to Mr. Hsu.

28. Furthermore, it is respectfully submitted, had Mr. Lyons breached any provision of the Act or related statute, which is expressly denied, the Toronto External Contracts Inquiry is not the appropriate forum, by law, for the determination of such. Rather, according to the Supreme Court of Canada in *Starr v. Holden* [1990] 1 S.C.R. 1366, such matters enter the realm of a criminal investigation, which cannot be conducted by a public inquiry. The Supreme Court ruled that the broad powers afforded to an inquiry must not be explicitly or subtly used to pursue a criminal investigative agenda, and that to do so would undermine the administration of justice.
29. It is respectfully submitted that to determine if Mr. Lyons did or did not take the necessary steps to determine the legality of his actions is beyond the legal purview of this Inquiry. To determine such would require supplanting the determination of the OPP. To find that Mr. Lyons did not take the necessary legal steps would implicitly determine an illegal act had occurred, which, respectfully, is *ultra vires* a public inquiry by virtue of *Starr v. Holden* [1990] 1 S.C.R. 1366.
30. In the alternative, it is respectfully submitted that given the facts entered into evidence before the Inquiry, Mr. Lyons did take reasonable measures to determine the legality of his actions. First, as stated, Mr. Lyons acted upon a widespread belief and acceptance of such arrangements, founded upon his twenty-years of political fundraising. Secondly, when Mr. Lyons canvassed the matter with MBS,

no caution was raised. MBS elected not to accept the funds because of political reluctance. MBS, being a firm of practicing lawyers, of which Mr. Lyons was not, did not see any illegality with such an action.

31. In the alternative, to find that Mr. Lyons' or Ms. Cross' actions constitute misconduct, does not accord with the facts of this case. Although no bright line definition of misconduct exists, it is respectfully submitted that misconduct conveys a wilful breach, a knowing violation, or a serious digression. Nowhere in the facts are such allegations supported, in fact they are disputed for the reasons stated herein.

32. First, Mr. Lyons' testified that he relied expressly on his fund-raising experiences borne over twenty (20) years, and by inference, the lack of any legal concern emanating from MBS.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 123.

33. Second, Mr. Lyons was operating during a period of compressed time commitments. Although further investigation in hindsight may have been appropriate, no warning signal alerted Mr. Lyons to any potential difficulty.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg. 135.

34. Third, Mr. Lyons took careful and deliberate steps to ensure that Ms. Hsu's funds were carefully protected on his behalf, constituting a trust or like arrangement. Mr. Lyons took pains to ensure that such an arrangement was created, including;

- a) Trying to have such funds deposited within MBS' trust account;
 - b) Then having such funds held by his executive assistant, being Ms. Cross;
 - c) Having Ms. Cross create a separate financial account for such funds to prevent co-mingling;
 - d) Forwarding such funds to candidates and carbon copying Mr. Hsu;
 - e) Realizing no personal financial gain or otherwise from the holding of such funds;
 - f) No political receipts were applied for by Ms. Cross, and;
 - g) Employing such funds only for the purposes of making political contributions to municipal candidates.
35. It is respectfully submitted that either a trust or power of appointment was created in the stated circumstances, which is permitted at law. A trust is defined as arising when one person holds property over which he has control for the benefit of a beneficiary, thereby attracting a fiduciary responsibility. *Guerin v. R.* (1984) 2 S.C.R. 335. In the alternative, a power of appointment, although similar, is less formal, has less specificity in direction to the donee, and often avoids the fiduciary duty as imposed in a trust. *Re Lloyd*, [1938] O.R. 32 (H.C.J.). In either circumstance, by common law, if Mr. Lyons is found to have acted honestly, in accordance with Mr. Hsu's instructions and refrained from capriciousness, then his actions, respectfully, are not reviewable.
36. With respect to the allegation that Mr. Lyons did not take the necessary steps to

reveal the original source of the said \$15,000.00, paragraphs 28 – 31 of these submissions are restated and relied upon.

37. The testimony of Mr. Jim Andrews supports the position that there was no willful attempt to conceal the identity of Mr. Hsu. Mr. Andrews testified that Mr. Hsu was open and publicly candid about his participation of making political donations to municipal candidates, in 2000.

Testimony of Jim Andrews, TECI, January 26th, 2005, at pgs. 146-47.

38. In the alternative, Mr. Lyons' actions cannot be held to have reached such a threshold as to constitute misconduct. As clearly demonstrated in evidence, Mr. Lyons did affix the name of Ball Hsu and Associates to the contribution forwarded to Councillor Kyle Rae. (Volumber 4 – Tab 26 - Begdoc 26460). Clearly, there was no attempt to hide or conceal the identity of Mr. Hsu. Although not all of the cheques mentioned Mr. Ball Hsu, this was an administrative oversight. Mr. Lyons did not instruct his staff to affix the name Ball Hsu and Associates to correspondence directed towards municipal candidates, the failure to do so was an administrative oversight, not a willful act.

C. Media

39. In the spring of 2001, Mr. Lyons' competitor, Mr. Bruce Davis, in his newsletter entitled *Nova Res Urbis*, published an account indirectly accusing Mr. Lyons of

making illegal campaign contributions. Upset, Mr. Lyons believed the account to be both untrue and a naked attempt to discredit him.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 39.

40. Approximately one (1) year later, Mr. Lyons was contacted by Mr. Jack Lakey; (“Mr. Lakey”), a reporter from the *Toronto Star* regarding an unrelated and ongoing matter. Without notice or anticipation, Mr. Lakey began questioning Mr. Lyons about ‘illegal’ campaign contributions, in association with Ms. Cross and Mr. Hsu. Mr. Lakey conducted a deliberate and pre-meditated journalistic ambush upon Mr. Lyons. Mr. Lyons believed this attack to be part of a malicious and hurtful campaign, initiated by his competition. In keeping with natural human instinct, Mr. Lyons simply defended himself. He made comments to protect his reputation from what he perceived to be a coordinated attack on him. His comments were not designed to mislead Mr. Lakey.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at paras. 40-42.

41. Such comments were not made under oath, they were not made to a public official, nor were they made to any investigative body. Mr. Lyons, instead, made comments to a media representative that were a natural reaction to an interview by ambush.
42. Shortly thereafter, Mr. Lyons instructed his counsel to send correspondence of a similar nature to Mr. Lakey’s then managing editor.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, at pg.242

43. These series of events can be interpreted as a natural continuum of a person justifiably trying to protect his hard-earned reputation. They were an ill-thought reaction to a coordinated campaign to discredit Mr. Lyons.
44. Mr. Lyons did not willfully attempt to deceive anyone. His actions never approached the level of misconduct. Mr. Lyons, rather, attempted to avert a concerted campaign borne by a competitor.
45. Shortly after the *Nova Res Urbis* article, Mr. Lyons was contacted by Ms. Cross, with respect to queries received by her from Mr. John Barber, a columnist with the *Globe and Mail*; (“Mr. Barber”). Again, Mr. Lyons believed Mr. Barber’s actions were designed to be threatening and emanating from his competition. Mr. Lyons specifically recalls directing Ms. Cross not to speak to Mr. Barber. Given Mr. Lyons’ distraught state, although he has no recollection of such, he takes no dispute with Ms. Cross’ account of instructing her to tell Mr. Barber that such funds were hers.

Affidavit of Jeffery S. Lyons, sworn January 10th, 2005, at para. 43.

46. It is respectfully submitted that TECI has no jurisdiction over a matter not squarely within the jurisdiction of Toronto’s City Council. In *Re Berlin (City) and County Judge of Waterloo* (1914) the then Ontario High Court ruled that

allegations of misconduct can only be directed towards matters falling within the jurisdiction of the municipal council. Respectfully, representations made by a private citizen to members of the media are beyond the jurisdiction of the City of Toronto. It is respectfully submitted that the consideration of such allegations are *ultra vires* this Inquiry.

47. Finally, the essence of Mr. Lyons' defense centred around his belief that his actions were legal. Nothing to date has been leveled to usurp this belief. Mr. Lyons was duly investigated and cleared of any wrongdoing.

D. Desktop Phase of the TECI

48. No allegation of impropriety has been raised against Mr. Lyons with respect to his representation of Dell Computers; ("Dell"), before the City of Toronto; ("the City") or otherwise. Mr. Lyons candidly testified about the terms, duration and responsibilities surrounding his representation of Dell, commencing in 1998.

Order Requested

49. It is Respectfully requested that no finding of misconduct be made against Mr. Jeffery S. Lyons, Q.C. with respect to the Toronto External Contracts Inquiry.

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