

TORONTO COMPUTER LEASING INQUIRY
FINAL SUBMISSIONS OF JEFFERY S. LYONS, Q.C.

December 6th, 2004.

Overview

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.

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 Bencher to the Law Society of Upper Canada from 1983 to 1991.

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.

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.

Allegations of Corruption, Shakedowns and Bribery

Background

Mr. Lyons was retained as a lobbyist by DFS, on March 15th, 1999. Mr. Gordon Barrett, the then General Manager for DFS, retained Mr. Lyons. DFS at that time was an incorporated entity carrying on business in the field of Information Technology ("IT") leasing.

*Testimony of Gordon Ellsworth Barrett, TCLI April 29th, 2003, at pgs. 92 & 94.
(Begdoc# 75440)*

Mr. Lyons' retainer included a monthly fee of \$3,000.00, which was paid by DFS to Mr. Lyons' law firm of Morrison Brown Sosnovitch; ("MBS"). At no time was Mr. Lyons retained as a lawyer, or for the provision of legal services. Mr. Lyons was the first lobbyist retained by DFS.

*Testimony of Gordon Ellsworth Barrett, TCLI April 29th, 2003, at pgs.89, 93 & 94.
Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pg. 24.*

Mr. Lyons initially believed that his lobbying efforts for DFS would be an adjunct to his retainer with Dell Computer Corporation; ("Dell"). Earlier, on November 12th, 1998, Mr. Lyons was retained by Dell to represent them before the Province of Ontario and various municipalities.

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pg. 24.

Mr. Lyons was retained to assist DFS with obtaining IT leasing business, which later culminated in DFS' response to the City's May 31st, 1999, RFQ (Begdoc #06104).

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pgs. 12-14.

Eventually, as Mr. Lyons' knowledge of IT leasing grew, he discovered that DFS' intended business with the City, by virtue of the said RFQ, would be significant.

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pg. 122.

In fulfillment of his retainer, Mr. Lyons first undertook to understand DFS' competitive advantages, the larger market place and the City's interest in IT leasing. Mr. Lyons' also coordinated an April 29th, 1999, meeting involving representatives of both DFS and Dell, Ms. Wanda Liczyk, the then CFO & Treasurer for the City, and Mr. Jim Andrew, the then Executive Director of IT for the City. During that meeting DFS was able to provide a detailed overview of its competitive advantages.

Cross, Susan; Memo to File, April 29th, 1999; Begdoc: 75432
Dell Standardization Analyst; Begdoc: 75352

In addition, Mr. Lyons and Mr. Marentette, DFS' Account Executive for the City, testified that Mr. Lyons facilitated a meeting between Mr. Marentette and Mr. Tom Jakobek, the then Budget Chief for the City. At that meeting, Mr. Marentette was able to "pitch" DFS' competitive advantages and services to Mr. Jakobek. This

meeting represented a core service that Mr. Lyons provided to his clientele in his role as a lobbyist.

Testimony of Scott Marentette, TCLI April 17th, 2003, at pg. 48.
Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pgs. 105 & 106.

As Mr. Lyons' knowledge of DFS' proposed business with the City crystallized, he was disturbed that his original retainer agreement with DFS had not included a success fee. Mr. Lyons had negotiated success fees in the past. If DFS was successful in acquiring IT leasing business with the City, Mr. Lyons determined that his retainer was well below the market level of compensation.

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pg. 119.

Success Fee Meeting

Eventually, Mr. Lyons met with Mr. Robert Simone, DFS' Corporate Sales Manager, and Mr. Marentette, in the late spring of 1999. The meeting occurred at DFS' offices, which were shared by Dell. Mr. Lyons canvassed with Mr. Simone the extent of business the RFQ would generate for DFS. Mr. Simone said that the contract could be worth "up to \$150 million." Mr. Simone testified that this may have been the first time Mr. Lyons truly understood what the RFQ was worth.

Testimony of Robert Simone, TCLI April 14th, 2003, at pg. 56.
Testimony of Robert Simone, TCLI April 15th, 2003, at pg. 94.

By this meeting, Mr. Lyons had performed the bulk of services for DFS. Mr. Simone, Mr. Marentette and Ms. Cross all testified that Mr. Lyons worked diligently of behalf of DFS, that he was successful in having DFS meet top

decision makers at the City and that he did the job expected of him, for what was an otherwise unknown entity.

Testimony of Robert Simone, TCLI April 16th, 2003, pg. 142.
Testimony of Scott Marentette, TCLI April 17th, 2003, at pgs. 35 & 123.
Testimony of Scott Marentette, TCLI April 28th, 2003, at pgs. 88 & 91.
Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pgs. 61, 62, 63 & 76.
Testimony of Susan Cross, TCLI May 6th, 2003, at pg. 115.

During the conversation, Mr. Lyons broached the subject of a success fee or like compensation. Mr. Lyons canvassed a figure of \$150,000.00. Mr. Franco David Carnevale testified, in his capacity as a lobbyist, that he negotiated success fees with four out of every five of his clients, in addition to a monthly retainer. Mr. Carnevale also testified that success fees are also negotiated by other lobbyists. Mr. Lyons immediately sensed that neither Mr. Simone, nor Mr. Marentette, were the appropriate persons to discuss this issue. Mr. Lyons had negotiated his contract with Mr. Barrett, and by their reaction, Mr. Lyons ended the discussion of the matter.

Testimony of Scott Marentette, TCLI April 17th, 2003, at pg. 155.
Testimony of Scott Marentette, TCLI April 28th, 2003, at pg. 124.
Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pgs. 121, 122, 148, 150 & 151.
Testimony of Franco Carnevale, TCLI, April 30th, 2003, at pgs. 13, 14, 195 & 196.

The intent of Mr. Lyons was not to “shake-down” DFS for the payment of additional funds. He did not pursue the matter or bring any pressure to bear upon DFS. He simply raised the issue of a success fee, which Mr. Simone and Mr. Marentette rebuffed. Mr. Lyons continued to lobby on behalf of DFS and did not raise the matter again.

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pgs. 159 & 160.

Mr. Lyons testified that he regretted raising the issue with Mssrs. Simone and Marentette. He conceded that the negotiation of a success fee should have occurred at the commencement of the contract, with Mr. Barrett. However, at the time he was introduced to DFS, by Dell, Mr. Lyons was not aware of the potential work or worth of contracts that DFS was pursuing with the City. At no time did Mr. Lyons conduct himself in a manner other than that of appropriate business practice.

Testimony of Jeffery S. Lyons, TCLI May 12th, 2003, at pg.123 & 125.

Mr. Simone conceded during his testimony that, based upon appropriate business levels, a \$150,000.00 success fee would not be unreasonable. In fact, Mr. Simone also testified that DFS paid finder's fees to Dell, which were calculated as being three-quarters of a percentage point of a successful contract.

Testimony of Robert Simone, TCLI April 15th, 2003, pg. 108.
Testimony of Robert Simone, TCLI April 14th, 2003, at pg.23.

At no point during the meeting did Mr. Lyons provide any comment that the payment of such a fee would guarantee DFS winning the RFQ. In fact, Mr. Simone conceded during his testimony that Mr. Lyons expressly noted that;

- a) DFS' bid would still have to be competitive;
 - b) DFS' bid would have to undergo the City's tendering process,
- and;

c) To be successful, DFS' bid would have to be the lowest.

The payment of Mr. Lyons' intended success fee was predicated upon DFS being able to competitively win the RFQ.

Testimony of Robert Simone, TCLI April 15th, 2003, at pg. 30.

At no point during the meeting did Mr. Lyons raise the fact that if DFS did not pay him a success fee the RFQ would be lost to another company that would pay such. Mr. Simone clearly testified that Mr. Lyons stated, merely, that other companies would pay such a success fee.

Testimony of Robert Simone, TCLI April 14th, 2003, at pg. 57.

At no time during the meeting, or at anytime thereafter, did Mr. Lyons raise the notion that the payment of funds would be for any elected official, including Mr. Tom Jakobek. In fact, neither Mr. Lyons nor Mr. Marentette have any specific recollection of the name Tom being used in relation to Mr. Lyons' success fee.

Testimony of Scott Marentette, TCLI, April 17th, 2003, at p.156.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pg. 156, l.19.

Mr. Simone testified that he believed the name "Tom" was used during the said meeting with Mr. Lyons and that he assumed the name Tom meant Tom Jakobek. Mr. Simone conceded, however, that he may have misheard the word Tom, or may have since attributed the name Tom from rumour, gossip, speculation or innuendo.

Testimony of Robert Simone, TCLI, April 14th, 2003, at pgs. 58-59.

Testimony of Robert Simone, TCLI, April 15th, 2003, at pgs. 140, 196 & 197.

Mr. Simone testified that he discussed DFS' losing RFQ with Mr. Marentette on a variety of occasions. He also testified that the matter of Tom and \$150,000.00 did not come up in his discussions with Mr. Marentette as, "...we honestly didn't think that that was an issue in our loss, *per se*."

Testimony of Robert Simone, TCLI April 14th, 2003, at pg. 66.

Mr. Simone testified that he believed, with a 100% of certainty, that Mr. Lyons' request for additional funds was not a bribe.

Testimony of Robert Simone, TCLI April 16th, 2003, at pgs. 10 & 156.
Testimony of Robert Simone, TCLI April 15th, 2003, at pg. 150.

In fact, Mr. Simone admitted that the only information source of corruption surrounding Mr. Lyons emanated from gossip and rumour.

Testimony of Robert Simone, TCLI April 16th, 2003, at page 130.

Mr. Simone testified that his only complaint with Mr. Lyons was his attempt to negotiate a success fee after Mr. Lyons' retainer had been finalized and that his contract was almost entirely fulfilled.

Testimony of Robert Simone, TCLI, April 15th, 2003, at pg. 35.

Contrary to the testimony of Mssrs. Simone and Marentette, Mr. Barrett had no recollection of any meeting where Mr. Lyons was accused, by them, of attempting to "shakedown" DFS. Mr. Barrett testified he would have remembered such a discussion.

Testimony of Gordon Ellsworth Barrett, TCLI, April 29th, 2003, at pgs. 109 & 152.

Additionally, Mr. Barrett testified that Mr. Simone was a young and excitable salesperson, who kept his ear to the ground in an environment fuelled with rumour and gossip.

Testimony of Gordon Ellsworth Barrett, TCLI, April 29th, 2003, at pgs. 111– 112.

Both Mr. Simone and Mr. Marentette separately conceded during their testimony that the use of the word “shakedown” was an inappropriate term to use with respect to Mr. Lyons’ request for a success fee.

Testimony of Robert Simone, TCLI April 15th, 2003, at pg. 116.
Testimony of Scott Marentette, TCLI, April 28th, 2003, at pgs. 180 – 181.

Franco Carnevale

On December 6th, 2000, Mr. Marentette met at a bar called CafT Degras, with his friend Mr. Daryl Chong and a competitor of Mr. Lyons, lobbyist Mr. Carnevale.

Testimony of Franco Carnevale, TCLI April 30th, 2003, at pg. 29.

During their socializing, Mr. Marentette provided his recollection of his meeting with Mr. Lyons. Mr. Marentette testified that he referred to the said meeting with Mr. Lyons in terms similar to a ‘shakedown’. Mr. Carnevale testified that he only recalled Mr. Marentette referring to Mr. Lyons’ meeting as negative. Mr. Carnevale did not recall Mr. Marentette mentioning the words bribe or shakedown.

Testimony of Franco Carnevale, TCLI April 30th, 2003, at pgs. 53 & 54.
Testimony of Scott Marentette TCLI April 17th, 2003, at pgs. 79, 117 & 119.

Thereafter, Mr. Carnevale undertook a coordinated campaign of inciting rumour, gossip and innuendo for the specific goal of discrediting Mr. Lyons. These efforts occurred over approximately two (2) years, and culminated in Mr. Carnevale receiving the aid of a newspaper journalist from the Toronto Star.

Mr. Carnevale, during the summer of 2002, persuaded and convinced Mr. Simone to speak with the journalist regarding the alleged corruption and Mr. Lyons. This was despite the fact that Mr. Simone, at no time, suggested to Mr. Carnevale that Mr. Lyons had ever solicited a bribe or participated in any such activity.

Testimony of Robert Simone, TCLI April 15th, 2003, at pgs. 165, 167 & 185.

Mr. Marentette, also on the prodding of Mr. Carnevale, was contacted by the journalist directly. When contacted, Mr. Marentette, however, advised that Mr. Lyons' request for funds was not for a bribe, rather that it may have been for a success fee.

Testimony of Scott Marentette, TCLI April 17th, 2003, at pgs. 83-84.

As a result of Mr. Carnevale's determined efforts, the journalist ultimately filed a story appearing in the Toronto Star on October 3rd, 2002, which indirectly accused Mr. Lyons of bribery.

Testimony of Franco Carnevale, TCLI, April 30th, 2003, at pgs. 40, 42, 43 & 44.
(Begdoc #41617)

As a result of this story, the TCLI called for a complete and independent police investigation, which was conducted throughout the fall of 2002. The police

investigation ultimately culminated in a press release, prepared by the Ontario Provincial Police, which was read into the TCLI transcript. It stated:

“We are sensitive to the fact that there has been a great deal of public anxiety and rumour concerning this recent matter.

However, the OPP criminal investigation has concluded that based on the information received no criminal act occurred in the allegation we were asked to investigate.”

Transcript of Ronald Manes, TCLI Inquiry, April 16th, 2003, at pg 6.

Dash Domi and Tom Jakobek

Mr. Lyons testified that he had known Mr. Jakobek for approximately twenty years. Although they had not been particularly close in later years, Mr. Lyons testified that he considered Mr. Jakobek a friend. Mr. Lyons also testified that he began to professionally know Mr. Domi during this time period, and that he later worked with him when he was eventually hired by MFP as their lobbyist.

There is nothing to suggest that Mr. Lyons participated in, or had any knowledge of, any alleged provision of funds, emanating from Dash Domi to Tom Jakobek, in relation to the City’s leasing transaction. In fact, Mr. Lyons testified that he never received any direct or indirect gain, from MFP or Dash Domi, in connection to the City of Toronto Computer Leasing RFQ.

Testimony of Jeffery S. Lyons, TCLI, September 22nd, 2004, at pgs. 6 & 7.

The comprehensive forensic examination of Mr. Jakobek’s finances, conducted by Grant Thornton LLP, initiated by TCLI’s Commission Counsel, revealed no direct or indirect connection between Mr. Jakobek’s unusual accounting practices

and Mr. Lyons. The only connection involving Mr. Lyons are two (2) brief phone calls emanating from Mr. Domi to Mr. Lyons, on November 1, 1999, each lasting 0.20 and 0.29 minutes.

Mr. Lyons testified that he had no recollection of Mr. Domi's phone calls, but believed that they likely related to an exclusive Globe and Mail newspaper article, focusing on Mr. Lyons, which was published on November 1st, 1999.

Testimony of Jeffrey S. Lyons, TCLI, September 22, 2004, at pgs. 8 & 9.

Case Law

The Supreme Court of Canada held in *Starr v. Holden* [1990] 1 S.C.R. 1366 at para. 20 & 40, that a commission of inquiry may not exercise a criminal investigation. The Court ruled that the broad powers afforded to an inquiry must not be explicitly or subtly used to pursue a criminal investigative agenda, as to do so would undermine the administration of justice.

Mr. Lyons was criminally investigated by the OPP. The further investigation conducted by the Commission Counsel for the TCLI, it is submitted, was beyond the constitutional purview of a public inquiry.

It is respectfully submitted that the TCLI has no jurisdiction over matters that do not squarely fall within the jurisdiction of Toronto's City Council. In *Re Berlin (City) and County Judge of Waterloo* (1914), 22 D.L.R. 296, the Ontario High Court ruled that investigations into allegations of misconduct can only be directed

concerning matters within the jurisdiction of the municipal council. Any allegation of wrongdoing against Mr. Lyons with respect to his request for a success fee, it is submitted, is beyond the scope of the TCLI. Mr. Lyons' request for a success fee was between an individual and a private incorporate entity.

Allegation of Conflict of Interest

Dell Retainer

On November 12, 1998, Mr. Lyons was retained to act on behalf of Dell Computers. Although Mr. Lyons' first goal was to lobby the City regarding the sale of computers, Mr. Lyons was also retained by Dell to lobby both the provincial government and other municipalities, for a monthly fee of \$7,500.00.

Testimony of David Kelly, TECI, November 23rd, 2004, at pgs. 248-249.

Affidavit of Jeffery S. Lyons, sworn November 11th, 2004, at para. 14.
(Begdoc # 31605)

Through a variety of efforts, Dell eventually won a contract to sell computers directly to the City, in 1998. Dell was pleased with Mr. Lyons' representation as a lobbyist.

Affidavit of David Kelly, TECI, sworn November 12th, 2004, at para.45

Dell Referral to DFS

Eventually, in the very early months of 1999, Mr. Kelly informed Mr. Lyons that a sister or adjunct corporation of Dell, being DFS, needed his services. Before that time, Mr. Lyons was unaware of DFS.

Testimony of Jeffery Lyons, TCLI May 12th, 2003, at pgs. 5 – 8.

Mr. Kelly coordinated a meeting involving Mr. Barrett and Mr. Lyons. Mr. Barrett was not particularly interested in the services Mr. Lyons had to provide, and believed that Mr. Lyons was being “foisted” upon DFS by Dell, evidencing the adjunct or subsidiary role of DFS to Dell.

Testimony of Gordon Ellsworth Barrett, TCLI, April 29th, 2003, at pgs. 54, 55, 110, 194 & 195.

In fact, Mr. Barrett testified that DFS was a ‘captive program’ of Dell. DFS operated as Dell’s leasing or financing arm. While Dell did leasing with other financing companies, DFS only acquired business through Dell. Mr. Simone also testified that DFS reported their quarterly reports directly to Dell.

Testimony of Gordon Ellsworth Barrett, TCLI, April 29th, 2003, at pgs. 54 & 55.

Testimony of Robert Simone, TCLI, April 14th, 2003, at pg. 22.

Dell Referral to MFP

Shortly thereafter, Mr. Kelly also referred Ms. Irene Payne, MFP’s Senior Vice President, to Mr. Lyons. By that time MFP and Dell had conducted a large volume of business together. As Mr. Simone testified, senior Dell sales leaders had strong relationships with their counterparts at MFP.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pgs, 18 & 45.

Testimony of Irene Payne, TCLI, January 9th, 2003, at pg. 161.

Testimony of Robert Simone, TCLI, April 14th, 2003, at pg. 149.

Testimony of Susan Cross, TCLI, May 6th, 2003, at pg. 31.

MFP was highly interested in retaining the services of Mr. Lyons, based particularly on his retainer with Dell. Mr. Lyons understood, from Ms. Payne, that

MFP and Dell had a very close working relationship. MFP explained to him their immediate interest in the leasing aspects of garbage disposal.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pg. 20.

During the formal retainer proceedings between Mr. Lyons and MFP, Mr. Lyons provided a clear and unambiguous letter, disclosing that he acted for Dell and DFS. (Begdoc #40455)

Testimony of Susan Cross, TCLI, May 6th, 2003, at pg. 36.

Before being retained by MFP, Mr. Lyons also canvassed any potential conflict of interest, with Dell. Mr. Lyons was clearly informed that there were none.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at p.34.

Upon being retained by DFS, Mr. Lyons lobbied the City of Toronto on behalf of DFS. At no time did Mr. Lyons contact any City official on behalf of MFP, with respect to the said RFQ. Mr. Lyons testified that he never had knowledge of MFP's bid on the said RFQ. Mr. Domi, MFP's Account Executive to the City confirmed this, as he testified that Mr. Lyons did not assist him with MFP's sales efforts before the City, with respect to the leasing RFQ.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pg. 33.

Testimony of Jeffery S. Lyons, TCLI, May 13th, 2003, at pg. 130.

Testimony of Susan Cross, TCLI May 6th, 2003, at pg. 32 & 115.

Testimony of Dash Domi, TCLI January 27th, 2003, at pgs. 106, 107, 114, 115, & 117.

In fact Mr. Bas Balkissoon testified at the Inquiry that when he met with Mr. Lyons regarding MFP, during a May 2001 Council meeting, Mr. Lyons clearly stated that he had not acted for MFP on the 1999 leasing RFQ, but was now representing their interests at the City, in 2001.

Testimony of Bas Balkissoon, TCLI, December 11, 2002, at pg. 109.

Mr. Lyons did, however, actively promote DFS before the City, with respect to the leasing RFQ. The evidence heard before the TCLI is unambiguous that Mr. Lyons arranged meetings with the City's key decision makers, on behalf of DFS, and liaised closely with Mr. Marentette. The work he did for MFP was completely unrelated and dealt primarily with the Toronto District School Board.

Begdoc: 40452.

Conflict Alleged

On May 26th, 1999, Mr. Lyons was verbally cited by Ms. Payne as being in a conflict of interest. An aggressive follow-up letter of the same date was sent to his attention, (Begdoc #40449), citing the same objection. Mr. Lyons responded by clearly demonstrating that he had expressly disclosed any potential conflict of interest in his letter of March 27th, 1999, to her attention. (Begdoc #40445)

Ms. Payne testified, however, that her initial belief in Mr. Lyons' failure to disclose a conflict of interest was not accurate. Thereafter, in September, 1999, MFP re-retained the services of Mr. Lyons, which was followed by a letter of praise from Ms. Payne to Mr. Lyons. (Begdoc #40443).

Testimony of Irene Payne, TCLI January 9th, 2003, at pgs. 179, 180 & 183.

Mr. Marentette and Mr. Simone did testify about a perceived conflict of interest involving Mr. Lyons and MFP. However, their accounts were, at best, inconsistent.

Mr. Marentette testified that his May 25th, 1999, meeting with Mr. Lyons and Mr. Jakobek, although a straight-forward sales meeting, was somewhat unorganized. Mr. Marentette was able to clearly articulate the competitive advantages of both IT leasing and DFS. Mr. Marentette later began to subscribe to rumours that Mr. Lyons was acting for MFP at the City.

Testimony of Scott Marentette, TCLI April 17th, 2003, at pgs. 49, 50, & 52.

Mr. Simone, in contrast, testified that Mr. Marentette left the meeting and immediately informed Mr. Simone of his belief that Mr. Lyons was acting on behalf of MFP, based upon comments emanating from Mr. Jakobek. Both Mr. Lyons and Mr. Marentette testified that no such conversations occurred involving MFP and Mr. Jakobek.

Testimony of Robert Simone, TCLI April 14th, 2003, at pgs. 75 & 152.
Testimony of Scott Marentette, TCLI, April 17th, 2003, at pgs. 49 & 50.
Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pgs. 108 & 109.

Mr. Simone, under cross-examination, conceded that there was no factual truth to the allegation that Mr. Lyons was working for MFP on the said RFQ and added that Mr. Lyons' retainer with DFS continued until October, 1999.

Testimony of Robert Simone, TCLI April 15th, 2003, at pg. 81.
(Begdoc: #75416)

In fact, Mr. Simone conceded that he saw no conflict in Mr. Lyons working for Dell and DFS. Given that Dell openly acted with other IT leasing corporations, in

spite of its relationship with DFS, it is evident that the industry acted in a highly interwoven and complex manner.

Testimony of Robert Simone, TCLI, April 15th, 2003, at p.207.

It is respectfully submitted that the TCLI has no jurisdiction over matters not squarely within the jurisdiction of Toronto's City Council. In *Re Berlin (City) and County Judge of Waterloo (1914)*, *supra*, the Ontario High Court ruled that investigations into allegations of misconduct can only be directed concerning matters within the jurisdiction of the municipal council. It is submitted that an alleged conflict of interest, conducted by Mr. Lyons, between two private incorporate entities, is beyond the control of the City's Council, and thereby beyond the proper scope of the TCLI. Mr. Lyons was not an employee of the City, or was he retained by the City for any services. Any alleged conflict was settled to the satisfaction of the private players, and should not be reviewed here.

Bas Balkissoon

By May of 2001, Mr. Lyons had been retained to act on behalf of MFP. At that time a photocopier leasing report; ("the report"), which recommended MFP, was before City Council. Mr. Balkissoon, as a City Councillor, "held" the report.

Testimony of Bas Balkissoon, TCLI, December 11th, 2002, at pgs. 107, 108 & 109.

Shortly thereafter, on the urging of his client, Mr. Lyons approached Mr. Balkissoon, during a Council session. Mr. Lyons testified that he informed Mr. Balkissoon that he acted for MFP, and canvassed with the Councillor why he had held the report. Mr. Balkissoon informed him that he was seeking greater

clarification and the meeting ended amicably. No difficulty with MFP was voiced by Mr. Balkissoon to Mr. Lyons.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pgs. 192 – 194.

Soon thereafter, however, Mr. Balkissoon provided an interview to Mr. John Barber, a columnist with the Globe and Mail. In the subsequent column, Mr. Balkissoon was quoted as being very critical of MFP, in contrast to the earlier conversation with Mr. Lyons.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pg. 195.

Upon reading Mr. Barber's column, Mr. Lyons left a 'knee-jerk' reactive voice mail with Mr. Balkissoon. In the voice mail Mr. Lyons sarcastically offered his assistance in getting Mr. Balkissoon media coverage that did not involve Mr. Barber. Mr. Lyons also gave his candid and unvarnished negative view of Mr. Barber to Mr. Balkissoon.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, pgs. 195 – 197.

Mr. Lyons testified that the voicemail was intended to be sarcastic, in response to his upset over Mr. Balkissoon speaking to Mr. Barber. He also testified that his abilities did not extend to controlling the media.

Testimony of Jeffery S. Lyons, TCLI, May 12th, 2003, at pg. 197.

Later, on the urging of a mutual friend, Mr. Lyons and Mr. Balkissoon met at Mr. Balkissoon's Council office. During that meeting, Mr. Balkissoon testified that he and Mr. Lyons had a long discussion, with an aim to resolving their animosity.

Testimony of Bas Balkissoon, TCLI, December 11th, 2002, at pg. 115.

It is respectfully submitted that the voice mail left by Mr. Lyons was the result of hurt feelings. The voice mail was not an attempt to induce Mr. Balkissoon on the pretence of favourable media coverage, a commodity clearly beyond the control of Mr. Lyons.

Production & Alleged Destruction of Documents

On August the 14th and November 22nd, 2002, Mr. Lyons received Summonses requesting documents related to the TCLI. Mr. Lyons had produced a variety of documents to Commission Counsel relating to MFP.

Transcript of Ronald Manes, TCLI May 8th, 2003, at pgs. 5-6.

Mr. Lyons also instructed his then assistant, Mr. Nav Mangat, to make the necessary inquiries of Mr. Lyons' former law firm of Morrison Brown Sosnovitch; ("MBS"). Mr. Mangat testified through affidavit that he did make the necessary inquiries of MBS, particularly, to retrieve Dell files. Although Mr. Lyons had successfully retrieved legal files in the past from MBS, Mr. Mangat was informed that it would be impossible to retrieve a file, absent an identification number, which Mr. Mangat did not have.

Affidavit of Nav Mangat, TCLI, Sworn August 26th, 2004 at paras. 11 & 13.

Mr. Ronald Manes, Commission Counsel to the TCLI, spoke on the record on May 8th, 2003 during his examination of Mr. Lyons. He also stated he had made inquiries of MBS, and their response to his office, was that no documents were available.

Transcript of Ronald Manes, TCLI, May 8th, 2003, at pg. 8.

At no time did Mr. Lyons willfully or negligently destroy documents in an effort to frustrate the two said Summonses. Mr. Lyons testified that, due to costs, files opened in his capacity as a lobbyist would be routinely destroyed, culled or discarded, as an informal office policy, given that he was not required to keep lobby files, as opposed to legal files. When Mr. Lyons could not locate the DFS file later produced in these proceedings, he believed that it had been destroyed in accordance with his informal destruction policy.

Testimony of Jeffery S. Lyons, TCLI September 21st, 2004, at pg. 13.

Contrary to lobbyist files, Mr. Lyons would 'dead-suit' legal files during his tenure at MBS. This was in accordance with Mr. Lyons' obligations imposed by the Law Society of Upper Canada.

Testimony of Jeffery s. Lyons, TCLI, September 21st, 2004, at pg. 15.

Lobbying files, however, were not "dead-suited". Given the paucity of lobbyist related files produced from MBS, it is submitted that the longstanding destruction policy is self-evident, in spite of Mr. Mangat's ignorance of the practice.

Employment of Ms. Vinnamae & Mr. Jim Andrew

Mr. Lyons testified that he believed Ms. Lana Vinnamae was an excellent member of the City's IT department, and that he believed her to be the 'nuts and bolts' of the department. Upon Mr. Andrew's departure as the City's Executive Director of IT, Ms. Vinnamae became the interim Executive Director. Given Mr.

Lyons' experience, he believed that her promotion to the permanent position of Executive Director of IT would be an ideal choice for the City.

Testimony of Jeffery S. Lyons, TCLI May 8th, 2003 at pg. 173.

Based upon his view, Mr. Lyons recalls speaking to a person in the Mayor's office and potentially two City Councillors about the merits of promoting of Ms. Vinnamae. Based upon Mr. Lyons' belief in Ms. Vinnamae's skills and contribution to the City's IT department, Mr. Lyons' advocated her promotion. Ms. Vinnamae was not promoted to the head of IT.

Testimony of Jeffery S. Lyons, TCLI, May 8th, 2003, at pgs. 174-175.

It is Respectfully submitted that there was nothing illicit or improper in Mr. Lyons' conduct. Ms. Vinnamae was, in Mr. Lyons' opinion, an accomplished and dedicated public servant. Based upon Mr. Lyons' extensive public sector experience, he believed that it would was a mistake for the City not to have Ms. Vinnamae become the permanent Executive Director of IT.

It is submitted that every taxpayer has the right and entitlement to express their views, about City officials, both to the Mayor's office and to City Councillors.

Testimony of Jeffery S. Lyons, TCLI May 13th, 2003, at pg. 90.

Contrary to Mr. Manes' cross-examination of Mr. Lyons on May 8th, 2003, Mr. Ridge provided no testimony that Mr. Lyons ever promised to help him to become a commissioner with the City.

Transcript of James Ridge, TCLI June 19th, 2003.

Contrary to Mr. Manes' cross-examination of Mr. Lyons on May 8th, 2003, Mr. Ridge provided no testimony that Mr. Lyons ever communicated to him that Mr. Lyons had played a role in Ms. Paula Dill becoming a commissioner.

Transcript of James Ridge, TCLI June 19th, 2003.

Contrary to Mr. Manes' cross-examination of Mr. Lyons on May 8th, 2003, Ms. Anderton provided no testimony that Mr. Lyons complained that Ms. Vinnamae did not acquire the permanent position of IT Executive Director.

Transcript of Joan Anderton, TCLI, November 23rd, 2003.

Mr. Lyons did testify that he recalled Mr. Andrew communicating to him that he wanted to become either a Commissioner of Corporate Services, or to earn a higher salary. Mr. Lyons believed that Mr. Andrew did a good job, but had no recollection of assisting him in becoming the Commissioner of Corporate Services, again, a position that Mr. Andrew never filled.

Testimony of Jeffery S. Lyons, TCLI, May 8th, 2003, pg. 172.

Confidential Documents

Background

In the summer of 1999, DFS, upon being informed of their loss to MFP, commenced a loss review in accordance with their internal business practices. Mr. Marentette testified his recollection was that he asked Mr. Lyons for information to assist with the review. Eventually, Mr. Marentette received a spreadsheet, purportedly from Mr. Lyons and allegedly containing leasing rates submitted by DFS' competitors.

Mr. Marentette's recollection of the spreadsheet, however, was at best limited. Mr. Marentette could only remember the general format of the spreadsheet, without any specific information contained therein. Mr. Marentette could not recall if the word confidential was stamped on it in a diagonal fashion. Mr. Marentette could not recall if the spreadsheet was similar to the document entitled *City of Toronto Proposal for 36 months lease received from respondents*, which formed part of a City report delivered to the Policy and Finance Committee; ("the Proposal"). (Begdoc #29335).

Testimony of Scott Marentette, TCLI, April 17th, 2003, at pgs. 26 – 27 & 108 – 110.

Testimony of Scott Marentette, TCLI, April 28th, 2003, at pgs. 103-106.

Mr. Simone, who testified that he had seen the spreadsheet in question, also said that he could not recall if the spreadsheet was stamped confidential in the manner and form of the Proposal.

Testimony of Robert Simone, TCLI April 14th, 2003, at pg. 98.

The evidence of Mr. Simone and Mr. Marentette was that the spreadsheet, allegedly received from Mr. Lyons, may have been received weeks after the City Council determined the issue.

Testimony of Robert Simone, TCLI April 14th, 2003, at pg. 93.

Testimony of Scott Marentette, TCLI April 17th, 2003, at pgs. 107-108.

Mr. Lyons testified that he had no recollection of obtaining or submitting any such information to Mr. Marentette.

Testimony of Jeffery S. Lyons, TCLI Inquiry, May 12th, 2003, at pgs. 164 & 188 – 190.

Ms. Cross testified that she did not recall Mr. Lyons ever receiving a confidential report from the City's Policy and Finance Committee.

Testimony of Susan Cross, TCLI May 6th, 2003, at pg. 88.

Both Mr. Simone and Ms. Payne testified, however, that public entities do routinely provide bid information, after the tendering process is complete.

Testimony of Robert Simone, TCLI, April 16th, 2003, at pgs. 33-34.

Testimony of Robert Simone, TCLI April 16th, 2003, at pgs. 40, 49 – 50.

Testimony of Irene Payne, TCLI January 13th, 2003 at pg. 151 – 152.

The opinion of Ms. Payne and Mr. Simone appear to have legislative support based upon the *Freedom of Information and Protection of Privacy Act*, ("FOIA") and the *Municipal Freedom of Information and Protection of Privacy Act*, ("MFOIA") According to section 10(1) of the *FOIA* and section 4(1) of the *MFOIA* which provides that an institution must give the public access to its records unless an enumerated exception has application.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, sections 10 – 22.

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M.56 sections 4 – 15.

Ms. Cross testified that as an Executive Assistant to a City Councilor she was aware that confidential documents involving the City are produced on purple

paper. Ms. Cross testified that she never saw purple documents in Mr. Lyons' office.

Testimony of Susan Cross, TCLI May 6th, 2003, at pgs. 116 – 118.

It has also been suggested that Mr. Lyons received confidential information and documents on March 29th, 1999, and June 7th, 1999, from an employee in the City's IT Division. With respect to Mr. Lyons' April 1, 1999 dictated memo to file, (Begdoc 75439), it is submitted that there is nothing contained within that evidences any confidential information. The document pertains to two matters:

- a) A report sent to council seven (7) months earlier, and;
- b) The opinion of a City staff member pertaining to leasing.

With respect Mr. Lyons' June 10th, 1999, dictated memo to file, (Begdoc 75418), it is also submitted that there is nothing contained within that would not be disclosed to any inquiring individual. Mr. Lyons testified that he did not believe the information provided was either confidential or not available to other bidders who asked.

Testimony of Jeffery S. Lyons, TCLI September 21, 2004 at pgs. 126,175 – 178 & 183.

Inappropriate Influence

Mr. Lyons has been cited as wielding an inappropriate degree of influence over City staff and Councillors. Respectfully these allegations are groundless or are so vague that they cannot be adequately defended.

Conclusion

For the last two years, Mr. Lyons has been a central subject of the Toronto Computer Leasing Inquiry; ("TCLI"). Because of rumour, speculation and innuendo, he has been accused in the media and in the tone and content of the Inquiry, of a spectrum of allegations, including bribery, corruption, inappropriate business practices, access to confidential information, document destruction and media control.

During the course of Mr. Lyons' representation of Dell Financial Services, through Dell Computers, Mr. Lyons requested a success fee, given the size of the anticipated contract. Contrary to innuendo, Mr. Lyons never solicited such funds for the purposes of any bribe or for any improper purpose. In fact, during the testimony heard at the TCLI, the witnesses to Mr. Lyons' request conceded that the request was for a further fee to Mr. Lyons and not for a bribe.

Although Mr. Lyons did request a success fee from Dell Financial Services, it was never for the purposes of shaking-down his client. The success fee was requested in accordance with standard market practice. When such compensation was declined by Dell Financial Services, he continued his representation of his client, without abatement.

Mr. Lyons first represented Dell Computer Corporation in the fall of 1998. Thereafter he was referred to Dell Computer Corporation's adjunct leasing entity,

being Dell Financial Services. Shortly thereafter, Dell Computer Corporation also referred Mr. Lyons to MFP Financial Services Inc. Mr. Lyons expressly disclosed any potential conflict of interest to MFP Financial Services Inc., before being retained by them. Mr. Lyons also sought the approval of acting for MFP Financial Services Inc., from Dell Computer Corporation, Dell Financial Service's parent body. Thereafter, Mr. Lyons only represented Dell Financial Services before the City of Toronto in the spring of 1999. Mr. Lyons never acted for MFP Financial Services Inc., before the City of Toronto in the spring of 1999. He never received any confidential information that would have the effect of putting him in a potential conflict.

Mr. Lyons never acquired confidential information or documents from the City of Toronto, however confidential can be described. Any information or documentation that Mr. Lyons may have received was either available to the public on request, or available through disclosure legislation.

Mr. Lyons fully complied with the two Summonses served upon him by the TCLI. The evidence of his assistant Mr. Nav Mangat corroborates that Mr. Lyons made the necessary inquiries of his former law firm of Morrison Brown Sosnovitch. Commission Counsel also confirmed that documents were originally not available even to Commission Counsel from Morrison Brown Sosnovitch.

Mr. Lyons' never attempted to induce Mr. Bas Balkissoon's duty as a City Councillor through the pretence of favourable media coverage. Mr. Balkissoon testified that after Mr. Lyons' difficult voice mail, both men met and were able to amicably resolve their differences. Mr. Lyons testified that the voicemail left for Mr. Balkissoon was as a sarcastic remark to Mr. Balkissoon's critical comments appearing in the media.

There is nothing to suggest that Mr. Lyons had any knowledge of or any connection to Mr. Jakobek's unique accounting practices. The forensic accounting report, prepared by Grant Thornton LLP, demonstrates no connection or financial relation between Mr. Lyons and either Mr. Dash Domi or Mr. Tom Jakobek.

It is respectfully submitted that there is nothing to suggest, nor evidence to corroborate, that any allegation of bribery, corruption or improper business practices can be leveled against Mr. Lyons.

It is respectfully submitted that any allegations of impropriety was definitively dispelled when police investigations cleared Mr. Lyons of any wrongdoing and with Mr. Lyons' testimony provided during the course of the Inquiry.

It is respectfully submitted that at all times Mr. Lyons practiced as a lobbyist with the highest levels of professionalism, integrity and honesty.

Order Requested

It is Respectfully requested that no finding of misconduct be made against Mr. Jeffery S. Lyons with respect to the Toronto Computer Leasing Inquiry.

Greespan, White
Counsel for Mr. Lyons

SmithValeriotte Law Firm LLP
Counsel for Mr. Lyons