

**IN THE MATTER OF THE
TORONTO EXTERNAL CONTRACTS INQUIRY**

**REPLY SUBMISSIONS OF DELL CANADA INC.
(March 21 , 2005)**

A. INTRODUCTION

1. Dell Canada Inc. (“**Dell**”) is submitting these Reply Submissions in response to certain submissions made by the City of Toronto, James Andrew and Lana Viinamae. Capitalized terms used in these Reply Submissions have the same meaning as in Dell’s Submissions dated February 28, 2005.

2. Dell is intentionally not “joining issue” in this Reply with all of the evidence cited or all of the Closing Submissions made by the parties with standing. Dell’s silence in respect of any particular matter should not be deemed to be acceptance of the accuracy of the evidence cited or the validity of those Submissions.

B. REPLY TO THE SUBMISSIONS OF THE CITY OF TORONTO

1. Dell’s Service and Products

3. Dell is pleased – and not surprised – that “The City does not contend that Dell behaved improperly in securing the City’s business”: City’s Submissions, paragraph 5.

4. Dell is surprised and somewhat disappointed that the City submits only that “the City received good PCs and good service from Dell at a good price”.¹ The uncontroverted evidence during TECI, including the evidence from Kathryn Bulko (Project Manager – Y2K City Wide Initiatives – Desktops from January 1999 to January 2000) and from Lana Viinamae (Director of the Year 2000 Project), was that Dell provided “excellent” service and did an “excellent” job² and that Dell provided “top level support and service”³ to the desktop team. Significantly, they did not ever describe Dell’s services or products merely as “good”.

¹ City Submissions, paragraph 6

² Bulko, November 23, 2004, p. 128, ll. 5 to 7; Viinamae, December 6, 2004, p. 180, ll. 11 to 15; December 8, 2004, p. 48, l. 20 to p. 49, l. 1; p. 103, ll. 18 to 21; p. 171, ll. 1 to 13

³ Bulko, November 23, 2004, p. 128, ll. 7 to 10

5. David Kelly's Affidavit, read into evidence at the outset of his appearance, was that Dell had provided "excellent work" and "excellent hardware products".⁴ Bruce Mortensen in his Affidavit, read into evidence at the outset of his testimony, stated that Dell had given "excellent service", "outstanding service and excellent products", and that it had done an "excellent job" and it had given an "excellent performance".⁵

6. Not one of these witnesses was challenged by Commission Counsel or by the City's counsel on cross-examination about their characterization of Dell's services and products as "excellent".

2. Role of Lyons and Andrew

7. Dell disagrees with the Submissions of the City's counsel with respect to the role of Jeffrey Lyons,⁶ the usefulness of his evidence,⁷ his relationship with Andrew,⁸ and Andrew's role.⁹

8. On the issue of Lyons, as a result of the delivery of Closing Submissions, it is now clear that there is no allegation of potential misconduct with respect to Lyons' lobbying activities on behalf of Dell.¹⁰

9. On the issue of the Andrew's dealings with Dell or Lyons, as referred to in the City's Submissions¹¹ and in Andrew's Submissions¹², Dell states that there was nothing improper about Dell and Lyons meeting with Andrew or about Dell hiring a lobbyist to help Dell

⁴ Kelly Affidavit, paragraph 60; Kelly, November 24, 2004, p. 258, ll. 18 to 22

⁵ Mortensen Affidavit, paragraph 13, 69, 89 and 97; Mortensen, November 25, 2004, p. 11, ll. 13 to 14; p. 36, ll. 3 to 4; p. 46, l. 16 to p. 49, l. 13

⁶ City Submissions, paragraphs 5, 10 to 13, 17, 21, 22(a), (b), (c) and (e), 26, 100(a) and 101

⁷ City Submissions, paragraph 20, final 3 sentences

⁸ City Submissions, paragraph 8, sentences 1 and 2, paragraph 10, paragraph 18, sentence 1, paragraphs 22(g) and 26

⁹ City Submission, paragraphs 11 to 12, 19

¹⁰ Lyons Submissions, paragraph 48

¹¹ City Submissions, paragraphs 18, 22(d)(ii), 22(g), 25 and 26

¹² Andrew Submissions, at pp. 56 to 57 and pp. 58 to 59

put forward its message to the City, whether it be to Andrew or to others. On all the evidence of the discussions with or written communications between Dell and the City, it is clear that Dell was putting forward its value proposition to the City and that the benefits of the Dell Model were ultimately understood.

10. There was no “preponderance of evidence”¹³, indeed there was no evidence, that Andrew caused the December Mini-RFQ to be held.

11. There was no evidence that Andrew gave any information to Lyons that was of use to Dell on the desktop acquisition.¹⁴ There was no evidence that Dell was paying Lyons for his ability to exploit relationships with City staff or to take advantage of any backroom favour trading or a “quid pro quo”.¹⁵ Nor were any such unwarranted allegations or conclusions put to any Dell witness for a comment or response.¹⁶ It would therefore be unfair to draw such inferences from the evidence that was actually adduced during the Inquiry.

12. The evidence that was adduced was that David Toms knew Andrew from his work for Novell, that Toms and Dell did not need Lyons’ assistance in order to speak to Andrew and that Toms never even considered that Lyons might be lobbying Andrew.¹⁷

13. In any event, the position of Commission Counsel is that there is no wrongdoing being alleged¹⁸ and the City “does not contend that Dell behaved improperly in securing the City’s business”.¹⁹

3. The Amendment Issue

14. The Amendment is not a “red herring” upon which nothing turns, as alleged by the City.²⁰

¹³ City Submissions, paragraph 25

¹⁴ Implied in City Submissions, paragraph 10

¹⁵ City Submissions, paragraphs 17, 100(a) and 101

¹⁶ Toms evidence, in passim; Kelly evidence, in passim; Mortensen evidence, in passim

¹⁷ Toms November 29, 2004, p. 255, l.120-23; p. 256, l. 14 to p. 257, l. 8; p. 257, l. 22 to p.258, l. 11; p. 253, ll. 3-25. See also; Mortensen, November 29, 2004, p. 170, ll 3-17; p.254, l. 18 to p.255, l.1; p.295, l.21 to p.296, l.20

¹⁸ Commission Counsel Opening Statement, November 22, 2004, p. 8, ll. 8 to 11

15. Most significantly, the City in its TECI Submissions does not even deal with the contents of the two draft reports to the Economic Development Committee²¹ which were produced months after the evidence of the City employees and of Councillor Shiner had been finalized in Affidavit form, and several weeks after each of them had been cross-examined on the issues directly and indirectly related to the Amendment. Dell submits that the City's counsel cannot explain or reconcile the draft Reports, the evidence given by Bulko in her Affidavit and in her initial testimony about the "vigorous" but non-existent debate at City Council, nor the evidence of the various witnesses about the non-existent newspaper article of November 25, 1998,²² and therefore seeks to have the issue of the Amendment pushed to one side.

16. The City also seeks to have the Commissioner put little weight on Mortensen's relatively contemporaneous March 1999 e-mail, without offering an adequate explanation for why Mortensen would use hyperbole to "sell" Lyons to his superiors if the information he had received from Lyons and was relying upon was not accurate or believed to be accurate.²³ If Lyons had not done the things that Mortensen had been informed had happened, why support his continued retainer? The City prefers, instead, to rely upon the spotty recollections of Lyons.²⁴ This "sea-change" in the approach of the City's counsel to Lyons' evidence during the desktop phase is remarkable.

17. Dell submits that because the draft EDC Reports and the Amendment do not fit into the chosen "theory of the case" and because the City's very late production of the draft reports was inexcusable, the City's counsel seeks to diminish the importance of the Amendment and the actual events at and after the November Council meeting.

4. General Response to the City's New Issues

¹⁹ City Submissions, paragraph 5

²⁰ City Submissions, paragraphs 41 to 43, 46 to 47 and the preceding heading

²¹ City Submissions, *in passim*

²² See Dell Submissions, paragraphs 164 to 171

²³ City Submissions, paragraphs 43 to 45

²⁴ City Submissions, paragraphs 20, last sentence and 43

18. The City has raised new issues of an unlevel playing field and a lack of proper purchasing authority in its Closing Submissions. It would not have been consistent with the Commissioner's approach to the desktop phase of TECI, where speed, efficiency and a focus on the issues as narrowed by her Counsel was being encouraged (but with the intention of not compromising the integrity or thoroughness of TECI),²⁵ to ask for complete evidence to be called on these issues that were not deemed significant by Commission Counsel. Affidavits had been obtained and an Opening Statement was provided by Commission Counsel to "help put the evidence in context, [to] speed up the presentation of evidence, and [to] result in reduced cost to the Toronto taxpayers."²⁶

19. Dell governed its presentation of evidence and Submissions at this Inquiry based on this process. These new City issues were not dealt with in any Affidavit and were only vaguely raised during the City's cross-examination of some witnesses. Accordingly, it would now be unfair to make any adverse findings based on an incomplete record on any issues not disclosed by the Commissioner or her Counsel in the Opening Statement as matters of interest to the Inquiry.

(a) The December Mini-RFQ was Conducted on a Level Playing Field

20. Although the City's counsel has argued in its Closing Submissions that the December Mini-RFQ uniquely suited Dell and that it did not level the playing field but rather changed the venue to Dell's home field where other manufacturers and the VARs were not allowed to play,²⁷ these arguments are simply not supported by the facts introduced in evidence or by any reasonable inference to be drawn from the facts adduced in evidence. What the evidence showed was:

(a) In the August RFP, when Dell bid direct and Compaq and IBM provided their prices through VARs, Dell's bid was not the lowest price.²⁸

²⁵ Commissioner's Opening Statement at TECI, p. 2

²⁶ Commissioner's Opening Statement at TECI, p. 3; Commission Council's Opening Statement at the Desktop phase, November 22, 2004, pp. 6-12, and Exhibit 14 (Affidavits)

²⁷ City Submissions, paragraphs 31 to 34, 37 to 40, and preceding heading

²⁸ TEC019478 at 482, Exhibit 15, Volume 1, Tab 9; Bulko, November 23, 2004, p. 48, l. 21 to p. 49, l. 15

- (b) A complete absence of any contemporaneous documentary evidence of the bid actually received from GE, or from IBM directly, in December 1998²⁹ and an attempt to let IBM bid directly after the close of the September Mini-RFQ.³⁰ This raises questions about exactly how IBM and GE submitted responses to the December Mini-RFQ. Only the response from SHL, which included the prices offered by IBM, was found in Bulko's file in early January 2005.³¹ (Dell's response had been produced by the City more than 2 years earlier.) GE's response and Questech's response have never been produced.
- (c) Assuming IBM bid through the three VARs in response to the December Mini-RFQ (in the absence of any contemporaneous documentary evidence showing exactly how IBM, Questech or GE actually bid), IBM did not put in its best price at that time. In late December 1998, after the release of the confidential information about Dell's price had allowed Dell's price to be "shopped around",³² IBM provided a new price through a VAR and IBM did bid a lower price, showing clearly that bidding through a VAR was not the cause of IBM's higher price that was apparently submitted on or about December 8, 1998.³³
- (d) Each of the manufacturers and each of the VARs received the December 7 and December 8 e-mails about the December Mini-RFQ.³⁴ It must be stressed that each of them knew or should have known at that time that Dell was going to bid direct from the December 8 e-mail,³⁵ that the VARs knew by the close of the bid on December 8 that they had not received any pricing from Dell, and they all

²⁹ Dell Submissions, paragraphs 23, 25, 178(f) and (g). Although Bulko in her affidavit sworn on September 15, 2004 attested to the fact that IBM and Compaq had sent their quotes to the VARs (paragraph 32), she also said at that time that she had looked in every location where the e-mails might exist and could not find them. The SHL e-mail only was subsequently produced in January 2005 from the files on her credenza.

³⁰ Dell Submissions, paragraphs 269 to 271; TEC057478, Exhibit 15, Volume 6, Tab 23

³¹ TEC057478, Exhibit 15, Volume 6, Tab 23

³² Bulko Affidavit, paragraph 38; Bulko, November 22, 204, p. 200, l. 4 to p. 201, l. 25

³³ TEC054070, Exhibit 15, Volume 1, Tab 26

³⁴ TEC052888 and COT040953, Exhibit 15, Volume 1, Tabs 20 and 22

³⁵ COT040953, Exhibit 15, Volume 1, Tab 22

knew by no later than early January 1999 that Dell had won the Mini-RFQ.³⁶ Yet there is no evidence that any of them complained at the time that they were “not allowed on the field” or that there was anything disadvantageous to them about Dell providing its pricing directly to the City.³⁷

- (e) The complaints of one of the VARs, GE Capital, were set out in writing in February 1999.³⁸ Not one of those complaints alleged that Dell had obtained any advantage by providing its prices directly to the City or alleged any disadvantage to GE or its favoured manufacturer, IBM, because the manufacturers had not been given an opportunity to submit prices directly to the City.
- (f) What IBM wanted to do is go directly to its contracts in the various departments and have those individuals specify that they only wanted IBM technology, and that kind of “direct dealing” was not permitted.³⁹
- (g) Franey explained that as of 1998, Digital Equipment Corporation (“Digital”) had been acquired by Compaq Corporation (“Compaq”) and that Digital had a direct sales model and did not go through VARs. He recalled that IBM had actually gone direct as well and had excluded VARs in certain accounts.⁴⁰ But in fact, when IBM approached the City the following year (in August 1999), IBM indicated that it intended to bid through IDI, and IBM promptly corrected any misapprehension that it had been requested by the City to sell through an agent of record rather than selling directly to the City: that was entirely IBM’s choice.⁴¹ GE did provide a quote to the City on IBM computers in response to the

³⁶ Bulko, November 23, 2004, p. 90, l. 18 to p. 94, l. 35; p. 102, l. 22 to p. 103, l. 6

³⁷ Evidence of Bulko, Franey and Viinamae, *in passim*

³⁸ TEC054071, Exhibit 15, Volume 1, Tab 41

³⁹ Franey Affidavit, paragraph 10; Franey, November 30, 2004, p. 69, ll. 1 to 13

⁴⁰ Franey, November 30, 2004, p. 59, l. 17 to p. 60, l. 8; p. 196, l. 8 to p. 197, l. 10

⁴¹ COT015554, Exhibit 15, Volume 3, Tab 20

September Mini-RFQ⁴², and IBM tried but did not successfully bid directly at that time.⁴³

21. In any event, the uncontroverted evidence of Bulko, Franey and Viinamae was that the City wanted one consistent or standard price from the manufacturers.⁴⁴ Bulko testified that the City did not provide any “line item” for a mark-up by the VARs.⁴⁵ So if the VARs had complied with the City’s desire to receive consistent pricing on the same model of desktop in the December Mini-RFQ, the pricing provided on behalf of Compaq or IBM would have been the best pricing made available by those manufacturers at that time, the “lowest price possible”.⁴⁶

22. Dell did not obtain any advantage during the December Mini-RFQ process. Since the other parties directly involved in the December Mini-RFQ had no such complaint at the time, it is submitted that it is not a valid criticism for the City’s counsel to make more than 6 years after the event, particularly when: “The City does not contend that Dell behaved improperly in securing the City’s business”.⁴⁷

(b) Adequate Transaction Authority

23. Contrary to the City’s arguments in Part IV and elsewhere in its Submissions,⁴⁸ the City had all the necessary authority to purchase directly from Dell. The special processes put in place by City Council in November 1998 did not impose any conditions or restrictions on the Y2K Office about how it would acquire any of the hardware or any of the software which the City required in order to become Y2K compliant. City Council did not attempt to micro-manage the hardware and software acquisition process at that time. City Council did not require the City Staff to report back or to obtain approval with respect to the manufacturers or brands of hardware

⁴² TEC019489 at 490, Exhibit 15, Volume 3, Tab 21

⁴³ Dell’s Submissions, paragraphs 269 to 271

⁴⁴ Bulko, November 23, 2004, p. 82, ll. 4 to 23; p. 83, l. 10 to p. 84, l. 20; Franey, November 30, 2004, p. 66, l. 20 to p. 67, l. 10; p. 71, ll. 4 to 6; December 1, 2004, p. 44, l. 24 to p. 45, l. 20; Viinamae, December 6, 2004, p. 99, ll. 6 to 18

⁴⁵ Bulko, November 23, 2004, p. 84, l. 14 to p. 85, l. 2; p. 83, ll. 10 to 18

⁴⁶ Franey, December 1, 2004, p. 45, ll. 13 to 15

⁴⁷ City Submissions, paragraph 5

⁴⁸ City Submissions, Parts IV and V, and particularly paragraphs 52, 53, 57, 68, 95(a), 96, 100(b) and 102

or software being acquired. The only reports required were the report to the Economic Development Committee resulting from the Amendment, and the regular reporting to the Strategic Planning and Priorities Committee required by the contemporaneous resolution of the City when adopting the Year 2000 Business Continuity Plan.⁴⁹ Finally, for the reasons stated in Dell's Submissions, the City had no obligation to use any of the VARs, the VARs had no right to provide any hardware to the City as a result of the August RFP and nothing restricted the Y2K desktop team from ordering the hardware directly from any of the Enterprise Tier manufacturers.⁵⁰

24. The City's counsel argues that there was no "transaction authority" because (a) there was no delegated approval form for the desktop purchases and (b) that without such a form the CAO never authorized the purchases.⁵¹ However:

(a) it is clear from the documents produced that at the Senior Management Committee meeting of March 26, 1999, it was decided that Commissioner Rodrigues would have a template developed for appropriate sign-off approvals,⁵² and as late as April 13, 1999 there was still no approved "Year 2000 Delegated Approval" form that was being utilized for any Y2K contracts.⁵³ Yet millions of dollars had already been spent and were being spent to implement the Y2K Business Continuity Plan and reports were being made to the SPPC and Council each and every month about the level of expenditure and the progress being made to achieve the deadlines.

(b) Michael Garrett was not asked such questions during TCLI⁵⁴ and he was not called as a witness during the desktop phase of TECI.

⁴⁹ COT030619, Exhibit 15, Volume 1, Tab 11

⁵⁰ Dell Submissions, paragraphs 37 to 44

⁵¹ City Submissions, paragraphs 52 to 58

⁵² COT038463

⁵³ E-mail dated April 13, 1999, COT030288

⁵⁴ Garrett evidence, *in passim*

25. If the City's Submissions about the consequences of the lack of this form and the lack of proper Council authority are accurate, then the City went to the market in the period from and after November 27, 1998 with purchase orders for approximately \$165 million worth of hardware, software and services (less any portion of that amount paid to the 3 VARs pursuant to their purchase orders) based on Council's express authorization of a special purchasing process to meet the requirements of the urgent Y2K issues but without the legal obligation to pay for these goods or services. It is submitted that this is such a commercially unreasonable interpretation that it cannot have been the intention of City Council, or of those who provided advice on the drafting of the specific resolutions passed at the November Council meeting, to do any such thing.

26. The City concedes that it would be speculative to conclude that the Purchasing Department made a mistake in issuing the purchase orders.⁵⁵ Dell submits that if there was any issue about this, simple fairness required the production of the Purchasing Department's copies of the relevant documents and a witness from the Purchasing Department to testify.

27. The City Auditor had a role in reviewing and commenting on the processes being used by the Y2K Office from the outset.⁵⁶ Auditing Guidelines were established in October 1998 as part of the Y2K Project Control Procedures.⁵⁷ City Council, the CAO and the Y2K Director had requested that the Auditor and CFO ensure due diligence, adequate spending controls and appropriate checks and balances be in place.⁵⁸ The City Auditor's department remained engaged throughout and reviews by Internal Audit were "ongoing, spot checks".⁵⁹ The City Auditor subsequently did several audit reports on various aspects of the City's Budget and on the acquisition and leasing of computers and other equipment,⁶⁰ including a report in February 1999 on an implementation problem following a review of the Y2K Program and

⁵⁵ City's Submissions, paragraph 58

⁵⁶ Schaubel Evidence, December 1, 2004, p. 271, l. 13 to p. 275, l. 2

⁵⁷ COT039104 and COT039106, Griffiths Volume 1, Tabs 35 and 36; COT015967, Griffiths Volume 2, Tab 2; Griffiths Affidavit filed in TCLI, paragraphs 21 to 22

⁵⁸ COT039114, Griffiths, Volume 1, Tab 40; COT001294 at 1296, Griffiths Volume 2, Tab 4

⁵⁹ COT030754 at 759 (May 5, 1999), Griffiths Volume 1, Tab 24; COT001294 at 1300, Griffiths Volume 2, Tab 4

⁶⁰ See for example, COT029620, COT001294, COT006367, COT006355, Griffiths Volume 2, Tabs 3, 4, 6, 7; COT001294, Griffiths Volume 1, Tab 14; Griffiths Affidavit, paragraph 23

Project Management. Not once did the City Auditor ever suggest in writing that proper purchasing authority for the desktop acquisition was not in place or that proper processes were not being followed in connection with the desktop acquisition. Nor did the City Auditor's representatives, Jeffrey Griffiths and Jerry Schaubel, give any such evidence during TCLI or TECI.⁶¹ Indeed, they weren't even asked any questions about the delegated authority form.

28. Accordingly, the Submissions that Dell should not have been allowed to bid directly, that the City had no authority to purchase directly from Dell and that there was no transaction authority should each be rejected by the Commissioner.

C. REPLY TO ANDREW'S SUBMISSIONS

1. August RFP was Non-Exclusive

29. With respect to the terms of the August RFP referred to in paragraphs 138 and 139 of Andrew's Submissions, while Dell agrees that section 9.6 of the August RFP is accurately set out, Dell submits that this section should be read in the context of the complete August RFP, including without limitation, sections 1.5 (Successful Proponent), 2.5 (Alternative Proposals), 2.7 (Negotiations), 3 (Selection and Evaluation Procedures), 4.2 (Purchase Orders), 8 (Requirements for Supply of Costed Services), 9.5 (Cancellation of RFP), 9.13 (Cancellation of Contract), and 9.17 (Contract Documents).

2. Dell as Enterprise Tier Manufacturer

30. Contrary to paragraph 149 of Andrew's Submissions, and as is made clear by the Gartner Report dated June 10, 1998,⁶² Dell was designated as an "Enterprise Tier" manufacturer as of June 10, 1998, when Gartner's classification system changed. No Dell witness was asked to provide the date when Dell became a Tier 1 supplier, the questions instead being properly directed to "Enterprise Tier" manufacturers,⁶³ which was the express requirement in the August RFP.

⁶¹ Affidavit and Evidence of Jerry Schaubel, December 1, 2004, *in passim*; Affidavit and Evidence of Jeffrey Griffiths, September 9 and 10, 2003, *in passim*

⁶² TEC057907, Volume 5, Tab 29

⁶³ See for example Kelly, November 24, 2004, p. 256, ll. 7 to 16; Mortensen, November 25, 2004, p. 81, ll. 20 to 23

3. Mortensen's Knowledge

31. Contrary to paragraph 191 of Andrew's Submissions, Mortensen's evidence was that "around early November 1998", he felt that any possibility of Dell securing the Y2K business from the City had been lost.⁶⁴

4. Viinamae as Decision Maker

32. Paragraph 194 of Andrew's Submissions does not fully set out the evidence. Mortensen testified that he would have seen Viinamae as being in a senior role, like the CIO, responsible for a broad range of activities including overseeing the selection of hardware vendors as a very small component of the overall job. He expressly agreed that it was "probably" "more likely than not" that he would have identified Ms. Viinamae as a decision maker, somewhere within the spectrum of decision makers in early November 1998, but he simply cannot recall it.⁶⁵

D. REPLY TO VIINAMAE'S SUBMISSIONS

1. Viinamae as Decision Maker

33. Dell submits that the final sentence of paragraph 35 of Viinamae's Submissions does not fully set out the evidence. As noted in response to Andrew's Submissions, Mortensen expressly agreed that it was "probably" "more likely than not" that he would have identified Ms. Viinamae as a decision maker, somewhere within the spectrum of decision makers in early November 1998, but he simply cannot recall it.⁶⁶

2. September Mini-RFQ

34. The evidence summarized in paragraph 96 of Viinamae's Submissions is inaccurate. Mr. Kelly was asked whether he found it surprising that the City, while not putting out a mini-RFQ in June, had done so in September for only the remaining 1,000 units that were

⁶⁴ Mortensen Affidavit, paragraphs 4 and 40

⁶⁵ Mortensen, November 25, 2004, p. 288, ll. 3 to 12; p. 288, l. 24 to p. 289, l. 13; p. 290, l. 14 to p. 291, l. 4

⁶⁶ Mortensen, November 25, 2004, p. 288, ll. 3 to 12; p. 288, l. 24 to p. 289, l. 13; p. 290, l. 14 to p. 291, l. 4

left to deploy. He testified that it was the mini-RFQ in September that “would have appeared odd” and that he “thought kind of strange”.⁶⁷

ALL OF WHICH IS RESPECTFULLY
SUBMITTED

OSLER, HOSKIN & HARCOURT LLP
Solicitors for Dell Canada Inc.

⁶⁷ Kelly, November 24, 2004, p. 125, l. 6 to p. 126, l. 5