

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

March 21st, 2005.

A. TECI – Desktop Phase

1. Contained within the City of Toronto’s TECI – ‘Desktop Phase’ submissions are a variety of accusations leveled against Mr. Jeffery S. Lyons. Q.C.; (“Mr. Lyons”), with respect to his representation of Dell Computers; (“Dell”). Such allegations are denied their entirety, based on a lack of evidentiary foundation.

(i) Improper Relationship

2. The City of Toronto; (“the City”), submitted that three (3) principal factors led Dell to become the sole supplier of desktop PCs to the City’s Y2K project, the first being that, “Jim Andrew’s relationship with Jeff Lyons was improper.”

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3. This allegation is unfounded and is another calculated attempt to deflect attention away from the incompetent management of the City of Toronto.
4. The evidentiary foundation before the Inquiry supports the fact that;
 - a) Mr. Lyons was a successful lobbyist, with an understanding of both the City’s processes and personnel;
 - b) Mr. Lyons maintained a professional relationship with Mr. Jim Andrew; (“Mr. Andrew”), then the City’s CIO, and;
 - c) During the course of this relationship, Mr. Lyons and Mr. Andrew

would exchange informal information, news and gossip.

Testimony of Mr. Jeffery Lyons, TECI, January 17th, 2005, at pgs.59 & 245.

Testimony of Mr. Jim Andrew, TECI, January 26th, 2005, pgs. 214 – 219.

5. Mr. Lyons provided his perspectives as a senior lobbyist to Mr. Andrew, and Mr. Andrew provided his perspectives as the City's CIO, to Mr. Lyons. The City has manipulated the evidence to an uncorroborated conclusion of an improper relationship.
6. Furthermore, the City has suggested that Mr. Andrew's ability to make impartial decisions was compromised, founded upon its unsubstantiated conclusion of his improper relationship with Mr. Lyons.

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7. Respectfully, there is nothing to support the City's submissions. Mr. Lyons and Mr. Andrew shared information, news and gossip, and that is the distance such evidence travels. To deduce that the relationship was both improper and then compromising, is beyond the orbit of evidence.
8. Respectfully, it would have been improper if Mr. Lyons did not have a relationship with Mr. Andrew. Mr. Lyons testified, without dispute, that during the fall of 1998 he represented a large number of information and technology; ("IT"), clients, before the City. Respectfully, it was incumbent upon Mr. Lyons to build sound professional relationships with City IT staff, including Mr. Andrew.

This gathering of information was not improper, unethical or illegal, rather, it was necessary for any credible lobbyist.

Testimony of Jeffery S. Lyons, TECI, January 17th, 2005, pg. 58.

9. To bolster its claim, the City cites Mr. Andrew's 'referral' of Mr. Lyons to Dell, via Mr. David Toms; ("Mr. Toms"). Mr. Andrew and Mr. Toms shared a longstanding friendship. Mr. Toms solicited the advice of Mr. Andrew regarding Dell's unfamiliarity with the public sector.

Affidavit of David Toms, TECI, sworn November 11th, 2004, pg. 7, paras. 22 – 24.

Testimony of Jim Andrew, TECI, January 25th, 2005, pg. 143, line 17 – p. 144, line 13.

10. Mr. Toms testified that he was not told to hire Mr. Lyons. Mr. Toms and Dell conducted a subsequent and thorough review of Mr. Lyons, lasting no less than two (2) months. Dell's conclusion, derived from it's own due diligence, was the same as Mr. Andrew's, being, that Mr. Lyons was a high profile, widely respected and capable lobbyist.

Testimony of Mr. David Toms, TECI, November 29th, 2004, at pgs. 81 – 88 & 256.

11. The City submitted that Mr. Andrew's 'referral' of Mr. Lyons would serve to further Mr. Andrew's contact with Mr. Lyons. Respectfully, this position is untenable. From the testimony of Mssrs. Andrew and Lyons, both men were already in regular contact with each other. Given Mr. Lyons' extensive IT lobby practice, one (1) further IT client would have had little, if any, impact on their contact.

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12. This submission is borne out in the evidence. Mr. Lyons testified that he recalled one (1) specific phone call on this matter with Mr. Andrew, and one (1) subsequent meeting. Mr. Andrew only recalls one (1) specific phone call. The City submitted that, “[Lyons’] evidence in this phase [TECI – Desktop] of the Inquiry should generally be accepted as accurate.”

Affidavit of Mr. Jeffery S. Lyons, TECI, sworn November 11th, 2004, at paras. 19 – 25.

Testimony of Mr. Jim Andrew, TECI, January 24th, 2005, at pg. 49, para. 115.

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(ii) Lobbyist not Required

13. Given Mr. Andrew’s alleged improper relationship with Mr. Lyons the City also posits that:

- a) Dell did not need a lobbyist to make its “pitch”, and;
- b) That Mr. Lyons’ retainer of \$7,500.00 was paid, merely, for the benefit of his ‘backroom *quid pro quo* relationships’.

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14. Respectfully, the City’s submissions are an inaccurate portrayal of the evidence before the Inquiry. The evidence shows that,

- a) Dell employees did not have sufficient experience or expertise with respect to the City’s computer procurement practices, and;
- b) By November of 1998 Dell was on the cusp of becoming an excluded supplier of PCs to the City.

Testimony of David Kelly, TECI, November 23rd, 2004, at pgs. 246-248.
Testimony of David Toms, TECI, November 29th, 2004 at pgs. 17-18.
Testimony of Bruce Mortensen, TECI, November 25th, 2004, at pgs. 24-25.

15. It is submitted by the City that Dell did not need a lobbyist. When Dell finally retained the services of Mr. Lyons, in November of 1998, Dell had identified a variety of City decision-makers, had arranged their own meetings, and conducted their own “pitches”. However, by the commencement of Mr. Lyons’ retainer, Dell was on the precipice of being an excluded supplier of desktop PCs to the City. Dell therefore required the assistance of Mr. Lyons.

(iii) “*Quid Pro Quo*”

16. Respectfully, the City’s submissions are patently false and defamatory by implying that Dell only retained Mr. Lyons to provide, “...backroom *quid pro quo* relationships”, justifying his monthly retainer of \$7,500.00.

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17. By 1998, Mr. Lyons was a demonstrated and proven lobbyist before both the City and the Ontario government. No evidence was ever called before TCLI or TECI that demonstrated Mr. Lyons’ retainer was beyond an acceptable market rate. It is submitted that \$7,500.00 was a normal monthly retainer for a lobbyist of Mr. Lyons’ stature.
18. Secondly, the City would infer that Mr. Lyons traded *quid pro quos* with Mr.

Andrew, while advocating for Dell. The City's veiled attempt to accuse Mr. Lyons of constructive bribery is not borne out by the evidence. Mr. Lyons had a professional relationship with Mr. Andrew that involved the exchange of news, information and gossip. There is no evidence to even suggest this submission. Mr. Lyons only had a professional relationship with Mr. Andrew.

19. Thirdly, once again, the City's fixation with Mr. Lyons' remuneration enters the fore.

The City, since 2003, has taken the position that Mr. Lyons was paid beyond the services he provided. The City now suggests that Mr. Lyons' retainer was for an ill-intended purpose.

20. As stated, no evidence was ever tendered by the City that Mr. Lyons' retainers were beyond those afforded to experienced lobbyists. It is respectfully submitted that no evidence was forwarded by the City because it knew that Mr. Lyons was paid within normal market parameters.

21. The City has repetitiously taken the position that all lobby fees are directly linked to effort, akin to a billable hour. The City did not tender any evidence to support this position.

22. There is nothing to suggest that Mr. Lyons did anything but lobby Mr. Andrew on the merits of Dell's product. Mr. Lyons testified and deposed that he both spoke and met with Mr. Andrew and advocated the merits of Dell. During such conversations Mr.

Andrew was duly impressed with the Dell business model. Mr. Andrew did not and did not have to give any favour to Mr. Lyons, as the City suggests. And yet the City contradictorily suggests that Mr. Andrew had been persuaded that letting Dell 'bid direct' made sense, providing it with a better and less expensive product.

Affidavit of Jeffery S. Lyons, Q.C. TECI, sworn November 11th, 2004, at paras. 19 – 24.

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt. 2, pg. 12, para. 26.

(iv) Alternative Perspective

23. Respectfully, the August 26th, 1998 RFP and subsequent November 1998 Report to the Corporate Services Committee were inherently flawed, in that they inadequately failed to assess the price and quality proposition emanating from Dell. When notified of this negligent oversight, City personnel realized their error, and by the City's own admission, acquired a better product at a better price.

24. If Mr. Lyons can be accused of anything with respect to the Desktop phase of the Inquiry it can be that, on behalf his client, Mr. Lyons signaled a significant oversight to the City, that in part, led its IT department to acquire a better and less expensive product, at a significant cost savings to the taxpayer.

B. TECI – Ball Hsu Phase

25. Contained within the City's TECI – 'Ball Hsu Phase' submissions are a variety of

accusations leveled against Mr. Lyons with respect to the political contributions made on behalf of Mr. Ball Hsu; (“Mr. Hsu”), and Mr. Lyons’ role as a volunteer political fundraiser. Such allegations are refuted in their entirety.

(i) *Municipal Election Act* s. 74(1)

26. As stated in Mr. Lyons’ Final TECI Submissions, he was extensively investigated by the Ontario Provincial Police; (“OPP”), throughout 2001, with regards to the political contributions involving Mr. Hsu. To restate, 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 Election Act*.” Therefore, it is again respectfully submitted that, according to Mr. Lyons’ rights as prescribed by the *Charter of Rights and Freedoms*, he is presumed innocent and deemed not to have violated any provision of the said Act, despite the insinuations as forwarded in the City’s submissions.

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

27. There is no evidence to suggest, as forwarded by the City, that Mr. Lyons was aware of section 74(1) of the Act. Mr. Lyons was candid in his affidavit and during his testimony about his belief in the propriety of actions, based upon the widespread practice involving law firms. That is why, as Mr. Lyons’ testified, he first directed Mr. Hsu’s funds to the trust account of Morrison Brown Sosnovitch; (“MBS”).

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt. 3, pg. 4.
Testimony of Jeffery S. Lyons, Q.C., January 17th, 2005, at pg.122.

28. Contrary to the City’s allegations, Mr. Lyons’ had Ms. Susan Cross; (“Ms. Cross”), assume responsibility for holding Mr. Hsu’s funds because he believed her to be an organized and responsible person, who willingly accepted this benign task.

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt. 3, pg. 4.
Testimony of Jeffery S. Lyons, Q.C., TECI January 17th, 2005, at pg. 126.

29. Respectfully, what is absent from the City’s submissions is any allegation of *male fides* on the part of Mr. Lyons. Mr. Lyons’ evidence is uncontradicted and stands for that he simply helped Mr. Hsu to raise funds for the political process and for no improper purpose.

Affidavit of Jeffery S. Lyons, Q.C. TECI, January 10th, 2005, at para. 32.

30. It is respectfully submitted that the spirit of s.74(1) of the Act, is to ensure disclosure of donors’ identities and prevent competing political contributions. Mr. Lyons was not trying to protect Mr. Hsu’s identity, as evidenced by correspondence sent to Councillor Kyle Rae, disclosing Mr. Hsu. Mr. Lyons was not trying to facilitate competing political contributions, as they never occurred.

Begdoc 26460 – Volume 4 – Tab 26
TECI, January 17th, 2005, at pgs. 153-54.

(ii) Mr. Lyons – The Fundraiser

31. It has been submitted by the City, that when a person raises funds for a political

candidate, any 'goodwill' is generated for the fundraiser himself, at the expense of the donor. It is the City's position that since Mr. Lyons assembled or 'bundled' political donations, he usurped both the intended campaign contribution limits as imposed by the Act, and usurped any goodwill the donor may have generated, in exchange for himself. The City's statements demonstrate a naivete with the Canadian political process.

Final TECI Submissions – City of Toronto, February 28th, 2005,
chpt. 3, pg. 8.

32. It must be stated that no question regarding such were asked of Mr. Lyons during his appearance before TECI. There can be no allegation of misconduct against Mr. Lyons with respect to such activities.
33. Mr. Lyons was a volunteer fundraiser. Through countless hours and major effort, Mr. Lyons raised funds on behalf of political candidates. Political contributions, it is submitted, are not easily raised. They require the determined effort of volunteer fundraisers, tasked with the job of seeking donors. The majority of campaigns in Canada, it is submitted, utilize volunteer fundraisers, out of necessity.
34. Mr. Lyons, after having assembled political contributions on behalf of a candidate, would package and deliver such to the political candidate. With the exception of an oversight involving Mr. Hsu, the names of each donor were included in a covering letter from Mr. Lyons, and the funds were payable directly from the donor's chequing account. Mr. Lyons did not provide anonymous bags

of currency to political candidates. Mr. Lyons provided cheques from the very donors he solicited on behalf of the political candidate. Eventually the candidate's publicly disclosed donor list would include the donor's name and corresponding contribution amount.

35. To infer that this process was immoral, unethical or illegal, as submitted by the City, is a departure from reasonable discourse. Mr. Lyons raised funds. Mr. Lyons delivered such to his chosen political candidate with the contributors disclosed. Had Mr. Lyons been a volunteer canvasser he would have canvassed voters door-to-door, and returned with a walk sheet demonstrating his results. Had Mr. Lyons been a phone canvasser he would have phoned voters, and submitted his call sheet demonstrating his results. Mr. Lyons was a fundraiser and submitted his hard-won donations to the candidate. Although Mr. Lyons packaged his results, each donor was clearly disclosed to the candidate and subject to eventual public display.
36. To then infer that Mr. Lyons' actions affected the recipients' judgment, would require that no campaign volunteer ever lobby a candidate. No campaign chair, no campaign manager, no poll canvass co-ordinator, no phone canvass co-ordinator, no lawn sign coordinator or coalition/outreach chair, may lobby their candidate, as their influence impairs the candidate's judgment and reason. Respectfully, this proposition is untenable.

C. **Mr. Lyons' Credibility**

37. The City has submitted that Mr. Lyons' credibility pertaining to his testimony at TECI should be doubted, due to Mr. Lyons' certain actions involving members of the media. Respectfully, the City is making an unfair comparison and an inappropriate generalization of Mr. Lyons.

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt. 3, pgs. 2-4.

38. First, Mr. Lyons provided candid affidavits with respect to his involvement in the both the Desktop and Ball Hsu phases of the Inquiry, which were undisturbed during his *viva voce* evidence. By the City's own admission Mr. Lyons' evidence with respect to the Desktop phase of the Inquiry should be accepted as accurate.

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt.2, pg.9.

39. Secondly, Mr. Lyons actions with respect to members of the media must be viewed in context. Mr. Lyons was accused of illegal activity by his then competitor, being lobbyist Mr. Bruce Davis. As a result of the findings of the OPP investigation, Mr. Lyons' actions should be viewed as being benign.

40. Thirdly, Mr. Lyons' comments to the media were not made to a public official, nor were they made to any investigative body, nor where they made under oath. Mr. Lyons, instead, made comments that were a natural reaction to an accusation that he had acted illegally.

41. To link Mr. Lyons' misstatements to the media as evidence that he participated in obtaining an improper payment from Dell Financial Services is unsubstantiated. Unfortunately, in our current age, providing misstatements to members of the media, especially by public office holders, is commonplace. To state, therefore, that such persons also participate in illegal activity is without merit.
42. The City cited that Mr. Lyons misrepresented matters to his own client, being Dell, via an internal Dell e-mail dated March 19th, 1999. Respectfully, this submission is untrue and inaccurate. Mr. Lyons candidly testified that he was contacted by Mr. Bruce Mortensen; ("Mr. Mortensen"), a senior sales representative with Dell, during the winter of 1999. Thereafter, on his own initiative, Mr. Mortensen provided a stirring and inaccurate internal e-mail account of Mr. Lyons' representation on behalf of Dell before the City during the late fall of 1998. It is undisputed that the e-mail was laden with factual inaccuracies.

Testimony of Jeffery S. Lyons, Q.C. TECI, January 17th, 2005, at pgs, 98 – 102 & 256 – 260.

43. The City has cited this e-mail as evidence of Mr. Lyons providing misstatements to his client. The City in its own submissions, however, admits that Mr. Mortensen could not recall if Mr. Lyons provided certain important wordings, such as "staff and politicians", and that by Mr. Mortensen's own admission, he employed hyperbole. Furthermore, Mr. Lyons did not admit that he provided false information to Mr. Mortensen, rather, that the information in the e-mail was

inaccurate. The City admits that little weight can be afforded to the March 19th, 1999, e-mail. Respectfully, no weight can be given. By the same evidence, Dell's support of the accuracy of Mr. Mortensen's e-mail is also disputed.

Final TECI Submissions – City of Toronto, February 28th, 2005, chpt. 2, pg. 9

Testimony of Bruce Mortensen, TECI, November 25th, 2004, pg. 127.

Testimony of Jeffery S. Lyons, Q.C. TECI, January 17th, 2005, at pgs, 98 – 102 & 256 – 260.

Final TECI Submissions – Dell, February 28th, 2005, pg.39.

44. It has also been forwarded by Dell that Mr. Lyons' credibility is to be discounted since Mr. Lyons willingly produced three (3) documents to the Inquiry regarding Dell during the fall of 2004. Respectfully, Mr. Lyons ably followed the two (2) separate summonses served upon him. Secondly, Mr. Lyons was never questioned by any party regarding the timing of such documents, including the solicitor for Dell.

Final TECI Submissions – Dell, February 28th, 2005, pg. 24.

D. Order Requested

45. 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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