

Len Brittain

January 19, 2005

Toronto Computer Leasing Inquiry
East York Civic Centre
850 Coxwell Avenue,
Toronto, Ontario.
M4C 5R1

Attention: Ms. Daina Groskaufmanis

Dear Ms. Grosfaukmanis

Re: Reply to Closing Submissions, Toronto Computer Leasing Inquiry

Please accept this letter as my reply to closing submissions to the TCLI.

1. Submission of City of Toronto – General

I agree substantially with the Submission of the City of Toronto. As such, I will limit my reply to exceptional items in certain other submissions and one specific item within the City's submission.

2. Submission of Wanda Liczyk

Finance Division: I assert that the submission's short-form definition of the term "Finance Division" to connote "Treasury and Financial Services Division" in Paragraph 23 is a deliberate attempt to create confusion, since the term "Finance" throughout the Inquiry's proceedings generally refers to the Finance Department, of which Treasury and Financial Services was one of seven divisions. This assertion is supported by Paragraph 38, which indicates that the leasing report was one of the projects that the "Finance Division" was working on, including proposed development charges. Treasury and Financial Services Division did not have responsibility for development charges, which was a responsibility of the Development, Policy and Research Division within the Finance Department (see Organization and Responsibilities of Finance Department, 1999 COT072793 at 72794).

Paragraph 59 includes a statement that "... Len Brittain and Don Altman appear to become afflicted with contagious amnesia with respect to discussions about the implementation of the Flexibility Clause...". This is an offensive comment clearly designed to leave the impression that Mr. Altman and I jointly withheld recollection of events to the detriment of the Inquiry's proceedings. Be assured that I have been open and honest with all of my dealings with the Inquiry and have recalled events to the absolute best of my ability and so, I submit, has Mr. Altman.

Paragraph 64. I would like to address the statements that “He was the point person for the leasing transaction for the Finance Division. This delegation is absolutely consistent with Ms. Liczyk’s past practice in respect of subway car leasing and fleet leasing”. Computer leasing was first leasing project undertaken by Finance Department, as indicated by Ms. Liczyk in her testimony on November 18, 2003, page 46, line 19 – page 47, line 3. The fleet leasing RFP was not issued until June of 2000 (COT041447). As such, fleet leasing was not a “past practice”. Further, as I testified (July 10, 2003 page 230, lines 7-13 and July 28, 2003, page 51, line 24 to page 52 line 21), the subway car financing project was a completely different type of transaction than computer leasing. Similarly, paragraph 29 refers “to the leasing project for the City’s subway car requirements”.

Paragraph 66. This paragraph contains the statement “Despite Mr. Brittain’s lack of candour in relation to his involvement in the decision-making process and analysis, assigning fault or blame is inappropriate.” Let me assure the Commission that I have exercised complete candour during my testimony and have worked diligently to assist the Commission in all manners possible.

3. Submission of Lana Viinamae

Leasing Experience: Paragraph 238 states that “In contrast, Mr. Andrew, Mr. Power, and certain members of the Finance department had substantial leasing experience...”. This does not state who the “certain members” were, but the evidence is that staff of the Treasury and Financial Services Division had no prior leasing experience (for example, my testimony of July 29, 2003, page 145 lines 11-17).

Debt Charges and Lease Payments: In various paragraphs, there is reference to the calculation of debt charges and the need for Finance to include the lease payments in those calculations (specifically, paragraphs 245, 253, and 333). This is not correct since debt charges and lease payments are calculated on a completely different basis and are budgeted separately. The Chief Financial Officer and Treasurer’s March 15, 2001 report to the Budget Advisory Committee, titled “2001 Operating Budget – Non Program Expenditures and Revenues Supplementary Report” (COT013046) clearly makes the distinction between debt charges and computer lease payments, specifically at 013047 and similarly in Appendix A of that same report, COT031894 at 31930.

The only relationship between debt charges and lease payments related to the adjustments required in respect of debt charges associated with the initial \$43 million originally budgeted in the capital budget for computer related acquisitions and the need to create the new leasing budget. Recommendation 3 of the July 9, 1999 report to the Policy and Finance Committee directed that debt charges would be reduced by \$6 million in 1999 and that lease payments of \$6 million would be added to the IT budget, to give effect to the replacement of capital expenditures (\$43 million) with the lease financing of the computers and software. I clarified this treatment in my testimony (July 29, 2003, pages 69 and 74).

\$24 Million Operating Budget Pressure: The statement is made in Paragraph 304 “Beginning in December 1999, she made others (including Ms. Liczyk, Mr. Andrew, and Mr. Brittain) aware that the acquisitions created an operating budget pressure of approximately \$24 million.”. This would not be possible, since an operating budget pressure represents the year over year increase in a particular budget item and the total leasing payments recommended to the Budget Advisory Committee (COT031894 at 31895) for inclusion in the 2001 operating budget was \$18.551 million. Software acquisitions of \$24.35 million were referenced in the March 15, 2001 report to the Budget Advisory Committee (COT031894 at 31896). However, the spreadsheet prepared by Ms. Viinamae that I updated on January 6, 2000 (COT064008) did not include a budget pressure of \$24 million, nor did it reference additional software acquisitions of \$24 million. Total lease payments in that document were \$16.3 million.

4. Submission of Jim Andrew

Finance Department Structure: There is further confusion with respect to the structure of the Finance department on page 30 which refers to “When, eventually, either Ms. Viinamae or one of the Financial Division managers did contact or c.c. Mr. Andrew, Mr. Andrew would act to resolve the problem or issue....”. Similarly, page 41 includes the statement that “Mr Andrew did not have overall responsibility for the lease tender. Rather, it was a joint function with Financial Services and PMMS.” Again, on page 47 is reference to “...Len Brittain’s Division (Treasure (sic) and Financial Services) and on page 91 “...clearly states that he worked closely with Financial Services...”. None of these references clearly and accurately describes my Division, Treasury and Financial Services.

Year 2000 Budget: The statement is made on page 94 that “When Ms. Liczyk had issues regarding the Year 2000 program budget she met with Ms. Viinamae or had Mr. Brittain meet with her.” I was in no way responsible for the overall Year 2000 budget. Within Finance Department, corporate budget responsibilities fell under the Budget Services Division (see Senior Administrative Structure COT043002 at 43004 and Organization and Responsibilities of Finance Department, 1999 COT072793).

5. City of Toronto Submission – Chapter 25 re: Sale and Leaseback Issue.

I strongly disagree that I should be ultimately accountable for not seeking explicit authority from Council for a sale and leaseback of computer equipment. The assumption made by Mr. Rabadi that the equipment previously accepted by the City could be re-invoiced from the vendors to MFP was not an unreasonable assumption and I have located no compelling evidence to the contrary. Such resolution could have been achieved operationally by a “willing” vendor who had an ongoing business relationship with the City and could easily have been facilitated by MFP, given their tax knowledge. Based on the re-invoicing assumption, there would have been no reason to report to Council and no tax exposure.

6. General - KPMG Interview Notes

Several references are made to the interview notes taken by KPMG in the fall of 2001 (COT012998 and COT013021), for example, in the Submission of Lana Viinamae, pages 92 and 100 and in the Submission of Jim Andrew, page 68. As I stated in my Supplementary Affidavit, I was not asked to sign off on the notes taken at either interview with KPMG, nor had I had the opportunity to review the wide range of background information and relevant documents relating to the matters at hand prior to my interviews with them. My comments and corrections to the interview notes as contained in my Supplementary Affidavit were not referenced in the above noted submissions.

Sincerely,

Len Brittain