

NOTES FOR A SPEECH
BY THE HONOURABLE JUSTICE DENISE BELLAMY
COMMISSIONER

AT THE
TORONTO COMPUTER LEASING INQUIRY
ON MONDAY, DECEMBER 2, 2002

Good morning, ladies and gentlemen. After our abbreviated start on September 30th, I again welcome you to the opening session of the Toronto Computer Leasing Inquiry.

I am going to take a few minutes now to let you know what has happened with respect to this Public Inquiry since the September 30th adjournment.

But first, let me briefly remind you how this Inquiry came about. Toronto City Council voted unanimously in February of this year to hold this Public Inquiry and provided me with broad terms of reference. These are quite long so I will not repeat them here; you can find them on either the city's website or on ours at www.torontoinquiry.ca. In a nutshell, I am to examine what happened with respect to certain computer hardware and software leasing contracts between the City of Toronto and MFP Financial Services Ltd., and also to examine the city's acquisition of Enterprise Licences from Oracle Corporation.

On September 30th, the Inquiry was all set to start. However, shortly before that date, Commission counsel uncovered evidence that we felt needed to be brought to the attention of the police. The Ontario Provincial Police began an investigation and asked that we not proceed with the Inquiry during the critical initial stage of their investigation. I agreed to that request. After that, the OPP provided Commission counsel with regular status reports and about two weeks

ago, they completed their investigation. The OPP decided that no charges would be laid.

As we begin the hearings phase of this Inquiry, I want to say a few general words about public inquiries. Public inquiries are an important component of Canadian society. As the Supreme Court of Canada has said, “In times of public questioning, stress and concern, they [public inquiries] provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be part of the recommendations that are aimed at resolving the problem.... They are an excellent means of informing and educating concerned members of the public” [*Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97].

While it has become relatively common in Canada to have federal or provincial inquiries, municipal inquiries in Ontario are still rather rare. When Toronto City Council voted to hold this Inquiry, it used a section of the Municipal Act that was enacted in 1866, a year before Confederation. Over 130 years later, our Supreme Court had occasion to comment on the enduring nature of that section as reflecting “a recognition through the decades that good government depends in part on the availability of good information. A municipality, like senior levels of government, needs from time to time to get to the bottom of matters and events within its bailiwick” [*Consortium Developments (Clearwater) Ltd. v. Sarnia (City)*, [1998] 3 S.C.R. 3].

Getting “to the bottom of matters” takes time. It is not possible to present the evidence all at once. Some evidence will come out of order. It will only be after all the evidence is heard that the complete picture will become clear. This will take a number of months. If this were a jury trial, I would be cautioning the jurors not to make up their minds until they have heard all the evidence. This is not a jury trial, but I do believe it would be helpful for all who are following the

details of this Inquiry to place themselves in the same position as jurors and not to jump to any conclusions until all the evidence has been presented.

This is especially important for three reasons. First, it is essential to keep in mind that a police investigation is very different from the task of a public inquiry. This is so despite the fact that public inquiries may call witnesses and hear evidence that covers the same subject matter as a police investigation.

On several occasions I have commented publicly about what a public inquiry is and what it is not, but I am going to repeat it now because it is so important. A public inquiry is not a trial. The strict rules of evidence that govern trials in our courts do not apply to public inquiries. Each public inquiry can establish its own rules and we posted our Rules of Procedure on our website on May 27th. Another distinction between a public inquiry and a trial is that in a public inquiry, no one is charged with a criminal offence and no one is being sued civilly. The Supreme Court of Canada has made it clear that commissioners of public inquiries are not to find anyone guilty of a criminal offence nor are they to establish civil responsibility for damages.

As well, public inquiries tend to be broader than either criminal or civil trials. They investigate and report on matters of substantial public interest to a community. Indeed, one important role of public inquiries can sometimes be to show the public, where it is warranted, that groups or individuals suspected of wrongdoing or tarnished by rumour have in fact done nothing wrong. As a rule, while public inquiries investigate past events, they are also concerned with providing an explanation of what happened to help prevent the occurrence of similar events in the future.

Second, there now exists another public inquiry that involves many of the same people. Within days of my adjourning the Inquiry for the police investigation, Toronto City Council decided the original terms of reference of the

Toronto Computer Leasing Inquiry were not sufficiently broad to permit me to examine other areas about which it was concerned. As a result, at its meeting in early October, City Council voted to extend the mandate of the Inquiry. Not wanting to further delay the start of the hearings of the first Inquiry, City Council voted to establish a second Inquiry called the Toronto External Contracts Inquiry. I am the Commissioner of both Inquiries.

This second Inquiry is at a very early stage. During the time that the first Inquiry was adjourned, I hired two Commission counsel for the second Inquiry: David Butt and Julie Dabrusin. I held standing hearings. After consultation with the parties with standing, we finalized the Rules of Procedure. Mr. Butt and Ms. Dabrusin are now beginning their investigations and will continue to do so during the time that I am conducting the hearings in the first Inquiry with Commission counsel Ron Manes, Pat Moore and Daina Groskaufmanis.

The existence of two inquiries presented the Commission with a complex procedural dilemma. Several of the witnesses will be the same, many of the issues are the same, and some of the same parties will be involved in both Inquiries. In an ideal world, it might have made sense to complete the investigation of the second Inquiry before embarking on hearing the evidence of the first. However, that would have resulted in a delay of a minimum of four months. Such a delay is in no one's best interests. Indeed, it would have been contrary to the express wishes of City Council. It is sensible then to proceed immediately with the first Inquiry instead of waiting for the investigation of the second one to be completed.

After reflection, the Commission decided to amend some of the Rules of Procedure to make certain that the principles of efficiency, expedition and cost saving govern both Inquiries. These rules, amended after consultation with all parties with standing, ensure that I can consider all the evidence in one report, and that the parties with standing in each Inquiry have a full opportunity to

explore this evidence. Even with these changes, there will be some witnesses who will be required to testify at both Inquiries.

I said there were three reasons not to jump to conclusions before the end of the second Inquiry. The third reason is this. An important aspect of my terms of reference in both Inquiries will not be addressed until the end of the second Inquiry. This is the part that requires me to examine the impact of the transactions on the ratepayers of the City of Toronto as it relates to the good government of the municipality or the conduct of its public business. This part cannot be addressed until I have heard all the evidence in both Inquiries.

As a result, the Inquiries will be organized as follows. In Phase 1, I will hear evidence of the transactions involving the City and MFP Financial Services Ltd. and Oracle Corporation. After this is completed, there will be an adjournment. I will then begin Phase 2, the second Inquiry, where I will hear evidence concerning the City's transactions involving Beacon, Remarkable, Ball Hsu & Associates Inc., and Dell Computer Corporation. I will then merge the two Inquiries to hear evidence relating to good government. We are calling this Phase 3.

As a rule, counsel will not be asking questions of the witnesses in the first Inquiry that should be more fully explored in the second one. Given that the investigation in the second Inquiry is at a very early stage, it would be premature to permit too much questioning on issues that should more properly be dealt with there. As well, as a general rule, counsel will not be probing the good government issues until the evidence has been heard regarding all the specific transactions.

For these reasons, I would ask everyone to reserve judgment and not to prematurely arrive at conclusions until they have heard all the evidence.

I want to repeat my commitment to open and public hearings and to the accessibility of information of the proceedings. On several occasions, I have encouraged members of the public to attend the hearings. I have also encouraged the media to publish written material and to televise reports of the hearings to inform those who cannot attend in person.

We have created a website for the Inquiry at www.torontoinquiry.ca to ensure that the public has easy access to all relevant information. We have tried to make it as user friendly as possible. Information on both Inquiries can be found on the same website. Our Rules of Procedure are written in plain language with a minimum of legal jargon and are designed to ensure that the process we follow is open, accessible and fair. Transcripts of each day's evidence will be on our website within a few hours after we finish for the day. Members of the public will be able to access the website at any time and read what every witness has said, word for word.

We are ready to begin. I will now call on Commission counsel, Ron Manes.