

IN THE MATTER OF THE TORONTO COMPUTER LEASING INQUIRY

**REPLY SUBMISSIONS
OF PAULA LEGGIERI**

TO: THE HONOURABLE MADAM JUSTICE DENISE BELLAMY, COMMISSIONER

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1. In paragraph 30 of the City of Toronto's submissions it is suggested that the Commissioner should find that Ms. Leggieri did not suffer any adverse employment consequences in connection with the Commission as Ms. Leggieri has not come forward with evidence to support this allegation.

2. During her testimony in April, Ms. Leggieri made it clear that it was her opinion that she had suffered adverse employment consequences because of a number of facts, which were enumerated both in her testimony and in our original submissions. The decision to conduct this segment of the Inquiry was taken, presumably because the Commission believed that the stated logic behind Ms. Leggieri's opinion was compelling enough that it warranted examination.

3. Ms. Leggieri did not ask for this portion of the inquiry to be conducted. Ms. Leggieri was not given any input into how this portion of the inquiry was to be conducted. Ms. Leggieri was not given the power to call witnesses or compel the production of documents. The job of marshalling evidence for this portion of the inquiry was essentially delegated to counsel for the City which made the decision on which documents it would volunteer to produce.

4. It is unreasonable in these circumstances to suggest that Ms. Leggieri had some obligation to bring forward further evidence to support her view. She was not given the basic tools necessary to accomplish this task. If the City's position is correct the outcome was mandated before the actual hearing took place.

5. The City of Toronto, on the other hand, was provided every opportunity to bring forward documentary and any other evidence to support its central contention that Ms. Leggieri was simply the victim of a routine job deletion. The fact that the City expended the bulk of its time and energy attacking Ms. Leggieri and failed to bring forward the most basic documents relating to the actual issue being examined, demonstrates that the City's position is not sustainable.

6. It is clear from the evidence that is presented that Ms. Leggieri did suffer adverse employment consequences. She was prevented from even applying for the licensing supervisor's position even though that position was created with the very funds saved from the deletion of Ms. Leggieri's job.

7. It was conceded by the City's witnesses, particularly Mr. Allain, that it was unusual that she would be denied an opportunity to compete for this position. It was also conceded in Mr. Ridge's testimony that Ms. Bulko had some input into this unusual event. In response to a question concerning the written reports on Ms. Leggieri's employment performance, Mr. Ridge was asked whether he had concerns about Ms. Leggieri's performance and responded:

“A. No and I don't want to suggest that. Again, she was a new supervisor, and was struggling with that a bit, in my discussions with Ms. Bulko, but I have no doubt at some point she could grow into the job and into the role, but I didn't have specific concerns about – about her performance, no.”

See Appendix 23 of the Written Submissions on behalf of Paula Leggieri, particularly page 281 of the transcript of the Evidence of James Ridge, June 19, 2003

8. The apparent negative comments from Ms. Bulko about Ms. Leggieri's performance are inconsistent with the written performance appraisals which she signed. They are, however, consistent with Ms. Leggieri's contention that threats were made by Ms. Bulko with respect to adverse employment consequences if she co-operated in a certain fashion with KPMG and/or Commission counsel.

9. The question of whether these threats were made is essentially a contest of credibility between Ms. Leggieri and Ms. Bulko. They were the only two parties present at the discussions.

10. Ms. Bulko's testimony was not credible in a number of important aspects, particularly with respect to her use of the term “boyfriend” and the gift sent to Mr. Domi. Ms. Leggieri's testimony stands unshaken despite the fact that she was required to testify without having had the benefit of a review of the relevant documentation and despite a vigorous assault by the City and Ms. Bulko's counsel. The only attack the City can now seem to muster against her testimony relates to confusion that seems to exist in the mind of the City as to what Ms. Leggieri said in her April testimony concerning the loss of her position.

11. It is suggested in the City's submissions that Ms. Leggieri was less than forthcoming when telling the Commission about the deletion of her job in April testimony. This is simply not

the case. Any fair reading of Ms. Leggieri's testimony indicates that she advised the Commission in April that she was "unsure of her status", that Kathryn Bulko had advised that "the writing is on the wall, there is no leasing program and you don't have a job", but on the other hand was also being told not to worry, that I.T. would not lose a competent employee. Ms. Leggieri made it clear in her April testimony that she understood the position of leasing supervisor was disappearing.

See testimony of Paula Leggieri, April 9, 2003, pp. 206-221

12. It is submitted that the evidence demonstrates that Ms. Leggieri's opinion offered in April is correct. She asserts that she was threatened with adverse employment consequences and, in fact, she suffered adverse employment consequences when she was not permitted to apply for the licensing supervisor's position.

13. The response of the City is that Mr. Ridge properly exercised his discretion in taking the unusual step of excluding Ms. Leggieri from being interviewed for this position. This was supposedly done not to punish Ms. Leggieri but because Ms. Graham was a far superior candidate.

14. Given that this is the crux of the City's explanation of an unusual occurrence, one would have expected that the qualifications of the successful candidate would have been brought before the Commission so that the Commission could be satisfied that Ms. Graham's qualifications were so clearly superior that the unusual step of excluding Ms. Leggieri from the competition was warranted. Unfortunately, no such documentation was produced by the City.

15. Even more striking is the complete absence of any meaningful internal City documentation from the time of Ms. Leggieri's January 17, 2003 e-mail to the date of Michael Martosh's responding letter on March 21, 2003. This is a period of 64 days.

16. The 64 dollar, or day, question is why the City chose not to produce internal documents from this lengthy period. It should be remembered that Ms. Leggieri's December 2002 inquiry into her employment status resulted in a flurry of internal City e-mails as to how to respond to that relatively innocuous request.

17. It should also be remembered that Mr. Ridge testified that Ms. Leggieri's January 17, 2003 e-mail was viewed by the Director of Human Resources as being serious as it foreshadowed a "Wallace" damages claim. In these circumstances there is little doubt that there would have been substantial communications between the members of the team which were dealing with the Leggieri matter from January 17, 2003 and March 21, 2003. Yet this internal correspondence has not been provided.

See Appendix 21 of the Submissions of Paula Leggieri, Transcript of the Evidence of James Ridge, June 19, 2003, p. 300

18. The absence of such documentation is even more remarkable in view of the fact that at this very time the City had created the position of licensing supervisor and was deciding who was to get the job. It is inconceivable that there was no discussion among "the team", including Mr. Ridge, about whether Ms. Leggieri should be considered for this position.

19. The City's contention that the obviously adverse employment consequence of not being permitted to even apply for the replacement position was innocent and related solely to a proper exercise by Mr. Ridge of his discretion, cannot be accepted in light of the City's failure to produce the most basic internal City documents concerning to this issue.

20. If the Commission is to simply accept the City's position without requiring it to back it up with the relevant documents, the entire hearing process did not serve any purpose.

21. It is also important to note that the City has never provided a reasonable explanation as to why it took 64 days to respond to Ms. Leggieri's January 17, 2003 e-mail. There was some suggestion that an intervening request for a response by Ms. Leggieri's solicitor delayed the process. This does not make sense in view of the fact that the City's internal "team" included a lawyer from December 2002. One would have thought that if the City was worried about Wallace damages, which generally arise from a failure to adequately communicate with the employee, there would be a large incentive, in a normal case, to communicate as promptly as possible

22. It is therefore submitted that because Ms. Leggieri did suffer adverse employment consequences in not being permitted to apply for this job and because no adequate explanation has been documented by the City, the only logical conclusion is the conclusion reached by Ms. Leggieri in her April testimony.

23. In any event, it is not necessary to look even that far to determine that Ms. Leggieri has suffered negative employment consequences as a result of her co-operation with the Commission and/or KPMG. Following her testimony in April, the City dumped into the public domain a number of Ms. Leggieri's private e-mails, including e-mails to and from her boyfriend and mother. This was a gross violation of Ms. Leggieri's basic right to privacy.

24. The City's rather weak justification for this strategic gambit is as follows:

- a) those private communications resided on a City-owned system and were therefore the property of the City; and
- b) they were properly produced as they were relevant to the issue of Ms. Leggieri's relationship with her co-workers.

25. This justification, of course, does not withstand even minimal scrutiny. Ms. Leggieri is a bit player in the overall context of the inquiry. The relationship of the most senior City personnel to other senior personnel would certainly be more relevant to this Commission than the relationship between Ms. Leggieri and a number of unionized employees. Despite this, nobody has seen fit to produce the personal e-mails of senior City management in order to explore the various relationships between the senior administrators responsible for the MFP fiasco.

26. The reason for this is simple. Such e-mails are not probative and their production would violate the privacy right of the individuals involved. The fact that the City, which was Ms. Leggieri's employer, dumped these e-mails into the public domain only in the case of Ms. Leggieri is, by itself, a negative employment consequence which is unquestionably directly connected to Ms. Leggieri's co-operation with, and testimony before, this Commission.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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