

TORONTO External Contracts INQUIRY

The Honourable Denise Bellamy
Commissioner

RULES OF PROCEDURE

GENERAL

1. The Toronto External Contracts Inquiry is an independent Commission set up by majority vote of Toronto City Council with specific terms of reference to inquire into:
 - all of the circumstances related to the retaining of consultants to assist in the creation and implementation of the tax system of the former City of North York (TMACS);
 - all of the circumstances related to the amalgamated City of Toronto's selection of TMACS and the selection of consultants to develop and/or implement TMACS at the amalgamated City of Toronto;
 - all of the circumstances surrounding the selection of Ball Hsu & Associates Inc. consultants to provide consulting services to the City of Toronto;
 - all aspects of the purchase of computer hardware and software that subsequently formed the basis for the computer leasing Request for Quotations that is the subject of the Toronto Computer Leasing Inquiry.

The Commission will be considering the history of these contracts and their impact on the ratepayers of the City of Toronto as they relate to the good government of the municipality or the conduct of the City's public business. Following the conclusion of hearings, the Commissioner will make any recommendations she deems appropriate and in the public interest.

- 1.1 The findings and recommendations of the Commissioner in both this Inquiry and in the Toronto Computer Leasing Inquiry will be contained in one report.
2. Throughout these Rules, the words “Commission” and “Inquiry” are used interchangeably, and both refer to the Toronto External Contracts Inquiry.
3. Public hearings will be held at the East York Civic Centre Council Chamber, located at 850 Coxwell Avenue, Toronto, Ontario, M4C 5R1. The Commissioner will set the dates for the hearings. Hearings will take place between 10:00 a.m. and 4:30 p.m., Monday through Thursday each week.
4. The Commission is committed to a process of fairness, including public hearings and public access to evidence and documents used at the hearings.
5. The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information to the Commission as soon as possible.
6. People are advised that the law offers protection to witnesses to encourage them to come forward and give full and forthright evidence to an Inquiry.

STANDING

7. Persons, groups of persons, organizations or corporations (“people”) who wish to participate may seek standing before the Inquiry.
8. The Commissioner may grant standing to people who satisfy her that they have a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to the Commission in fulfilling its mandate. The Commissioner will determine on what terms standing may be granted.
9. People who are granted standing are deemed to undertake to follow the Rules of Procedure.
10. People who apply for standing will first be required to provide written submissions explaining why they wish standing. Written submissions are to be received at the Commission’s office no later than 4:00 p.m. on Friday, November 1, 2002.
11. People who apply for standing will also be given an opportunity to appear in person before the Commissioner to explain their reasons for requesting standing. Applications for standing will be heard starting on Tuesday, November 5, 2002.
- 11.1 People with standing in the Toronto Computer Leasing Inquiry shall, upon request, be granted standing in the Toronto External Contracts Inquiry to the extent that the Commissioner determines that evidence received at this Inquiry may engage their substantial and direct interest.

12. The Commissioner has appointed Commission counsel to represent her and the public interest. Commission counsel will ensure that all matters which bear on the public interest are brought to the attention of the Commissioner. Commission counsel will have standing throughout the Inquiry.

PREPARATION OF DOCUMENTARY EVIDENCE

13. As soon as possible following the granting of standing, people with standing will produce to the Commission all documents having any bearing on the subject matter of the Inquiry. People are encouraged to advise Commission counsel of the names, addresses and telephone numbers of all witnesses they feel should be heard and, if possible, to provide summaries of the information the witnesses may have.
14. All documents received by the Commission will be treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs; however, Commission counsel are permitted to produce such documents to proposed witnesses.
15. Commission counsel will try to provide, both to witnesses and people with standing, those documents that will likely be referred to during a witness' testimony. Before being provided with such documents, witnesses and people with standing will be required to sign an undertaking that they will use the documents only for the purposes of the Inquiry.

16. No document will be used in cross-examination or otherwise unless Commission counsel have been advised in advance and the document has been provided to Commission counsel, the witness, and people with standing, unless the Commissioner decides otherwise.

WITNESS INTERVIEWS

17. Commission counsel will interview people who have information or documents which have any bearing upon the subject matter of the Inquiry and may be helpful in fulfilling the Commission's mandate. People who are interviewed are welcome, but not required, to have legal counsel present.
18. Witnesses are advised that the *Public Inquiries Act* provides that no adverse employment action shall be taken against any employee who, acting in good faith, has given information to an Inquiry.
19. Following the interview, Commission counsel will prepare a summary of the witness' anticipated evidence and, before that person testifies before the Commission, will provide a copy of the summary to the witness for his or her review.
20. The witness summary, after being provided to the witness, will be shared with people with standing. Before being given a copy of the witness summary, people with standing will be required to sign an undertaking that they will use the witness summary only for the purposes of the Inquiry.

EVIDENCE

21. The Commissioner may receive any evidence that she considers to be helpful in fulfilling the mandate of the Inquiry. The strict rules of evidence used in a court of law to determine admissibility of evidence will not apply.
- 21.1 The Commissioner may receive in this Inquiry evidence from the Toronto Computer Leasing Inquiry. Parties with standing in this Inquiry may refer to evidence received in the Toronto Computer Leasing Inquiry.
22. Witnesses who testify will give their evidence under oath or upon affirmation.
23. It will be the practice of Commission counsel to issue and serve a subpoena (summons to witness) upon every witness before he or she testifies.
24. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness' testimony.
25. Witnesses may be called more than once.
26. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner to lead a particular witness' evidence in-chief. If counsel is granted the right to do so, examination shall be

confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.

27. The order of examination will be as follows:

- (a) Commission counsel will lead the evidence from each witness. Except as otherwise directed by the Commissioner, Commission counsel are entitled to ask both leading and non-leading questions;
- (b) People with standing will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination of each witness will be determined by the people with standing and, if they are unable to reach agreement, by the Commissioner;
- (c) Counsel for a witness will examine last, unless he or she has questioned the witness in-chief, in which case there will be a right to re-examine the witness; and
- (d) Commission counsel will have the right to re-examine last.

28. If Commission counsel elect not to call a witness or to file a document, anyone with standing may apply to the Commissioner to do so or to direct Commission counsel to do so.

29. All hearings are open to the public; however, where the Commissioner is of the opinion that,

- (a) matters involving public security may be disclosed at the hearing; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

the Commissioner may hold the hearings concerning any such matters in the absence of the public on such terms as she may direct.

30. Applications from witnesses or people with standing to hold any part of the hearing in the absence of the public should be made in writing to the Commission at the earliest possible opportunity.
31. The transcripts and exhibits from the hearings will be made available as soon as possible for public viewing. If any part of the hearings is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing on such terms as the Commissioner may direct.
32. The proceedings are open to the public. The use of television cameras or other electronic or photographic equipment in the hearing room will be permitted at the direction of the Commissioner.

RIGHT TO COUNSEL

33. Witnesses and people with standing are entitled, but not required, to have counsel present while Commission counsel interview them and also when they testify.
34. Counsel will be retained at the expense of the witness and people with standing. The Terms of Reference do not grant the Commissioner jurisdiction to order the City of Toronto to provide funding for legal counsel.

NOTICES REGARDING ALLEGED MISCONDUCT

35. The Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel.
36. Any notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.

AMENDMENT TO THE RULES

37. These Rules may be amended and new Rules may be added if the Commissioner finds it helpful to do so to fulfil the Commission's mandate and to ensure that the process is thorough and fair.

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