

DELIVERED BY HAND

Personal & Confidential

December 30, 2003

His Worship Mayor David Miller
Office of the Mayor
Toronto City Hall
100 Queen Street West, 2nd Floor
Toronto, Ontario M5H 2N2

Dear Mr. Mayor:

May I take this opportunity to extend the best of the holiday season to you, your staff, and members of City Council.

I would also like to inform you and Council about what has transpired to date in the Toronto Computer Leasing Inquiry (TCLI) and to receive your urgent consideration regarding the future of the Toronto External Contracts Inquiry (TECI).

As you know, City Council voted unanimously in February 2002 to hold an independent judicial inquiry, now known as the Toronto Computer Leasing Inquiry. Since my appointment as Commissioner in early March of that year, I have been involved in investigating and hearing evidence relating to this Inquiry.

In early discussions with City staff before I retained Commission Counsel, I was advised that the Inquiry would involve just one filing cabinet of documents and, based partly on that assumption, that City staff had budgeted for approximately forty days of hearings. At first, the City thought it would not need a lawyer at these hearings. In the final analysis, the City hired four lawyers, and the Inquiry involved more than 64,000 pages of documents, twelve parties with standing, forty lawyers, twice as many witnesses as originally projected, and heard testimony over the course of 150 days. As you can see, the Inquiry process involved much more time and cost than the former Council had initially anticipated. This is understandable, and we all now have the benefit of hindsight.

Even with that, the Toronto Computer Leasing Inquiry is not yet over. There remain a couple outstanding issues. One of these involves the possible recall, at the City's request, of four

witnesses: Messrs. Dash Domi, Tom Jakobek, Jeffery Lyons and Peter Wolfrain; the other, the unresolved issue of the contents of eighteen sealed banker's boxes belonging to Mr. Lyons. This latter matter is currently before the courts.

In October 2002, by a majority vote of 26 to 7, Toronto City Council voted to extend the mandate of the first Inquiry by establishing a second Inquiry, the Toronto External Contracts Inquiry. As part of their Terms of Reference, both Inquiries require that I examine issues relating to good municipal government. The second Inquiry was set to start on December 1, 2003. It was to be followed by an examination of issues relating to good government.

However, on November 4, 2003, recognizing that it was impossible for me to have a timely report to the Mayor and the new Council, I reversed the order of the good government phase and the Toronto External Contracts Inquiry. During the municipal election campaign, I saw that all the main candidates for Mayor were proposing changes to the way in which the City conducts its business. Each of you discussed integrity, conflict of interest guidelines, rules on lobbying and the need for transparency in government. It seemed clear that whoever was elected Mayor intended to address these integrity issues as an early priority. I wanted the new Mayor and City Council to have the benefit of the information we had gathered and researched over the past year, early in the electoral term.

The good government phase is now set to begin on January 19, 2004. It will be followed by the Toronto External Contracts Inquiry on February 16, 2004.

Upon reflection and because of the impending February date, I feel it is my responsibility to bring three concerns to your attention. I would be grateful if you would discuss these with members of City Council and respond to me before the February start date, as preparations with respect to TECI are proceeding without interruption and we continue to diligently pursue all viable investigative leads.

I preface the following remarks by assuring you that I am fully prepared to discharge my mandate under the second Inquiry. As well, without prejudging evidence before it is tested in the hearing room, I can inform you and Councillors that my investigations to date have uncovered conduct, the propriety of which may be in question and would be appropriate to expose by way of a judicial inquiry.

First Concern: Cost

I am aware that this Council is faced with considerable budgetary pressures and that the existence of the Inquiries contributes to those pressures. In examining all relevant questions with care and fairness to all concerned, public inquiries are expected to be thorough. They are also expensive. At the end of the day, they are prohibited by law from finding criminal or civil liability. Throughout the Inquiry, I have been live to budgetary concerns and have continually addressed this publicly at the hearings.

Between March 2002 and December 2003, the Inquiries will have spent approximately \$6.5 million (\$1.760M for 2002; \$4.700M for 2003). That amount is within the budget that we gave

to the City in March, 2003. It does not, of course, include the cost of the City's own lawyers nor those legal costs of TCLI participants which the City may be paying.

I expect the Toronto External Contracts Inquiry to result in the spending of at least another \$1.5 million. Again, that does not include the cost of the City's own lawyers nor the legal costs of TECI participants which the City may pay. I am not privy to those costs, but I know your staff would be in a position to provide you with this information. In any event, it would not be unreasonable to expect that the combined costs for proceeding with the second Inquiry could be more than \$3 million.

Court applications to review my decisions also increase the cost. Each application can result in additional unexpected pressure on my budget, and presumably also on the City's own budget.

Second concern: Timeliness

The *Municipal Act*, referred to in my Terms of Reference, requires that I report to Council "with all convenient speed". If TECI does not proceed, I would expect to be in a position to have a report with my recommendations to you and Council by the end of the summer, 2004. If TECI does proceed, for the reasons discussed below, I would not be able to have a report to you and Council until early to mid 2005.

The reasons for this are as follows: the second Inquiry has been scheduled for 70 hearing days. Commission Counsel is making every effort to streamline and minimize the issues and evidence in TECI (to date, over 54,000 pages of documents). It may be that TECI can be completed in less than the budgeted 70 days. On the other hand, the parties to TECI may exercise rights which can affect the length and costs of the Inquiry.

Ultimately, as we learned in TCLI, the length of an inquiry cannot be determined in advance with certainty. Providing the participating lawyers the time they need to conduct the good government phase, to make their submissions with respect to TCLI, to conduct TECI with reasonable sitting times and breaks, means that it is unlikely that the second Inquiry would finish before August, 2004. After this, I must provide the parties with a reasonable opportunity to make submissions before I write the report. It would not be possible to have a complete report on both TCLI and TECI until early to mid 2005.

Third Concern –Value

I believe that the first Inquiry served to highlight issues which resulted in them being seriously addressed during the election. I think it is fair to say that evidence heard during the Inquiry has already helped raise the profile and public awareness in the City of issues such as integrity, conflicts of interest, accountability, lobbying, and good government.

Both TCLI and TECI are mandated to examine good municipal government in the context of information technology procurement. Thus, while the specific transactions to be examined differ between TCLI and TECI, and while there may be merit in examining those different transactions,

it is also true that there is considerable overlap in subject matter and that many of the same participants in TECI were also involved in TCLI.

With that in mind, I believe I have a responsibility to inform you and Council that whether or not any misconduct, serious or otherwise, is brought out publicly in the second Inquiry, it is not likely that the receipt of this evidence will materially enhance my recommendations to you and Council.

In conclusion, I repeat that my staff and I are ready to complete my mandate within the Terms of Reference of both Inquiries. I also expect that my decision to explore good government issues sooner rather than later will assist Council to address integrity issues in a timely fashion.

Having said that, I am sensitive to the budgetary constraints facing the City of Toronto at this point. I believe, therefore, that I have a responsibility to you, to Council, and to the ratepayers of Toronto to bring the above-mentioned concerns to your attention so that you and the new Council can weigh the cost of proceeding with the second Inquiry against the results you hope to achieve, mindful that potential findings of misconduct are unlikely to materially change my recommendations.

I look forward to your early response.

Yours very truly,

Denise E. Bellamy
Commissioner