

**IN THE MATTER OF THE TORONTO EXTERNAL CONTRACTS INQUIRY**

**AFFIDAVIT OF MARY ELLEN BENCH**

I, Mary Ellen Bench, of the City of Mississauga, in the Province of Ontario, **MAKE OATH AND SAY:**

**A. Background**

1. From May, 1991 to December 31, 1998, I was in-house counsel for the former City of Toronto. After amalgamation, I continued working in the Legal Department at the new amalgamated City of Toronto until May, 2001. From September, 1993 to May, 2001 my position was the Director of the Municipal Law Practice Group.
  
2. I am currently City Solicitor for the City of Mississauga.

**B. City of Toronto Legal Department**

3. After amalgamation, the City of Toronto's Legal Department had eight practice areas. I was the head of the general municipal section that dealt with what were considered to be "soft services" – tax and assessment, finance, parks, economic development, clerks, freedom of information, buildings, signs, heritage, health and general support to the Chief Administrative Officer's staff. James Anderson was the head of the legal section dealing with "hard services" – sewers, water,

police, fire, roads, and information and technology. James Anderson's group worked at Metro Hall, while my group worked mostly at City Hall. My office was located in City Hall.

4. Brian Loreto, one of the lawyers in James Anderson's group, was the main information and technology lawyer at the City of Toronto after amalgamation. Brian Loreto reported to James Anderson and had an office at Metro Hall.
5. Wanda Liczyk and Brian Loreto knew each other from their years working at the former City of North York prior to amalgamation.

**C. Wanda Liczyk's Relationship with the Legal Department**

6. Wanda Liczyk did not use Legal Services unless absolutely necessary and she rarely contacted the Legal Division herself. If Wanda Liczyk or the Finance Department had a legal issue, someone at a lower level, such as Len Britten, Giuliana Carbone, Margo Brunning or Joe Farag would be the individuals who would contact Legal. Two lawyers in my practice group worked on Finance issues under my supervision and I worked on several projects involving a team that included the Finance Department myself. For the most part, my conversations with Wanda Liczyk took place at Council meetings, where Legal staff sat next to Finance staff.

7. Wanda Liczyk would only provide the Legal Department with the bare minimum of background information when she was seeking advice. Most of the time, we would have to obtain more information from her staff before we could fully address Wanda Liczyk's question.
8. In contrast, Giuliana Carbone had a very good working relationship with the Legal Department. Giuliana Carbone often came to Legal for advice, including advice about contracts. Legal staff had a good working relationship with most of the Finance Department staff and worked closely with them.
9. Commission counsel has shown me the July 17, 1998 proposals from Beacon Software to the City of Toronto that were approved by Wanda Liczyk on August 1, 1998 (TEC007521, vol. 2, tab 1, and TEC013131, vol. 2, tab 2). This is the first time I saw these documents. These were not contracts prepared by the Legal Department, and Legal Services would definitely advise against using contracts such as these if we had been consulted. The contracts do not contain basic provisions Legal staff always insist on, for example, sections regarding indemnity, insurance, or copyright.

**D. Termination of the TXM2000 partnership with Mississauga**

10. My practice group did not have a file regarding the termination of the City of Toronto's partnership with the City of Mississauga for the development of the

Tax Manager 2000 ("TXM2000") system. This issue was one that would be dealt with by James Anderson's group, and by Brian Loretto specifically.

11. Contrary to what Wanda Liczyk said in her testimony, she did not approach me in October or November 1998, regarding her desire to terminate Toronto's partnership with Mississauga. Wanda Liczyk never told me that she had met with or made a deal with David O'Brien, Mississauga's former City Manager, to terminate the partnership. **(Wanda Liczyk testimony, November 10, 2004, 82 to 111)**
  
12. On or about October 26, 1998, I received some documentation from Giuliana Carbone, which I delivered to James Anderson. Giuliana Carbone advised me that Wanda Liczyk wanted to terminate the TXM2000 agreement with Mississauga and that she wanted it to be done by the end of the week, and I provided this information to James Anderson. James Anderson prepared an Urgent Action Slip dated October 26, 1998 instructing Brian Loretto to handle this matter. **(document to be scanned)**
  
13. Brian Loretto sent an email to Wanda Liczyk on October 26, 1998, copied to Jim Andrew, James Anderson, and me. **(TEC057096, vol. 6, tab 22)** Brian Loretto would have copied me on this email because the Finance Department was my client and because I had the initial contact with Giuliana Carbone.

14. I replied by email dated October 26, 1998 to Brian Loreto and Wanda Liczyk, copied to Jim Andrew and James Anderson (TEC057098, vol. 6, tab 23). I referred to the documentation that had been sent by Finance and stated that I did not keep a copy of this documentation. I advised Brian Loreto to speak with Giuliana Carbone to obtain further information.
15. In my email of October 26, 1998 (TEC057098, vol. 6, tab 23), I also wrote "Wanda has negotiated a way out of this for the City." I obtained this information from Giuliana Carbone. As I stated earlier, I did not have a conversation with Wanda Liczyk about the termination of the partnership with Mississauga.
16. I did not provide any opinions or advice regarding the termination of Toronto's partnership with Mississauga. More specifically, at no time did I tell Wanda Liczyk that the termination of the partnership did not have to go before City Council. (Wanda Liczyk testimony, November 10, 2004, 102:19, 109:23, and 209:15) It has always been my practice to confirm legal advice given verbally in writing. This is very important to do when other lawyers actually have carriage of the file, as in this case. If I had given advice to Wanda Liczyk on the TXM2000 termination, I expect I would have sent her an email confirming my advice and documented the advice that I gave her as per my usual practice.
17. Had Wanda Liczyk asked for my opinion, I would have told her that terminating an agreement with another municipality on a project of this magnitude and

importance was something that must receive Council authorization as it was not covered by the authority delegated to her by Council (By-law No. 4-1998 being a by-law to delineate certain duties and responsibilities of the Chief Financial Officer and Treasurer for the City of Toronto). This would have been my opinion regardless of whether there was authority in the agreement for staff to terminate the partnership. It is unfathomable that I would have given Wanda Liczyk the advice that the termination of the agreement did not have to be reported to Council.

18. I do not recall having any discussions with James Anderson about the termination of Toronto's partnership with Mississauga.
19. Commission counsel has shown me a draft letter dated December 17, 1998 from Wanda Liczyk to William Munden in Mississauga (TEC013121, vol. 2, tab 33). Although I am copied on this letter, I do not recall having seen this letter before. I may have been copied on this letter because Finance was my practice group's client.
20. Commission counsel has also shown me a letter dated February 9, 1999 to Mississauga's City Manager (TEC013123, vol. 2, tab 36). I have reviewed this draft letter and although I do not recall drafting it, it looks like my writing style, and the initials at the bottom of the letter ("MEB") are mine. Josie Esorba ("jge") was a legal assistant at the City of Toronto; however, she worked for Dolores


Morrell and James Speakman in February 1999. I had a different assistant at that time. The path at the bottom of the letter does not look familiar and suggests that a draft of the letter likely came from Finance for review and comment.

21. In my view, the February 9, 1999 draft letter would not be sufficient to terminate the agreement between Toronto and Mississauga. This letter would only start the termination process by outlining the terms agreed to by the parties, essentially serving as a memorandum of understanding. After the terms of the agreement have been negotiated and finalized, one of two things should happen. Either the parties would go to Council and get approval to terminate in principle, and then draft an agreement which could be a letter agreement, or a full formal agreement, would first be drafted and then taken to Council for approval. In either case, Council would authorize the termination.
  
22. Wanda Liczyk never asked me whether switching from the TXM2000 system to the TMACS system was a matter that should go to Council. Furthermore, contrary to what she stated in her testimony, she never told me the history of the development of the two tax systems leading up to the decision switch from TXM2000 to TMACS in October 1998. (Wanda Liczyk testimony, November 10, 2004, 110 to 111)

**E. Mississauga**

23. In March 2001, Wanda Liczyk and Janice Baker, Mississauga's Commissioner of Corporate Services signed an agreement terminating the TXM2000 partnership. I was not consulted in respect of this agreement by Wanda Liczyk or her staff, nor was I advised that it was being signed. (TEC050558, vol. 3, tab 61) This agreement was taken before Mississauga City Council and Council approved it.

SWORN BEFORE ME at the City of )  
Mississauga, in the Province of Ontario )  
on the 14<sup>th</sup> day of December, 2004 )

  
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A Commissioner, etc.

  
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MARY ELLEN BENCH