

IN THE MATTER OF THE TORONTO EXTERNAL CONTRACTS INQUIRY

AFFIDAVIT OF KEVIN E. DEARY

I, Kevin E. Deary, of the Town of Rehoboth, in the Commonwealth of Massachusetts, in the United States of America **MAKE OATH AND SAY:**

BACKGROUND

1. I received a BA in Government in 1968, and the next year, became a Special Agent with the Federal Bureau of Investigations (FBI), where I remained for the next twenty-five years.
2. Among my numerous activities at the FBI, I conducted investigations into organized crime, prepared counterintelligence cases, investigated "white collar" crimes and conducted background checks on Presidential appointees, including members of the Supreme Court of the United States. In 1994, the year of my retirement, I was nominated Special Agent of the Year.
3. In 1994, I became a private investigator working for an insurance company whose clients were Lloyd's of London syndicates, and since 1997, as an investigator with Corporate Investigations, which primarily does exploratory work on behalf of law firms.

RETENTION BY COMMISSION COUNSEL

4. In 2003, I was retained to do investigative work on behalf of the Toronto External Contracts Inquiry. I worked under the guidance and direction of Commission Counsel
5. I was retained to try and make contact with Michael Saunders, founder of Beacon Software Inc. I was informed that he lived in Newport, Rhode Island.
6. I reside in Rehoboth, a Southern Massachusetts town on the outskirts of Providence, Rhode Island, and about an hour away from the community where Mr. Saunders resides.
7. I first drove the roughly fifty kilometres from Rehoboth to Newport on the afternoon of May 31, 2003. I arrived at Mr. Saunders home, but in three attempts over a three-hour period that day, was unsuccessful in making contact with anyone at the address.

JUNE 2, 2003 CONTACT

8. On June 2, 2003, I made a late-afternoon return visit to Mr. Saunders' home located off Rhode Island Avenue in downtown Newport. There, I approached Mr. and Mrs.

Saunders, who were sipping iced tea on their veranda. I informed them of who I was, and why I was there.

9. Mr. Saunders informed me that he did not wish to speak to Commission Counsel about his dealings with the City of Toronto and the former City of North York.

10. I informed Mr. Saunders that the Inquiry had no prosecutorial powers, and that damages could not be awarded against him.

11. He stated that the City is looking for someone upon which to lay blame in a "political inquiry", and that Mr. Saunders would be that person. He noted that there is no upside for him to speak with Commission Counsel.

12. He added that he would require legal representation, but that he personally had lost enough money already, and there would be no upside to him speaking to Counsel, so it would not be worth the expense.

13. I returned to Mr. Saunders' home on June 12, 2003, but no one answered the door.

14. I returned to the home again two days later. Again, the door went unopened.

JUNE 16, 2003 CONTACT

15. Late in the afternoon of June 16, 2003, I telephoned Mr. Saunders when I was in the outskirts of Newport. He answered, and I asked him if I could come over to his house, at his convenience. He acquiesced, and moments later, I was inside his home.
16. I relayed information from Commission Counsel that he had requested in our previous discussion. I told him that the Inquiry was not in a position to provide him with legal counsel. I explained what the Toronto External Contracts Inquiry Terms of Reference were looking into, and advised him that Commission Counsel David Butt would be willing to come down to Newport to speak with him personally.
17. Mr. Saunders reiterated that he had no interest in speaking with any lawyers from Toronto, and wished the entire thing would just end.
18. He stated that he would meet with me in the future if I had any more questions for him, but would not meet with any lawyers from Toronto.
19. I made two additional attempts to contact Mr. Saunders in early December 2003, and two more attempts in January 2004. All four were unsuccessful. Mrs. Saunders explained that her husband's mother had just passed away and it wasn't a good time. I politely asked her to call me when things were cleared up. He did not call.

JUNE 21, 2004 CONTACT

20. In mid-June of 2004, I returned to Mr. Saunders' house again. He met me at the door, and was quite friendly. He once again declined to meet with Commission Counsel, or otherwise participate in the proceedings of the Inquiry.

SERVING MR. SAUNDERS

4.21 In September of 2004, I was instructed to provide Mr. Saunders with a summons to witness and other documents.

5.22 Based on information he provided to me in our last encounter, I was aware that Mr. Saunders worked for the State of Rhode Island Department of Education in Providence.

6.23 I attended at Mr. Saunders' office, and he appreciated my coming to see him at his work place rather than at his home. I served on him all the documents provided to me by the Inquiry, including the summons and an explanatory letter.

24. Mr. Saunders reiterated that he had no intention of returning to Toronto for any reason, adding that if the Inquiry had any legal standing over him, he would be compelled to hire counsel that would cost him a fortune and then respond to any legal action against him.

25. Mr. Saunders thanked me for coming, and we shared a laugh after he remarked, partly in jest, that he would see me again next time.

26. A true copy of the Summons and the explanatory letter served on Mr. Saunders are attached hereto.

SWORN BEFORE ME at the)
 Town of Rehoboth in the)
 Commonwealth of Massachusetts on)
 the ^{14th} day of October, 2004)

Kathleen J. Carmichael)
 COMMISSIONER, ETC.)

Exp. July 29, 2005

Kevin E. Deary
 KEVIN E. DEARY

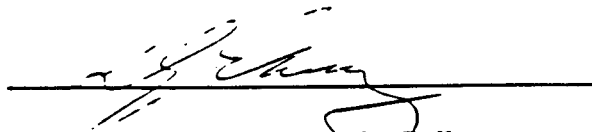
TORONTO EXTERNAL CONTRACTS INQUIRY

SUMMONS TO WITNESS

TO: Mrs. Michael R. Saunders
17 Francis Street
Newport, R.I. 02840
U.S.A.

You are hereby summoned and required to attend before the Toronto External Contracts Inquiry at a hearing to be held at Council Chambers in the East York Civic Centre, 850 Coxwell Avenue, in the City of Toronto, Ontario on Monday, the 27th of September, 2004, at the hour of ten o'clock in the forenoon local time and so from day to day until the Inquiry is concluded or the Commission otherwise orders, to give evidence on oath touching the matters in question in the Inquiry and to bring with you and produce at such time and place all books, contracts, orders, papers, letters, copies of letters, statements, notices, agreements, catalogues, manuals, cards, order forms, and any and all other documentation and writings in your custody, possession or power containing any entry, memorandum, minute, or material relating to the matters in issue before this Inquiry.

Dated this 10th Day of August, 2004.


The Honourable Madam Justice Bellamy
Commissioner

NOTE

You are entitled to be paid the same personal allowances for your attendance at the hearing as are paid for the attendance of a witness summoned to attend before the Ontario Superior Court of Justice.

If you fail to attend and give evidence at the inquiry, or to produce the documents or things specified, at the time and place specified, without lawful excuse, you are liable to punishment by the Ontario Superior Court of Justice in the same manner as if for contempt of that Court for disobedience to a summons.

TORONTO EXTERNAL CONTRACTS INQUIRY

The Honourable Madam Justice Denise Bellamy
Commissioner

East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

Tel: 416-338-3999

Fax: 416-338-3944

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August 26, 2004

Mr. Michael Saunders
17 Francis Street
Newport, R.I. 02840
U.S.A.

Dear Mr. Saunders:

The City of Toronto has called a public inquiry to examine all aspects of contracts for services between the City of Toronto and Beacon Software Inc. and Remarkable Software Inc. The Honourable Madam Justice Bellamy of the Ontario Superior Court of Justice is the Commissioner of the Inquiry, and has appointed legal counsel (Commission Counsel) to fully explore all the issues surrounding these contracts. You may read more about the Inquiry on our web site: www.torontoinquiry.com.

Please find enclosed a Summons to Witness (a subpoena) to appear as a witness before the Toronto External Contracts Inquiry. We appreciate that you have already indicated to our investigator that you do not wish to appear as a witness, or otherwise co-operate with the Inquiry in any way. While the Summons to Witness cannot be enforced outside of the Province of Ontario, your appearance could be of great assistance to the Commissioner in the writing of her report, and we would strongly encourage you to appear. This letter and the summons accompanying it will be made part of the public record in the event that you do not attend. **We must further advise that if you fail to appear, the Commissioner may draw inferences unfavourable to you because you failed to appear.** Any adverse inferences that the Commissioner might draw would be published in her final report that will be made publicly available and widely distributed.

The Summons requests your attendance on September 27, 2004. That is the scheduled start date for the Toronto External Contracts Inquiry, and your attendance is not required on that day, but only when it is arranged with you that you will testify. If you at any point change your mind and wish to co-operate with the Inquiry, please contact our administrative assistant, Clita Saldanha (416-338-3941), as soon as possible. To repeat what our investigators have told you, Commission Counsel wish to first interview you, which we are prepared to do at a place and time in the near future convenient to you. Further, if travel is necessary for you to attend an interview and/or testify, we will pay your reasonable travel expenses.

If you hire a lawyer and prefer that we communicate directly with your lawyer, please have him or her contact Ms Saldanha at the above number.

Thank you in anticipation of your co-operation and assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Butt", with a large, stylized initial "B" and a horizontal line extending to the right.

David Butt
Commission Counsel

Encl