

**IN THE MATTER OF THE TORONTO EXTERNAL CONTRACTS INQUIRY****AFFIDAVIT OF ROGER FLEMMING**

I, **ROGER FLEMMING**, of the Town of Uxbridge in the Province of Ontario, **MAKE OATH AND SAY:**

**Background**

1. I am an employee of the City of Toronto ("City") and am currently working in the Corporate I&T Planning group. I have been a full time temporary City employee, since February 2002.
2. From January 1999 through April 2001, I worked at the City as a consultant through Ball Hsu & Associates Inc. ("BHA") and Andall Technologies Corporation ("Andall").
3. In April 2001, I ceased working at the City as a contractor and went to work as an I.T. consultant at a private company.
4. In February 2002, I was hired as a full time temporary employee by the City and have worked both in the Office of the City Clerk and in Corporate I&T Planning.

**Relationship With Ball Hsu**

5. I will at times in this affidavit refer to BHA and Andall collectively. For the reasons set out in more detail below, I considered them to be part of the same organization.

6. In late 1998, my contract with a company in the Toronto area was ending. Someone I was working with gave me the number of an I.T. consulting company that was looking for people.
7. I had an interview in the afternoon of Christmas Eve 1998 with a gentleman named T.K. Tong, who was a representative of BHA/Andall. I had another interview in late January 1999 with Mr. Tong and another BHA/Andall representative, Clem Chan. In these interviews, they told me they were looking to fill positions in the City's Y2K project.
8. I thought I was interviewing with Andall. Mr. Tong and Mr. Chan told me Andall was the company that would be hiring me. However, I signed the contract (through my consulting company) with BHA on January 26, 1999 (TEC049033). I also signed a further contract with BHA on April 10, 2000 (TEC049035).
9. From February 1999 until April 2000 I billed BHA (an example of my invoices to BHA is TEC049037). However, in April 2000 I started billing Andall (TEC049038).
10. In truth, however, I did not consider BHA and Andall to be functionally separate companies.. Indeed, I sent my invoices to Andall to the same address (1033 McNicoll Avenue, Scarborough) as I had sent my BHA invoices, and I dealt with exactly the same people after I started billing Andall. Further, as noted above, the BHA/Andall organization was fine with me invoicing Andall instead of BHA.
11. My first contract with BHA was for a period of three months (TEC049033). However, I did not sign another contract until more than a year after I started working for BHA at the City (TEC049035). The reason for my signing the second contract was that Jim Hart, who in 2000 was my

Director and my immediate report at the City, negotiated a lower rate with BHA for the City to pay BHA for my services. As a result, BHA reduced the rate it would pay me from \$65/hour to \$60/hour, and this is reflected in the second contract with BHA.

12. Because of my experience, I am versatile and as a result I was moved around quite a bit at the City. From February 1999 through April 2001 my positions at the City were:

Feb-Apr 1999:	Project leader on Y2K project relating to City mainframes
May-Jul 1999:	Project manager on Y2K project in the Clerks division
Aug 1999-Jan 2000:	Project manager for Clerks and Council
Feb-Dec 2000:	Acting Manger of Information Systems in Clerks and Council
Jan-Apr 2001:	Project consultant in a business unit within Clerks called the Secretariat

13. At all times during my time at the City between February 1999 and December 2000, there were BHA contractors working under me. I did not have signing authority over payments respecting their work, but I did initial their timesheets and track their time to ensure their timesheets were correct. I did this for contractors (BHA & other) under me as well as for employees claiming overtime.


14. BHA/Andall's office was on McNicoll Avenue in Scarborough. There were a significant number of contractors to the City working out of that office.

15. When I was working on the mainframe project in the first three months I worked at the City, I was actually based at the BHA/Andall office on McNicoll. Every other week or so during my first three months there was a meeting at the BHA McNicoll office. I think most of the attendees were BHA Y2K mainframe project team leaders. Lana Viinamae was also in attendance at these meetings. These were high-level meetings for the

- purpose of updating the status of the project; they were not technical meetings. Ball Hsu's wife Natalia Hsu worked at the McNicoll office. From my perspective she was essentially the paymaster. She would prepare the cheques I received. I have no knowledge if she performed other duties for the company.
16. During my time working as a contractor at the City the number of contractors working under me that were from BHA/Andall varied from perhaps 25% to 50% of the people working under me. I do not know which corporate entity these people were in fact contracted with (BHA or Andall), but as they were working out of the McNicoll offices, I assumed that they were part of Ball Hsu's organization.
  17. The BHA/Andall people I worked with were very high quality. They were knowledgeable and hard-working I.T. people. Some of them later became City employees through job competitions.
  18. I was involved in the interview process of BHA contractors to work at the City in the sense that when I recognized a staffing need, I would do a business case on how many people were needed for a role and for how long. Often it was a BHA person who ended up being hired.
  19. When I started working for the City as an employee in 2002, the supply of I.T. professionals exceeded demand. Currently, there is still a glut of skilled I.T. workers, and it is not difficult for employers to find I.T. employees. However, at the time of Y2K the situation was entirely different. Y2K was an immovable deadline and the demand for programmers and analysts exceeded supply. In general, employers who wanted to meet the Y2K deadline had to go with whoever could supply them with skilled workers in a timely fashion.

20. I was someone who did well as a result of this shortage of I.T. workers. If I had not been able to find work as a consultant at the City, I expect I would have been able to do so elsewhere. As a City employee, I make less (even counting benefits) than I did as a consultant working for the City and elsewhere.

21. I make this affidavit in respect of the Toronto External Contracts Inquiry and for no other purpose.

SWORN BEFORE ME at )  
 the City of Toronto in )  
 the Province of Ontario on )  
*August 30*, 2004 )  
 )  
 A COMMISSIONER, ETC. )  
*Andrew Lewis*

  
 \_\_\_\_\_  
 ROGER FLEMMING

TEC049033

**INDEPENDENT CONTRACT AGREEMENT**

This agreement was made as of January 26, 1999

Between

Ball Hsu & Associates Inc.  
(hereinafter called the "Company")

of the first part

-and-

1281345 Ontario Limited  
(hereinafter called the "Contractor")

of the second part

In consideration of the mutual covenants and agreements hereinafter contained the parties covenants and agree as follows:

1. The Contractor must provide individuals that are acceptable to the Company.
2. The Contractor must use his own tools as no tools will be provided by the Company.
3. The Contractor will provide its hours to the Company.
4. The hourly rate is \$65.00
5. The Company will pay the Contractor in 30 days from the date of the invoice.
6. This contract is for a period of three months commencing January 28, 1999.

TEC049034

7. This agreement may be terminated before its expiry date in the following circumstances

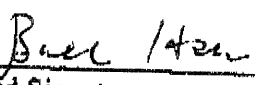
- (i) at any time by one of the parties upon providing 14 days written notice to the Contractor and 30 days written notice to the Company
- (ii) at any time by written mutual agreement between the Company and the Contractor
- (iii) at any time by the Company upon the Contractor(s) breach of any term(s) of this agreement.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto.

Witness 

  
Authorized Signature  
1281345 Ontario Limited

Witness 

  
Authorized Signature  
Ball Hsu & Associates Inc.

TEC049035

**INDEPENDENT CONTRACT AGREEMENT**

This agreement made as of April 10, 2000.

**Between**

Ball Hsu & Associates Inc.  
(hereinafter called the "Company")

of the first part

-and-

1281345 Ontario Limited  
(hereinafter called the "Contractor")

of the second part

In consideration of the mutual covenants and agreements hereinafter contained the parties covenants and agree as follows:

1. The Contractor must provide individuals that are acceptable to the Company.
2. The Contractor must use his own tools as no tools will be provided by the Company.
3. The Contractor will provide its hours to the Company.
4. The hourly rate is \$60.00
5. The Company will pay the Contractor in 30 days from the date of the invoice.
6. The Contract is for a period of three months commencing on April 1, 2000.

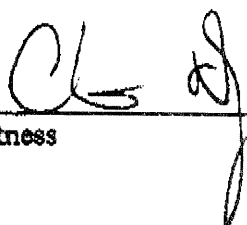



TEC049036

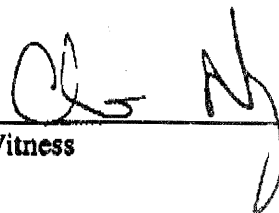
7. This agreement may be terminated before its expiry date in the following circumstances

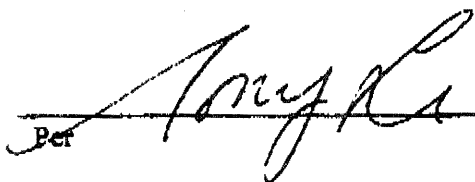
- (i) at any time by one of the parties upon providing 14 days written notice to the Contractor and 14 days written notice to the Company
- (ii) at any time by written mutual agreement between the Company and Contractor
- (iii) at any time by the Company upon the Contractor(s) breach of any term(s) of this agreement.

IN WITNESS WHEREOF this agreement has been executed by the parties hereto.

  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Per Date: April 10/2005

  
 \_\_\_\_\_  
 Witness

  
 \_\_\_\_\_  
 Per

TEC049037

1281345 Ontario Limited  
40 Jonathan st  
Uxbridge, ON  
L9P 1B7

March 31, 1999

Consultant: Roger Flemming

Sold to: Bal Hsu & Associates Inc.  
1033 McNicoll av.  
Lower Level  
Scarborough, ON  
M1W 3W6

Invoice #: 99-03-01  
Invoice covers: March 1 - 31, 1999

For business analyst duties carried out at the above site:

179.5 hours @ \$65/hr	=	\$ 11667.50
GST @ 7%	=	\$ <u>816.73</u>
Total:	=	\$ 12484.23

GST # 873511448

TEC049038

1281345 Ontario Limited  
40 Jonathan st  
Uxbridge, ON  
L9P 1B7

April 25, 2000

Consultant: Roger Flemming  
Tel: 905-852-2912  
416-879-2278(cell)

Sold to: Andall Technologies Corporation  
1033 McNicoll Ave.  
Lower Level,  
Scarborough, Ontario M1W 3W6

Invoice #: 00-04-02  
Invoice covers: April 1 - 15, 2000

For business analyst duties carried out at the above site

74.5 hours @ \$60/hr	=	\$ 4,470.00
GST @ 7%	=	\$ 312.90
Total:	=	<u>\$ 4,782.90</u>

GST # 873511448