

IN THE MATTER OF THE TORONTO COMPUTER LEASING INQUIRY

AFFIDAVIT OF ULLI WATKISS

I, Ulli Watkiss, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the City Clerk for the City of Toronto. The City Clerk's Office oversees and manages the legislative process and related activities for Toronto City Council, community councils, council standing committees and task forces of council. The City Clerk runs municipal elections, maintains the assessment roll of 1.6 million voters, issues marriage licenses, registers births and deaths, issues burial permits, and licenses for charitable gaming. The division also provides financial and administrative support to council, maintains corporate records and archives, looks after the printing, mailing and distribution needs of the organization, and provides protocol services.

2. One of the statutory duties of the City Clerk is to maintain minutes of all meetings of Council, and of Committee meetings. Formal Council minutes are prepared by my office after the conclusion of these meetings, and are confirmed by City Council at a subsequent Council meeting.

3. Council meetings are conducted according to very detailed rules of procedure, as required by the Procedural By-laws contained in Chapter 27 of the Municipal Code (the "Code"). For the purposes for which I swear this affidavit I believe that the relevant council procedures set out in Chapter 27 were the same in October 2000 as they are today. That procedure is as follows:

- a. My office prepares a Council agenda in the format required by section 27-17. A. of the Code. That agenda includes the presentation of reports of the standing committees, community councils and other committees, and the consideration by Council of those reports;

- b. Section 27-17. D. of the Code states that the recommendations of a committee, embodied in a report to Council, are deemed to have been moved and to have been adopted by Council without any amendments, unless Council takes other action;
- c. Section 27-24 permits Councilors to submit a list to my office, in advance, of all agenda items they wish to have considered, meaning subject to discussion and debate, during a Council meeting. Near the beginning of each new Council meeting the Chair will proceed item by item through the agenda and ask Councilors if they wish the items to be held. If so, the item is then held for consideration. Items which are not held, or if held and subsequently released without amendment, are deemed to have been adopted by Council. At various times during the meeting, usually before a break, the Chair will ask if there are any held items for quick release, being items which can be voted on without significant debate or discussion.
- d. Once an item has been adopted by Council, it can only be re-opened for further consideration in accordance with section 27-49 of the Code. This requires a two-thirds vote of the members present and voting.

4. Council minutes do not reflect the specific order in which each event recorded in the minutes occurred, nor do they reflect every event in a manner which can be used to recreate an event after the fact. Rather, Council minutes are "rolled up", such that the minutes reflect an event as it was ultimately dealt with by Council. The minutes are therefore a summary of the final resolution of an item, and do not necessarily reflect either what happened at each moment of the meeting, or the order in which events may have occurred as Council addressed the particular issue. Video tape recordings are made of Council meetings which can be viewed to recreate what happened at a particular meeting.

5. I have reviewed excerpts from the videotape of the October 2000 Council Minutes in order to review how Policy & Finance Report No. 12, Clause 14 ("P & F No.

12, Clause 14”) was dealt with by Council during that meeting. These excerpts show the following:

- a. At 10:30 a.m. on October 3, 2000, the first day of the meeting, Deputy Mayor Case Ootes, as Acting Chair, went through the list of items one by one to determine which ones would be held for further discussion during the meeting. P & F No. 12, Clause 14 was not held at that time. Therefore, it was deemed to have been moved and adopted by Council without amendment (see paragraph 3(b) above);
- b. Starting at approximately 4:40 p.m. on October 11, 2000, Deputy Mayor Ootes invited Councilors to speak to quick items before the meeting was adjourned. Councillor Jakobek rose and indicated that he had two quick items to address. Both required that earlier motions be re-opened. The first issue was to re-open a motion concerning TEDCO to add a short phrase in order to clarify Mr. Jakobek’s own earlier motion on the issue. He then spoke briefly to the second issue (at 4:34:42 on the video counter) as follows:

Councillor Jakobek: And second, okay. Clause 14 in Policy Report #12. I’ve consulted with the Treasurer. First page. It’s simply a motion to refer this back to the Treasurer for a report back to the first meeting in December and for her to compare the lease cost with external borrowing and a comparison of any savings that might be incurred by leasing.

Councillor Ootes (Chair): All in favour?

Unknown councillor: Question ... I just want to hear from the staff if that’s going to create a problem?

Councillor Jakobek: I believe that as long as we extend the RFP the answer is it’s okay.

Councilor Ootes (Chair): Staff? Where's staff?

Councilor Jakobek: I can assure the Councilor that you can re-open it if you want, but she's agreed.

Unknown Councilor: Okay.

Councilor Ootes: All in favour – opposed – carried.

6. It appears from a review of the video during the above exchange that staff was either not available, or for some other reason did not answer the question posed by the unknown Councilor to Councilor Jakobek about whether his motion might create a problem.

7. I have reviewed an excerpt from the Minutes of the Council of the City of Toronto ("October 2000 Council Minutes") which I am advised by counsel for the City of Toronto is included in a binder labeled Exhibit 98, Tab 9. That excerpt contain pages 1 to 9 and page 123 of the October 2000 Council Minutes. With respect to the October 2000 Council Minutes I can advise as follows:

- a. Because the Minutes are "rolled-up" one cannot read these minutes to fully understand what happened at each moment of that Council meeting, or in what order things occurred; rather, one has to review the videotapes made of each meeting to follow the sequence of events;
- b. Report No. 12 of the Policy and Finance Committee was presented for and was given consideration as reflected in clause 11.4 on page 3;
- c. Clause 11.7 on page 7 reflects that:
 - (i) After it was initially approved, P & F No. 12, Clause 14 was given further consideration at some point during the meeting; and
 - (ii) P & F No. 12, Clause 14 is not included in the list starting at the bottom of page 8 of clauses which were held by Council for further consideration but which were subsequently adopted without amendment


or further discussion. This reflects the fact that this Clause was given further consideration by being the subject of a motion to re-open by Councillor Jakobek, as indicated in Clause 11.119 on page 123.

8. Section 46 of the Council Procedural By-Law referred to in Clause 11.119 of the October 2000 Council Minutes is now section 47 of the Code.

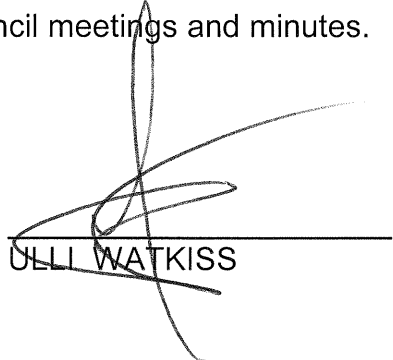
9. In my experience it is not that unusual for items to be re-opened. The reasons for which a Councilor may bring a motion to re-open a matter are not reflected in Council Minutes. A review of the videotapes shows that Councilor Jakobek gave no reasons for doing so with respect to P & F No. 12, Clause 14 on October 11, 2000.

10. I make this affidavit for purposes of describing some of the procedural issues involved in understanding the workings of Council meetings and minutes.

SWORN BEFORE ME at)
the City of Toronto in)
the Province of Ontario on)
July 8, 2004)

)

Robert A. Centa
Barrister & Solicitor
565833_1


ULLI WATKISS