

# TORONTO STAFF REPORT

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September 20, 2002

To: Audit Committee  
From: City Solicitor  
Subject: Toronto Computer Leasing Inquiry - Status Report

## Purpose:

To provide the Audit Committee and City Council with a status report on the Toronto Computer Leasing Inquiry.

## Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

## Recommendations:

It is recommended that this report be forwarded to City Council for information.

## Background:

City Council, at its meeting held on February 13, 14 and 15, 2002, established the terms of reference for a public inquiry, pursuant to Section 100 of the *Municipal Act* to inquire into all aspects of leasing contracts for computers and related software between the City of Toronto and MFP Financial Services Ltd. and between the City of Toronto and Oracle Corporation Canada Inc. Madam Justice Bellamy was appointed as Commissioner of the Inquiry.

## Comments:

### Standing Hearings

The Commission published a call for applications for standing and subsequently held a hearing on June 24, 2002 to deal with the standing applications. The Commissioner released her decision on standing and funding on July 3, 2002. The Commissioner has granted full standing to the City of Toronto, MFP Financial Services Ltd., Lana Viinamae and Wanda Liczyk. She

has granted special standing to the Canadian Union of Public Employees, Local 79. As set out in her decision, full standing includes:

1. Access to documents collected by the Commission subject to the Rules of Procedure;
2. Advance notice of documents that are proposed to be introduced into evidence;
3. Advance provision of statements of anticipated evidence;
4. A seat at counsel table;
5. The opportunity to suggest witnesses to be called by Commission counsel, failing which an opportunity to apply to the Commission to lead the evidence of a particular witness;
6. The opportunity to cross-examine witnesses on relevant matters; and
7. The opportunity to make closing submissions.

Special Standing includes:

1. Access to documents collected by the Commission subject to the Rules of Procedure;
2. Advance notice of documents that are proposed to be introduced into evidence;
3. Advance provision of statements of anticipated evidence;
4. The opportunity to suggest areas that should be canvassed and areas for examination of certain witnesses by Commission counsel; and
5. The opportunity to make closing submissions.

#### Applications for Funding

At the standing hearing, both Lana Viinamae and Wanda Liczyk asked that, if granted standing, they be able to obtain funding. The Commissioner accepted our submissions that there is no statutory jurisdiction that allows her to order the City of Toronto to provide funding. Neither Section 100 of the *Municipal Act*, R.S.O. 1990, c.M.44 nor the provisions of the *Public Inquiries Act*, R.S.O. 1990, c.P.41 provide jurisdiction to award funding. However, the Commissioner indicated that although she has no jurisdiction to order the City to provide funding, she can make recommendations to the City. The Commissioner considered the submissions made by the solicitors for the individuals granted standing as to the need for funding beyond the \$50,000.00 cap that had been proposed by the City. The Commissioner acknowledged in her decision that it is for the City to make the final decision on what conditions it attaches to funding. However, she went on to make recommendations as to the sorts of conditions the City should consider. These recommendations included that the individuals with standing should be provided with the

funding necessary to fully and actively participate in the Inquiry. However, on the other hand, it is not in the public interest to have open-ended funding.

In a separate companion in-camera report, the issue of funding for the individuals with standing is further addressed.

#### City's Outside Solicitors

The City has retained the law firm of Paliare Roland Rosenberg Rothstein to act for the City at the Inquiry. Linda Rothstein of that firm is the lead counsel and will be assisted by Lili Harmer, Gordon Capern and Robert Centa of the firm. Services are being provided under instruction from the Chief Administrative Officer and the City Solicitor.

#### Document Production

The significant majority of the City's documents, including production of the KPMG working file was produced to Commission counsel at the beginning of June. Additional documents have subsequently been produced by the City, responding to Commission Counsel's requests. Communications were sent out to all City staff regarding the need to produce all relevant documents. The City documents, along with productions of other parties, have been scanned and reproduced on a computer database for easy reference. All parties who have standing will be provided with a copy of the complete database. In addition, parties have identified which documents they are claiming privilege over. These documents are not being produced to the other parties, but have been shared with Commission counsel. All parties and counsel have had to sign a confidentiality agreement which provides that the documents or information produced in connection with the Commission's proceedings, will not be used for any other purpose. The confidentiality undertaking has no force or effect once any document or information has become part of the public proceedings of the Commission.

#### Hearings

The hearings are scheduled to begin on September 30, 2002 and are anticipated to last approximately six to eight weeks. At this time, it is estimated that approximately 35 witnesses will be called to testify at the hearings. Commission counsel have been meeting with City staff and potential witnesses over the last two months, and will be preparing witness summaries that will be shared with the counsel for the parties with standing. In general, at the hearing, Commission counsel will lead the evidence from each witness. Parties with standing will then have an opportunity to cross-examine the witness to the extent of their interest. Counsel for a witness will examine last and Commission counsel will have the right to re-examine last. All hearings are open to the public, however, the Commissioner may hold parts of the hearing in the absence of the public on such terms as she may direct.

#### Communication Plan

The Toronto Computer Leasing Inquiry has established a Web site at <http://www.torontoinquiry.ca/>. A link to this site from the City of Toronto site will be

established. The Inquiry has confirmed that a daily transcript of proceedings will be placed on their Web site each evening. At present, no broadcaster has indicated an interest in televising the proceedings.

Following the conclusion of each days sitting a brief email will be sent to Councillors and their staff outlining the major matters that were heard during the day and highlighting what evidence is scheduled for consideration in the days following.

Conclusions:

It is recommended that this report be received for information.

Contact:

Diana W. Dimmer  
Director of Litigation  
Legal Services  
Tel: (416) 392-7229  
Fax: (416) 392-1199  
Email: [ddimmer@city.toronto.on.ca](mailto:ddimmer@city.toronto.on.ca)

Anna Kinastowski  
City Solicitor