

Clause embodied in Report No. 6 of the Audit Committee, as adopted by the Council of the City of Toronto at its meeting held on June 18, 19 and 20, 2002.

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**Toronto Computer Leasing Inquiry -  
Document Production, Preliminary Budget  
and Standing Issues/MFP Financial Services Ltd. -  
Status of Litigation and Litigation Costs**

*(City Council on June 18, 19 and 20, 2002, adopted the following recommendations:*

*“It is recommended that:*

- (a) *City Council instruct the City Solicitor to seek standing at the Public Inquiry and to retain outside counsel to represent the City at the Inquiry on the terms set out in the joint report dated June 10, 2002, from the Chief Administrative Officer and the City Solicitor, as embodied in the Clause, save and except the following process:*

*‘If standing is sought, it will be City Council who provides direction to the outside counsel. It is our view that it would not be manageable or timely for the whole of Council to provide legal direction throughout the Inquiry.*

*Therefore, it is recommended that Council delegate the authority to provide direction to the Chairs of the Standing Committees and the Chair of the Audit Committee, who, as a whole, shall provide overall direction to the outside counsel.*

*The day-to-day instructions would be the responsibility of the City Solicitor and the Chief Administrative Office. It is apparent that the City Auditor will likely be a witness at the Inquiry as being involved in the implementation of the City’s Y2K administrative processes and it is not appropriate that he be responsible for providing instructions to any external counsel. The Auditor has been consulted and concurs.*

*Further, it is recommended that the City Solicitor and the Chief Administrative Officer report from time to time to the Chairs of the Standing Committees and the Chair of the Audit Committee, and then onto Council, on the status of the Inquiry.’;*

(b) *the following recommendations embodied in the joint report dated June 10, 2002, from the City Solicitor and the Chief Administrative Officer, pertaining to the preliminary budget for the Public Inquiry, as embodied in the Clause, be adopted:*

- ‘(1) staff or the City’s outside counsel be directed to invite the Inquiry Commissioner to order legal funding for witnesses and persons with standing, subject to the limits set out in this report, where the Inquiry Commissioner is of the opinion that it is appropriate for the City to be responsible for a portion of those costs;*
- (2) Council approve, in principle, an estimated budget of \$3,975,000.00 for costs relating to or associated with the Public Inquiry as set out in this report, to be funded from the computer leasing liability account;*
- (3) staff monitor the budget estimates set out in this report and report back with any substantial changes to the estimated budget set out herein; and*
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.’; and*

(c) *the confidential joint report dated June 19, 2002, from the Chief Administrative Officer, the Chief Financial Officer and Treasurer and the City Solicitor, entitled ‘MFP Motion for Possession of Computer Equipment’, be adopted, such report to remain confidential, in accordance with the provisions of the Municipal Act, having regard that it contains information which is subject to solicitor-client privilege, save and except the following recommendations embodied therein:*

*‘It is recommended that:*

- (1) City Council provide instructions to the City’s external solicitors not to appeal the decision of Master MacLeod; and*
- (2) City Council instruct City staff to comply with the conditions set out in the decision of Master MacLeod, in order for the City to remain in possession of the computer equipment, which requires the City to make the following payments:*
  - (a) a payment of approximately \$440,000.00 to MFP or its assignee for arrears, to be paid from the City’s capital financing reserve fund;*

- (b) *a payment of \$9.0 million into court, to be paid from the City's computer liability account and capital financing reserve fund;*
- (c) *a payment of approximately \$3,900,000.00 to MFP or its assignee to purchase certain equipment, to be paid from the City's capital financing reserve fund; and*
- (d) *all future lease payments going forward as they fall due under the leases.' "*

*City Council, at its in-camera session, also issued confidential instructions to staff, such instructions to remain confidential, in accordance with the provisions of the Municipal Act, having regard that they pertain to litigation or potential litigation.)*

**The Audit Committee:**

- (1) submits the joint report (June 10, 2002) from the City Solicitor and Chief Administrative Officer respecting Preliminary Budget of the Toronto Computer Leasing Inquiry and of Litigation Costs to Council without recommendation;**
- (2) recommends that City Council instruct the City Solicitor to seek standing at the Public Inquiry and to retain outside counsel to represent the City at the Inquiry on the terms set out in the joint report (June 10) from the Chief Administrative Officer and City Solicitor titled, "Toronto Computer Leasing Inquiry – Standing Issues";**
- (3) recommends that the confidential report (June 11, 2002) from the City Solicitor titled, "MFP Financial Serviced Ltd. – Status of Litigation", submitted to Council under separate cover, be received; and further that, in accordance with the Municipal Act, discussions pertaining to this report be held in camera, as the report deals with the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;**
- (4) recommends that the joint report (June 7, 2002) from the Chief Administrative Officer and the City Solicitor titled, "Toronto Computer Leasing Inquiry – Document Production" be received for information.**

The Audit Committee reports having requested the City Solicitor to submit a further report directly to Council clarifying the anticipated litigation costs and the anticipated costs of the Public Inquiry.

**The Audit Committee submits the following joint report (June 10, 2002) from the Chief Administrative Officer and City Solicitor:**

Purpose:

The purpose of this report is to obtain instructions as to whether City Council wishes for the City of Toronto to have standing at the Toronto Computer Leasing Inquiry.

### Financial Implications and Impact Statement:

As set out in this report, if the City of Toronto is to seek standing at the Public Inquiry, it will need to retain outside counsel.

### Recommendations:

It is recommended that:

- (i) City Council instruct the City Solicitor to seek standing at the Public Inquiry and to retain outside counsel to represent the City at the Inquiry on the terms set out in this report; or
- (ii) City Council instruct the City Solicitor not to seek standing at the Public Inquiry.

### Background:

City Council at its meeting held on February 13-15, 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.

### Comments:

- (a) Standing Hearings

Madam Justice Bellamy, who has been appointed as the Commissioner of the Toronto Computer Leasing Inquiry published notices regarding applications for standing. The notice indicates that the Inquiry is to look into all aspects of leasing contracts for computers and related software between the City of Toronto and MFP Financial Services and between the City of Toronto and Oracle, their history and their impact on the ratepayers of the City of Toronto. As well, the Inquiry Commissioner is to make any recommendations that she may deem appropriate and in the public interest.

Applications for standing were invited by the Inquiry Commissioner from any person or group who has a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to fulfill the Commission's mandate. Standing before a Commission of Inquiry gives the individual or organization the right to take part in the proceedings and to make submissions, on terms set by the Inquiry Commissioner.

Written requests for standing were to be submitted to the Commission by June 7, 2002. Hearings on the applications for standing are scheduled to commence on June 24, 2002.

In order to preserve the City's rights, the City Solicitor forwarded a submission in writing to the Inquiry Commissioner, indicating that she would be seeking instructions from City Council at its meeting to be held on June 18 - 20, 2002, regarding the issue of standing for the City of Toronto at the Inquiry. The submission to the Inquiry Commissioner indicates that if the City wishes to have standing, it should be granted standing as it

clearly has a substantial and direct interest in the subject matter of the Inquiry and, in addition, the City's participation may be helpful to the Commission in fulfilling its mandate.

The Inquiry Commissioner has also published rules of procedure governing the Inquiry. Any party who is granted standing is deemed to undertake to follow the rules of procedure. Parties with standing need to produce to the Commission all documents having any bearing on the subject matter of the Inquiry, although the City will be producing all documents irrespective of the standing issue. Generally, if a party has standing, that party will be provided with access to all documents produced in the Inquiry, will have an opportunity to cross-examine witnesses to the extent of their interest, will be entitled to have counsel present when Commission counsel interview them and also when they testify at the Inquiry, and also will have an opportunity to make submissions to the Commissioner where appropriate.

(b) Advantages and Disadvantages of Standing

It is City Council's decision whether it wishes for the City of Toronto to have standing at the Inquiry. It appears to us that the following factors should be considered by City Council in making a decision on this issue:

- (i) The Inquiry Commissioner's role with the assistance of Commission Counsel is to inquire into all of these matters and to make such recommendations as are appropriate. We believe that the Inquiry Commissioner and her counsel will conduct a thorough and independent review of all of these matters for the benefit of the City and its constituents;
- (ii) The City is still involved in litigation with MFP Financial Services Ltd. ("MFP") and Aztec Limited Partnership. MFP has sought standing at the Inquiry. The City may wish to have counsel present at the Inquiry in order to protect the City's litigation interests;
- (iii) The City clearly has a direct and substantial interest in the matters which are the subject of the Inquiry and the City's participation may be helpful to fulfill the Commission's mandate;
- (iv) The City may wish to take a neutral position on the issues which are the subject of the Inquiry, and leave matters to the Inquiry Commissioner and her counsel, in terms of making any conclusions as to whether there has been any misconduct on the part of any person;

(c) If Standing is Sought

On balance, there are good reasons for the City to seek standing at the Inquiry. If City Council is inclined to direct that standing be sought at the Inquiry, it is recommended that the City's role should involve the following:

- (i) assisting where appropriate or necessary in ensuring that all relevant information is presented to the Inquiry;
- (ii) assisting where necessary and appropriate in ensuring that the Commissioner is aware of all internal administrative procedures, both past and present at the City that may bear on the issues being addressed by the inquiry;
- (iii) ensuring that the City's litigation position with MFP and Aztec are protected to the extent possible and appropriate; and
- (iv) responding to any requests from the Inquiry Commissioner or Commission counsel to assist in respect of the Inquiry.

It is not recommended that the City take a specific position at the Inquiry on allegations of misconduct against specific persons.

(d) Outside Counsel

If City Council directs that standing be sought, it will be necessary to retain outside counsel. City policy with respect to the retention of outside counsel will be followed. The City Solicitor will seek responses from a short list of potential outside counsel who have litigation expertise and who do not have a direct or appearance of a conflict in acting for the City at the Inquiry. The City Solicitor and Chief Administrative Officer will review the responses and determine who should be retained as the City's external counsel. The cost consequences of retaining external counsel are set out in a companion report. It is estimated that the total costs could be in the range of \$500,000 - \$750,000.

If standing is sought, it will be City Council who provides direction to the outside counsel. It is our view that it would not be manageable or timely for the whole of Council to provide legal direction throughout the Inquiry.

Therefore it is recommended that Council delegate the authority to provide direction to the Chairs of the Standing Committees and the Chair of the Audit Committee, who, as a whole, shall provide overall direction to the outside counsel.

The day-to-day instructions would be the responsibility of the City Solicitor and the Chief Administrative Office. It is apparent that the City Auditor will likely be a witness at the Inquiry as being involved in the implementation of the City's Y2K administrative processes and it is not appropriate that he be responsible for providing instructions to any external counsel. The Auditor has been consulted and concurs.

Further, it is recommended that the City Solicitor and the Chief Administrative Officer report from time to time to the Chairs of the Standing Committees and the Chair of the Audit Committee, and then onto Council, on the status of the Inquiry.

Conclusions:

The purpose of this report is to obtain instructions whether City Council wishes the City to have standing at the Inquiry. This is a decision to be made by Council. On balance, there are good reasons to seek standing, mainly to assist in ensuring all relevant information is presented at the Inquiry and that the City's interests are protected.

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**The Audit Committee also submits the following joint report (June 10, 2002) from the City Solicitor and Chief Administrative Officer:**

Purpose:

To advise Audit Committee and Council of the preliminary budget of the Toronto Computer Leasing Inquiry and to advise of other costs anticipated in connection with the Judicial Inquiry.

Financial Implications and Impact Statement:

Toronto Computer Leasing Inquiry and Related Matters – Preliminary Budget Estimate

(a)	Total Public Inquiry Preliminary Budget Estimate	\$1,960,000
(b)	Estimated Cost of additional KPMG retainer	\$15,000
(c)	Estimated Cost of City's Outside Counsel at Public Inquiry	\$500,000 - \$750,000
(d)	Estimated Costs for Intervenor Funding	\$250,000
(e)	Estimated Cost of City's Outside Counsel for MFP Litigation	\$1,000,000
	Total Estimate	\$3,725,000 - \$3,975,000

The Chief Financial Officer and Treasurer has reviewed these financial implications and advises that funds have been set aside in a computer leasing liability account.

Recommendations:

It is recommended that:

- (1) staff or the City's outside counsel be directed to invite the Inquiry Commissioner to order legal funding for witnesses and persons with standing subject to the limits set out in this report where the Inquiry Commissioner is of the opinion that it is appropriate for the City to be responsible for a portion of those costs;

- (2) Council approve, in principle, an estimated budget of \$3,975,000.00 for costs relating to or associated with the Public Inquiry as set out in this report to be funded from the computer leasing liability account;
- (3) staff monitor the budget estimates set out in this report and report back with any substantial changes to the estimated budget set out herein; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

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 Limited. The Inquiry has been housed at the East York Civic Centre.

The Inquiry has issued a call for applications for standing with hearings on the applications to be heard commencing on June 24. The actual hearing is expected to commence in the fall.

The Inquiry has now submitted its preliminary budget. In addition, Committee and Council should be aware of other potential costs relating to matters associated with the Inquiry.

Comments:

(a) Inquiry Budget

On June 7, 2002 the Inquiry submitted its preliminary budget of \$1,960,000 as set out in Appendix 'A'. This budget was prepared based on assumptions also set out in Appendix 'A'. In particular, it is difficult to be more definitive because it is unknown how many parties will receive standing and accordingly, how long the hearing will last. The Inquiry expects to provide the City with its final budget estimate in September and a further report will be prepared on receipt of the final budget estimate.

As noted in the estimate, the budget is based on an estimated 40 day hearing. The budget may increase or decrease depending on the number of parties with standing and the actual length of the hearing. In addition, the Inquiry has not yet reviewed all the material provided to it from the City and from KPMG. The Inquiry may determine that additional forensic accounting or investigative work may be required or further experts may need to be retained which will impact on the final budget estimate.

(b) KPMG Retainer

KPMG was retained to undertake a review of various matters relating to the lease transactions and to review the behaviour of staff. KPMG completed their assignment and has been paid for that retainer.



Staff have recently had to meet with KPMG to review materials in their possession, to discuss their investigation and to generally assist in preparing to provide the material and information to the Inquiry.

KPMG has advised that they require a further retainer for work done to date and any future assistance. The estimate for this work is \$15,000.

(c) City's Outside Counsel

Audit Committee and Council will be considering a separate report from the Chief Administrative Office and City Solicitor with respect to the issue of the City's standing at the Inquiry.

The report sets out the method for selecting outside Counsel, its role and how outside counsel will obtain instructions.

As indicated, City policy with respect to the retention of outside legal consultants will be followed. Although it is difficult to estimate the budget for outside counsel, based on information currently available, it is reasonable to assume a budget of \$500,000 - \$750,000.

(d) Intervenor Funding

In a report dated April 10, 2002 from the Chief Administrative Officer and the City Solicitor and considered by Council at its meeting held on April 16, 17 and 18, 2002, the issue of intervenor funding was raised. Intervenor funding refers to payment by the City of legal costs incurred by persons as a result of the Inquiry. The report advised that it is expected that a number of employees will be requesting reimbursement for what they will perceive as necessary legal representation during the preliminary stages of the Inquiry. It was suggested in the report that the City should invite the Inquiry Commissioner to make recommendations with respect to matters of legal funding for individuals.

It should be noted that the Rules of Procedure of the Inquiry at Paragraph 34 provide as follows:

“Council will be retained at the expense of the witness and people with standing. The Terms of Reference do not grant the Commissioner jurisdiction to order the City of Toronto to provide funding for legal counsel”.

There are circumstances where it might be appropriate for the City to provide funding for legal counsel for witnesses and persons with standing and it is recommended that Council invite the Inquiry Commissioner to make recommendations for legal funding as set out below, for witnesses and people with standing where the Inquiry Commissioner is of the opinion that it is appropriate for the City to be responsible for a portion of these costs.

A number of staff have expressed concerns that they may be called as potential witnesses and note that the Rules of Procedure of the Inquiry provide that they may retain counsel.

Staff should be encouraged to cooperate with the Commission and to provide all available information to the Commission. It should be noted that the Inquiry Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel. While it is not essential that these people be represented by counsel unless there is a potential for a finding of misconduct, Council may nonetheless wish to provide some financial assistance to its staff in the event they retain counsel and in the event that the Inquiry Commissioner determines that the City should be responsible for a portion of these costs. It is estimated that perhaps up to 10 current and former staff may be called as witnesses and it might be appropriate to provide up to a maximum of \$5,000.00 per person on receipt of invoices towards reimbursement of legal expenses. While not all witnesses will retain legal counsel, the maximum amount would be \$50,000.00. If Council determines that some other amount is appropriate, the budget estimate would have to be adjusted accordingly.

Certain individuals have applied for and may be granted standing at the Inquiry. It is fairly certain that individuals granted standing will be represented by legal counsel. Although this has not yet been determined, there is a possibility that up to 4 individuals may be granted standing. If the Inquiry Commissioner determines that the City should be responsible for a portion of these legal costs, it is recommended that the reimbursement be limited to up to \$50,000.00 per person on receipt of invoices. If Council determines that some other amount is appropriate, the budget estimate would have to be adjusted accordingly.

The total to be budgeted therefore, for intervenor funding would be \$250,000.00

(e) Lenczner Slaght Royce Smith Griffin Costs

With respect to the ongoing litigation with MFP Financial Services Ltd. and Aztec Limited Partnership, the City has retained the services of Alan Lenczner of the above-noted firm.

Mr. Lenczner's legal fees in respect of the litigation matter if it proceeds to a full trial could exceed \$1,000,000. For the purpose of this report, the fees are estimated at \$1,000,000.

Conclusions:

Every effort is being made by the Inquiry and staff to keep the costs of the Inquiry and associated costs reasonable. Certain costs such as the final cost of the Inquiry will be out of the City's control. Other costs including the cost of the Inquiry will vary depending on the number of parties and persons with standing and the length of the hearing. There is a need for some contingency funding if new information is ascertained through this process which results in a more complex hearing.

Staff will report further once the Inquiry's final budget estimate has been received and more information is known about the hearing.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications and impact statement and advises that funding provisions have been made in a computer leasing liability account for this purpose.

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Toronto Computer Leasing Inquiry

Budget Estimate

Fiscal Year 2002 and Fiscal Year 2003

Budget Plan and Assumptions:

This budget estimate is a preliminary one. It is an estimated budget based upon the knowledge available in the very early setup days of the Inquiry, and is being provided to the City in early June 2002 at the request of the City Solicitor. The Inquiry will provide the City with a final budget estimate in September 2002.

The Inquiry was established in March 2002 and began taking form in April. Certain key decisions on a number of activities are still to occur. At the time of preparing this budget estimate, the Inquiry is not in a position to know how long the hearings will last, including how many parties will have standing (which will not be determined until after the Standing Hearings which start on June 24, 2002). The Inquiry received most of the documentation from the city in late May and the KPMG documents only in early June. Accordingly, until Inquiry Counsel have an opportunity to examine these many boxes of material, the Inquiry is not in a position to know what additional forensic accounting or investigative work may be required, whether experts will need to be retained, etc.

The Inquiry has made some assumptions in the preparation of this preliminary draft budget estimate. These are as follows:

- For budget purposes only, it will be assumed that the Inquiry will complete its responsibilities by March 2003
- As the length of hearings is unknown at this time, for early budget purposes, it will be assumed that there will be 4 days to deal with matters of standing and, using the City's estimate provided in the January 2002 report to the Audit Committee, that 40 days of hearings will be required

- Office and hearing room space is being provided by the City of Toronto at the East York Civic Centre in existing owned space. It is assumed that the Inquiry needs no budget for the cost of using those facilities. Furniture, computers, printer, etc. are being provided from existing surplus City stock and no new cost or budget is associated with that. However, some additional funding may be required for laptop computers and docking stations for use in the hearing room of the Inquiry.
- Certain 2003 budget costs would move back into 2002 if the Inquiry proceeds faster than currently estimated
- Certain budget items (most significantly counsel costs) would be reduced if the Inquiry proceeds faster than expected
- In the City Solicitor's Staff Report to the Audit Committee to Council, \$75,000 was estimated for investigative accounting or forensic work. The City made an assumption that KPMG had already done most of the investigative work and document production. The Inquiry is using that \$75,000 in this preliminary budget estimate, but advises that this number could be higher subject to the review of existing documents. The KPMG documents were received only in early June and Inquiry Counsel have not yet had an opportunity to review them let alone make a determination as to what further additional investigative work might be needed
- The Staff Report noted how difficult it is to estimate the potential costs of an inquiry hearing. A range of \$1 to \$2 million was provided. In the detailed estimate attached to that Staff Report, an estimate of 40 hearing days was used (that 40 days is used in this preliminary budget estimate, until a better estimate of hearing length is known). The Staff Report's estimate for Inquiry Counsel was based on a total hourly rate of \$800 for two counsel; however, the actual total hourly rate of the expected four Inquiry Counsel, established by the City Solicitor, is \$1,015 which makes the Inquiry's preliminary budget estimate for counsel approximately \$400,000 higher than the estimate in the Staff Report
- The fee for court reporting is taken at the City's estimate of \$100,000. The Inquiry has tendered this item, but is not yet aware of how much it will cost
- No monies have been included in this budget for intervenor funding to people with standing
- Given all of the unknowns, a contingency line item is included in this preliminary budget. A final budget will be provided to the City in September at which time there will be known facts to allow for a more exact budget. That budget will also clarify what contingency funding is actually required.

Fiscal Year 2002 (April to December):

Salaries and Benefits:

No salary or benefits funding is required.

The short-term nature of the Public Inquiry results in retaining staff on short-term personal service contracts. The Commissioner, the Honourable Denise Bellamy, will continue to be paid by the Federal Government as a Justice of Superior Court.

Materials And Supplies:

Misc. Office Supplies	\$10,000
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Furniture And Equipment:

Furniture (almost all furniture is available from the City at no charge)	\$1,000
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Office equipment rental (Furniture and equipment not available from City)	\$1,000
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Technology (assuming all technology and support to be provided by City – see assumptions)	nil
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Corporate Services:

Mail/courier	\$2,000
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Printing	\$10,000
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Copying	\$2,000
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Other Services	\$10,000
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Services and Rents:

Consult - Technical and Professional:

CAO	\$36,000	\$600 per day
Communications Officer	\$40,000	\$600 per day
Senior Legal Secretary	\$28,000	\$24.00 per hour
Legal Secretary	\$24,000	\$20.00 per hour
Hearings Registrar	\$7,000	\$170 per day
Hearing Room Officer	\$5,000	

Professional and Technical Legal (*Counsel):		
Senior Counsel	\$360,000	*\$385 per hour
Senior Counsel	\$300,000	*\$310 per hour
Counsel	\$200,000	*\$210 per hour
Articling Student	\$70,000	*\$110 per hour
Investigators / Forensic Accounting	\$75,000	
Advertising and commun. News releases, Notices of meetings and hearings	\$20,000	
Court Reporting & Transcript fees	\$100,000	
Other Professional and Technical Services:		
Experts & Witness Fees	\$60,000	
Public Broadcasting and Audio Services	\$15,000	
Document Management	\$25,000	
Website Development / Updating	\$40,000	
Travel and Accommodation	\$1,000	
Office Equipment Rentals	\$1,000	
Telephone	\$5,000	
Contingency	\$275,000	

Notes:

\* counsel fees established by City Solicitor

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Fiscal Year 2003 (January To March):

Salaries and Benefits:	Nil
Materials and Supplies:	
Misc. Office Supplies	\$5,000
Furniture And Equipment:	Nil
Corporate Services:	
Mail/courier	\$1,000
Printing	\$20,000
Copying	\$2,000
Other Services	\$5,000

Services and Rents:

Consult - Technical and Professional:

CAO	\$14,000	\$600 per day
Communications Officer	\$9,000	\$600 per day
Senior Legal Secretary	\$11,000	\$24.00 per hour
Legal Secretary	\$10,000	\$20.00 per hour
Hearings Registrar	\$1,000	\$170 per day

Professional and Technical Legal (\*Counsel):

Senior Counsel	\$45,000	*\$385 per hour
Senior Counsel	\$36,000	*\$310 per hour
Counsel	\$25,000	*\$210 per hour
Articling Student	\$35,000	*\$110 per hour

Investigators / Forensic Accounting nil

Advertising and Commun. nil

Court Reporters & Transcript fees nil

Other Professional and Technical Services:

Witness Fees	nil
Public Broadcasting and Audio Services	nil
Website Development / Updating	\$15,000
Travel and Accommodation	nil
Office Equipment Rentals	nil
Telephone	\$3,000

Contingency \$75,000

Notes:

\* counsel fees established by City Solicitor

Toronto Computer Leasing Inquiry  
Summary Budget Totals

	2002	2003	Total
Salaries and Benefits:	nil	nil	nil
Materials and Supplies:	\$10,000	\$5,000	\$15,000
Furniture and Equipment:	\$2,000	nil	\$2,000
Corporate Services:	\$24,000	\$28,000	\$52,000

Services and Rents:

Staff	\$140,000	\$45,000	\$185,000
Counsel	\$930,000	\$141,000	\$1,071,000
Investigator	\$75,000	nil	\$75,000
Advertising	\$20,000	nil	\$20,000
Reporting/transcripts	\$100,000	nil	\$100,000
Other	\$147,000	\$18,000	\$165,000
Contingency	\$200,000	\$75,000	\$275,000
Total	\$1,612,000	\$279,000	\$1,891,000
Total:	\$1,648,000	\$312,000	\$1,960,000

**The Audit Committee also submits the following joint report (June 7, 2002) from the Chief Administrative Officer and City Solicitor:**

Purpose:

To report further on the issue of document production to the Inquiry Commissioner.

Financial Implications and Impact Statement:

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

Recommendation:

It is recommended that this report be received for information.

Background:

At its meeting held on April 16, 17 and 18, 2002, Council requested the Chief Administrative Officer to report on information and records proposed to be withheld from the Inquiry for Council's direction with respect thereto. City Council, at its meeting of May 21, 22 and 23 had before them Notice of Motion J(17) requesting consideration of a report dated May 21, 2002 from the Chief Administrative Officer and the City Solicitor. This report together with the Notice of Motion was deferred to the June 18, 19 and 20, 2002 meeting of City Council.

This report deals with the status of the production of documents to the Inquiry Commissioner.

Comments:

We have been working with the Inquiry Commission counsel in producing documents and materials to them that were in the custody of the City Solicitor. In addition, we have co-ordinated the production of KPMG's documents for Commission counsel as well. In addition, a communication will be going and by the date of this meeting, is expected to have gone out to all City staff to produce all files and documents to the City Solicitor so that they can be forwarded to Commission counsel.



Arrangements have been made with the Inquiry Commission counsel that we will be identifying any privileged documents and then producing them to the Inquiry on the basis that they can be reviewed by them, but this does not amount to a waiver of the privilege that attaches to those documents. If any of the documents which are identified as privileged, are ones which the Commission wishes to have produced in the Inquiry, we will have an opportunity to review the privilege issues with Commission counsel. It is hoped that any issues of privilege may be resolved. We understand that this is a similar process as was used in the Walkerton Inquiry. Accordingly, at this time we are not withholding any documents that are privileged, but simply identifying them to Commission counsel as being privileged.

Conclusions:

In the event there are issues that need to be resolved between the City and Commission counsel, we will report further to City Council on these matters.

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*(City Council on June 18, 19 and 20, 2002, had before it, during consideration of the foregoing Clause, the following report (June 14, 2002) from the City Solicitor:*

Purpose:

*To provide clarification as requested by the Audit Committee at its meeting held on June 13, 2002 and to provide Council with a letter dated June 12, 2002 from Commission Counsel, Toronto Computer Leasing Inquiry.*

Financial Implications and Impact Statement:

*Financial Implications have been included in the June 10, 2002 report from the City Solicitor and the Chief Administrative Officer.*

Recommendation:

*It is recommended that this report be received for information.*

Background:

*At its meeting held on June 13, 2002, Audit Committee requested clarification with respect to the Subject line of the report dated June 10, 2002 from the City Solicitor and the Chief Administrative Officer entitled "Preliminary Budget of the Toronto Computer Leasing Inquiry".*

*Since the preparation of the aforesaid report, we have received a communication from Ron Manes, Commission Counsel relating to applications for standing at the Inquiry and raising the issue of funding for applicants' legal fees that Council should be aware of.*

Comments:

*The June 10, 2002 report of the City Solicitor and Chief Administrative Officer sets out various budget matters relating to the Toronto Computer Leasing Inquiry. The report also includes a section on the estimated costs of outside counsel with respect to the MFP litigation. The cost of litigation counsel is obviously not an Inquiry cost and accordingly the subject of the report would have more appropriately been entitled "Preliminary Budget of the Toronto Computer Leasing Inquiry and MFP Litigation Budget".*

*The Inquiry has prepared a preliminary budget of \$1,960,000, which is within the \$2 million dollars originally estimated, for the Inquiry. As noted in the report, the final budget estimate will be submitted in September and that estimate may change depending on the factors set out in the report.*

*Other costs associated with the Inquiry set out in the report include:*

- estimated cost of additional KPMG retainer	\$15,000
- estimated cost of City's outside counsel at Public Inquiry	\$500,000 - \$750,000
- Estimated costs for intervenor funding	\$250,000
<b>Total</b>	<b>\$765,000 – \$1,015,000</b>

*Including the actual Inquiry estimate, the total budget estimate is \$2,725,000 – \$2,975,000.*

*With respect to the ongoing litigation with MFP Financial Services Ltd., and Aztec Limited Partnership, unrelated to the Public Inquiry, Mr. Lenczner's legal fees if the matter proceeds to a full trial could exceed \$1 million. The total budget estimate of \$3,725,000 - \$3,975,000 set out in the June 10, 2002 report includes Mr. Lenczner's estimated fee.*

*Applications for Standing*

*Attached to this report is a communication dated June 12, 2002 from the Toronto Computer Leasing Inquiry confirming receipt of the City's application for standing before the Inquiry and attaching copies of applications for standing received from:*

- *WeirFoulds on behalf of Lana Viinamae dated June 7, 2002*
- *Caley Wray on behalf of CUPE Local 79 dated June 7, 2002*
- *Blaney McMurtry on behalf of Wanda Liczyk dated June 7, 2002*
- *Bellmore & Moore on behalf of MFP Financial Services Ltd. dated June 7, 2002.*

*In the letter, Commission Counsel brings to the City's attention that the applicants with the exception of Caley Wray on behalf of CUPE Local 79, raise the issue of funding for legal counsel. The Commission advises that it would be helpful if the City responds to the funding issue.*

*A number of previous Inquiries have indicated that persons with an interest sufficient to be represented at an Inquiry should be provided with funding for legal representation. In addition, other Inquiries have taken the position that the participation of individuals is essential to the completeness of the Inquiry and that in the interests of justice and fairness, it would be appropriate to provide funding. Therefore, it is important that Council considers the terms for intervenor funding at a minimum as set out in the June 10, 2002 report and provides the Inquiry with its position in this respect. To be clear, the June 10, 2002 report recommends intervenor funding for individuals only.*

*If Council chooses not to provide intervenor funding, it is anticipated that this will become a major issue at the hearings for standing which will commence on June 24, 2002. By providing funding in accordance with the terms of the June 10, 2002 report, in our view, funding will not be as significant an issue at the hearing and the City will show commitment to a fair and impartial review of the subject transactions involving parties who may be able to assist the Inquiry.*

Conclusions:

*This report provides clarification of the budget set out in the June 10, 2002 report. It further provides information with respect to applications for standing received by the Toronto Computer Leasing Inquiry and with respect to intervenor funding for legal costs.*

Contact:

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*(A copy of the attachment referred to in the foregoing report is on file in the office of the City Clerk.)*

*(City Council also had before it, during consideration of the foregoing Clause, the following confidential reports:*

- (i) (June 11, 2002) from the City Solicitor, such report to remain confidential in its entirety, in accordance with the provisions of the Municipal Act, given that it contains information that is subject to solicitor/client privilege; and*
- (ii) (June 19, 2002) from the Chief Administrative Officer, the Chief Financial Officer and Treasurer, and the City Solicitor, such report to remain confidential, in accordance with the provisions of the Municipal Act, given that it contains information that is subject to solicitor/client privilege, save and except the following recommendations embodied therein:*

*“It is recommended that:*

- (1) City Council provide instructions to the City's external solicitors not to appeal the decision of Master MacLeod; and*
- (2) City Council instruct City staff to comply with the conditions set out in the decision of Master MacLeod in order for the City to remain in possession of the computer equipment which requires the City to make the following payments:*
  - (a) a payment of approximately \$440,000.00 to MFP or its assignee for arrears to be paid from the City's capital financing reserve fund;*
  - (b) a payment of \$9.0 million into court to be paid from the City's computer liability account and capital financing reserve fund;*
  - (c) a payment of approximately \$3,900,000.00 to MFP or its assignee to purchase certain equipment to be paid from the City's capital financing reserve fund; and*
  - (d) all future lease payments going forward as they fall due under the leases.”)*

*(Councillor Ootes, at the meeting of Council held on June 18, 19 and 20, 2002, declared an interest in the foregoing Clause, in that he has shares in Clarica Life Insurance Company.)*