

Clause embodied in Report No. 9 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on September 22, 23, 24 and 25, 2003.

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**Revised Preliminary Budgets for the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry**

*(City Council on September 22, 23, 24 and 25, 2003, adopted this Clause, without amendment.)*

**The Policy and Finance Committee recommends the adoption of the following joint report (September 9, 2003) from the Chief Administrative Officer and the City Solicitor:**

Purpose:

To advise the Policy and Finance Committee and City Council of the revised preliminary budgets of the Toronto Computer Leasing Inquiry (TCLI) and the Toronto External Contracts Inquiry (TECI), and to obtain instructions on certain funding issues.

Financial Implications and Impact Statement:

Preliminary Budget Estimates

	Budget Estimates February, 2003	Current Estimates September, 2003
(a) Inquiries (TCLI&TECI) Plus Contingency	\$12,000,000	8,440,300 1,500,000
(b) Additional KPMG retainer	30,000	30,000
(c) City's Outside counsel at public inquiries	2,250,000	3,250,000
(d) Funding to certain individuals with standing and current and former City employees	1,250,000	2,250,000
(e) Total cost	\$15,530,000	15,470,300

The Chief Financial Officer and Treasurer has reviewed these financial implications and advises that \$6.0 million had been set aside in a Computer Leasing Liability account in 2001 to finance the preliminary estimated cost of the Inquiry(s).

An additional \$9,000,000 was allocated to the Computer Leasing Liability Account from the 2002 operating surplus as approved by Council in the final 2002 operating variance report. Costs to be incurred in 2004 to complete the inquiry will be included in the 2004 Operating Budget.

Recommendations:

It is recommended that:

- (1) Council approve the revised estimated budget of \$15,470,300 for costs relating to or associated with the public inquiries, as set out in this report, to be funded from the Computer Leasing Liability account (\$15.0 million) and the 2004 operating budget will include estimates and funding to cover the 2004 costs to complete the Inquiries;
- (2) Council specifically approve the increased budgets for the costs for the City's outside counsel at the inquiries and the costs for funding to certain individuals and employees/current councillors;
- (3) Council approve the revisions to the funding formula with respect to the preparation of written affidavits and submissions for certain individuals with standing who are receiving funding at the inquiry and current and former employees who are receiving funding, as set out in this report;
- (4) Council approve funding in accordance with the approved formula for Councillor Berardinetti and Ms. Boctor, as set out in this report;
- (5) Staff monitor the budget estimates set out in this report and report back with any substantial changes to the estimated budget set out herein;
- (6) Council direct that the City's outside counsel obtain their day-to-day instructions from the Chief Administrative Officer and City Solicitor on matters pertaining to the Inquiries until the next regular City Council meeting; and
- (7) 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 the public inquiry pursuant to Section 100 of the *Municipal Act*, known as the Toronto Computer Leasing Inquiry ("TCLI"). There have been several reports to City Council on the status of the inquiry and several reports dealing with budget estimates.

At its meeting on October 1 - 3, 2002, City Council decided to extend the terms of reference of the TCLI by establishing a second public inquiry known as the Toronto External Contracts Inquiry or TECI. The report before Council indicated the additional costs for the second inquiry could be in the range of \$3 - 4 Million. The hearing portion for the TECI will immediately follow the hearing portion of the TCLI and the Commissioner will present one report dealing with both inquiries.

In the City Solicitor's and Chief Administrative Officer's report dated January 17, 2003 to City Council, we provided a revised budget estimate for all costs relating to both inquiries of \$15,530,000. A subsequent information report dated March 31, 2003 attached the Commission's revised budget for the two inquiries of \$8,440,300 with a contingency of \$1,500,000.

### Comments:

#### Status of the TCLI and TECI

As of August 31, 2003, there have been 105 hearing days with 54 witnesses having given evidence at the TCLI. It is anticipated that approximately another 15 witnesses will be called at the TCLI. Three of the remaining witnesses are former senior employees of the City whose evidence may be quite lengthy.

On July 10, 2003, Commissioner Bellamy provided an oral status report of the progress on the Inquiries. She advised that in the course of their investigation, Commission Counsel have conducted more than 150 interviews. She reiterated that the Commission has tried to streamline the process by having witnesses present their evidence by way of affidavits whenever possible in order to try and reduce the amount of time witnesses need to spend in the witness box. In July the Commissioner asked her counsel to determine whether all of the remaining witnesses would need to be called. Commission Counsel decided to reduce the number of remaining witnesses as a result. The Commissioner expects to finish hearing the evidence from all witnesses on TCLI by November. Counsel will be given an opportunity to prepare written submissions. The Commissioner has indicated she wishes to limit the length of oral submissions as the oral submissions are simply for the purpose of supplementing the written material.

The Commissioner advised in her update on July 10, 2003 that they have been monitoring expenditures and are on budget to complete both inquiries within the figure provided to City Council in March of \$8.4 Million. She advises that the second Inquiry will start in the late fall. After the second Inquiry is completed the Commissioner will deal with issues relating to good municipal government. Following this, she will prepare her report which will deal with both Inquiries.

#### Costs of the Inquiries:

As set out above, there has been a need to increase the cost estimates within the categories of the City's outside counsel and the funding for certain individuals with standing and current and former City employees. However, it is anticipated that the total costs of the Inquiries will come within the overall estimate provided to City Council in February of 2003. We anticipate that the hearing portion for TCLI will be completed by the end of November, 2003. Following this, we

will provide a full report to City Council on the costs incurred relating to TCLI, including a list of the funding paid to certain individuals with standing and current and former employees who have obtained funding.

#### City's Outside Counsel:

City Council instructed the City Solicitor and the Chief Administrative Officer to retain outside legal counsel to represent the City at the Inquiry. In the report dated January 17, 2003, the cost for both inquiries was estimated to be \$2.25 Million. This amount should be updated as the costs incurred to the end of July, 2003 are \$2,080,255,96. Some of these costs relate to preparation for the second inquiry which work is currently ongoing. Some of the reasons for increased costs for our outside counsel include:

Witness Affidavits – As set out above, the Commissioner requested that witnesses present their evidence by way of affidavit to try and reduce the amount of time witnesses spend in the witness box. This has resulted in our outside counsel spending a significant amount of additional preparation time with City witnesses to prepare lengthy affidavits for them to assist the Commission.

The Leggieri Allegations – Paula Leggieri, who was a City employee in the City's IT Division, suggested that her employment status had been affected due to her co-operation with Commission Counsel. This resulted in our outside counsel conducting a detailed investigation of this serious allegation. In connection with that our outside counsel met with numerous City witnesses, assisted them with preparing affidavits and attended at the hearing for the week that was set aside to deal with these allegations. This resulted in a significant unanticipated amount of time being spent on these matters that did not directly relate to the issues at the Inquiry.

Document Requests – There have been numerous on-going document requests from both Commission counsel and counsel for other parties that the City's internal Legal Division has had to deal with and as well the City's outside counsel. This has been time consuming, and has added to the additional time spent by our outside counsel on these matters.

We have met with our outside solicitors to discuss possible ways to try and manage their costs. Efforts will be made where it is possible and appropriate to do so.

#### Funding Issues for Certain Individuals with Standing and Current and Former Employees

##### Funding Formula:

There have been several reports to City Council outlining the formula for funding to certain individuals with standing and current and former City employees. At the time the reports were prepared, we did not anticipate that counsel for the three main individuals with standing who are receiving funding would be asked to prepare affidavits setting out their clients' evidence. Counsel for Jim Andrew, Wanda Liczyk and Lana Viinamae have all been asked by Commission counsel to prepare detailed affidavits setting out their clients' evidence which will be used to try and shorten the hearing time. In view of this request from the Commission, we recommend that

an additional component be added to the funding formula for these three individuals of up to 30 hours for junior counsel and 50 hours for senior counsel time for preparation of their clients' affidavits.

In addition, at the time we reported on the funding formula, we did not include a component for preparing written submissions. The Commissioner has indicated that she wishes to reduce the amount of hearing time for oral submissions and is expecting parties to set out their position in their written submissions. We are recommending the following be added to the funding formula for preparation of final written submissions on TCLI:

Main parties with Standing who are receiving funding (Wanda Liczyk, Jim Andrew, Lana Viinamae):

Junior Counsel	-	Up to 100 hours
Senior Counsel	-	Up to 50 hours

Employees and former employees who are represented by Counsel and are receiving funding:

Junior Counsel	-	Up to 20 hours
Senior Counsel	-	Up to 20 hours

Funding for Brendan Power

Junior Counsel	-	Up to 40 hours
Senior Counsel	-	Up to 40 hours

In addition, we advise that the Commissioner asked that the parties involved in the Leggieri Allegations prepare written submissions. The Commissioner indicated she would be making an interim ruling on these allegations. We recommend that additional funding be provided to the two individuals involved (Paula Leggieri and Katherine Bulko) for preparation of written submissions dealing with the interim ruling on the Leggieri allegations, as follows:

Junior Counsel	-	Up to 10 hours
Senior Counsel	-	Up to 20 hours

Funding for Certain Persons:

We have also received invoices for funding for Councillor Berardinetti and for Leslie-Ann Boctor. Both of these individuals were advised that they were going to be called as witnesses and incurred certain costs for legal representation. We recommend that we process the requests for payment in accordance with the funding formula even though it appears these individuals will not be called as witnesses. The combined total for both of these requests is under \$5,000.00.

## 2003 Budget and Financing

Based on the preliminary estimates described above, \$15.0 million has been set aside in the Computer Leasing Liability account to date. The Chief Financial Officer and Treasurer will include the additional funding to complete the inquiry in the 2004 Budget.

### Conclusions:

Unfortunately, we have little, if any, control over the length of hearing time being required for the Inquiries and the nature of the issues that may be raised from time to time. It is still possible that the costs may exceed the estimates set out above if the hearing takes longer than anticipated or if unforeseen issues arise. We will continue to monitor expenses and will report to Council in the event that substantial changes to the estimated budget are anticipated. The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications and impact statement.

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