

**NOTICE OF MOTION**

**Toronto Computer Leasing Inquiry (“TCLI”) and Toronto External Contracts Inquiry (“TECI”) – Letter from Commissioner Bellamy to Mayor Miller**

**Moved by: Mayor Miller**

**Seconded by: Deputy Mayor Pantalone**

“**WHEREAS** Commissioner Bellamy has written to Mayor Miller requesting City Council to consider the future of the Toronto External Contracts Inquiry (‘TECI’); and

**WHEREAS** the City Solicitor has prepared a report dated January 26, 2004, providing a status of the TCLI and the TECI to assist City Council in its deliberations;

**NOW THEREFORE BE IT RESOLVED THAT** Council consider the report from the City Solicitor dated January 26, 2004;

**AND BE IT FURTHER RESOLVED THAT** the necessary provisions of Chapter 27 of the City of Toronto Municipal Code be waived to permit introduction and debate of this Notice of Motion at the meeting of Council to be held on January 27, 28 and 29, 2004.”

January 27, 2004

Attachment

According to Chapter 27 of the Municipal Code, the foregoing Notice of Motion:

Notice was previously given	
Meets Municipal Code provisions and only requires a simple majority to introduce and debate	
Requires two-thirds to waive notice	(√)
Requires two-thirds to re-open	
Fiscal Impact Statement provided	*
Should have Fiscal Impact Statement prior to debate	*
Requires two-thirds to waive requirement if Council wishes to debate	
Should be referred to the Policy and Finance Committee	(√)
Requires two-thirds to waive referral if Council wishes to debate	
Recommendations are time sensitive	(√)

\* Chief Financial Officer and Treasurer to advise.

# TORONTO STAFF REPORT

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January 26, 2004

To: City Council

From: City Solicitor

Subject: Toronto Computer Leasing Inquiry and Toronto External Consultants Inquiry  
Letter from Commissioner to Mayor Miller and Status Update

Purpose:

To provide City Council with a status update on the Toronto Computer Leasing Inquiry ("TCLI") and the Toronto External Contracts Inquiry ("TECI") and to comment on the implications of Commissioner Bellamy's letter to Mayor Miller.

Financial Implications and Impact Statement :

City Council has approved a preliminary estimate of \$15,470,300 for the Inquiries. In the event that City Council decides not to proceed with TECI, costs estimated to be in the range of \$3,070,000 will not be expended. If City Council decides to proceed with TECI, potential revisions to the approved budget will be the subject of a further report. Costs of the City's outside counsel for TCLI will exceed the approved estimate but are anticipated to be within the overall approved budget estimate for the Inquiries.

Recommendations :

It is recommended that:

- (1) City Council consider Commissioner Bellamy's December 30, 2003 letter to Mayor Miller and determine whether or not it should cancel TECI.
- (2) The City's outside counsel be permitted to criticize current employees in closing submissions, only if justified by the evidence;
- (3) If City Council confirms that Commissioner Bellamy proceed with TECI, the City Solicitor be requested to report to Policy and Finance Committee with a revised budget estimate.

- (4) The budget amount estimated for the cost of the City's outside counsel be increased to \$3,440,000 from \$3,250,000 to complete TCLI.

Background:

City Council established a public inquiry pursuant to Section 100 of the *Municipal Act* (now section 274 of the *Municipal Act, 2001*), at its meeting held on February 13, 14 and 15, 2002. There have been several reports to City Council on the status of this Inquiry, which is now known as the Toronto Computer Leasing Inquiry ("TCLI").

City Council established a second public inquiry, now known as the Toronto External Contracts Inquiry ("TECI"), at its meeting held on October 1, 2 and 3, 2002.

City Council approved an estimated budget of \$15,470,000 for all costs relating to both Inquiries at its meeting held on September 22, 23, 24 and 25, 2003.

Commissioner Bellamy wrote a letter dated December 30, 2003, to Mayor Miller, attached as Appendix "A". The Commissioner has requested that City Council consider whether it wishes TECI to proceed to a hearing or not.

Comments:

Status of TCLI

On November 25, 2003, Commissioner Bellamy adjourned TCLI. As of that date, 65 witnesses had given evidence over approximately 152 hearing days. The City's outside counsel has requested that the Inquiry recall four witnesses to respond to evidence that has been led at TCLI since they testified: Dash Domi, Jeff Lyons, Tom Jakobek and Peter Wolfram. The Commissioner has not yet decided whether or not to recall these witnesses because her counsel are continuing to investigate certain significant matters within the TCLI terms of reference. The Commission is sensitive to the need to move quickly and is giving it urgent attention. Until these investigations are completed, a decision will not be made about whether to call additional evidence and/or recall witnesses.

There is also the outstanding matter of a legal challenge of the Commissioner's Ruling dated October 15, 2003 with respect to sealed boxes belonging to Mr. Jeffrey Lyons. On May 14, 2003, Mr. Lyons completed his testimony at TCLI. Subsequently, Commission Counsel learned that Mr. Lyons' former law firm had 18 bankers' boxes of his material, which the firm sealed and delivered to Commission Counsel. Neither Mr. Lyons nor Commission Counsel have reviewed the contents of the boxes.

Mr. Lyons has claimed solicitor client privilege over the contents of the boxes. Commission Counsel brought a motion before the Commissioner seeking a ruling that the boxes be unsealed and reviewed by Commission Counsel, in the presence of Mr. Lyons and his counsel, to review the material for privilege and relevancy to the Inquiries. The City supported Commission Counsel's position. Mr. Lyons opposed the motion and proposed that he and his lawyers review

the documents privately, without the participation of Commission Counsel, to determine whether there is material in the boxes that might be helpful to the Commissioner.

The Commissioner ruled that Commission Counsel could unseal the boxes and review their entire contents for relevance, helpfulness and possible privilege, taking into account all issues in both TCLI and TECI. Mr. Lyons has applied to the Divisional Court for judicial review of the Commissioner's order. The Commissioner has retained outside counsel to oppose the application. The City's outside counsel is also appearing to oppose the application. It is scheduled to be heard on January 28 and 29, 2004. The Divisional Court's decision may be appealed to a higher court.

#### City Submissions on TCLI

City Council has previously instructed the City's outside counsel that they can make specific submissions on allegations of misconduct, if appropriate, against various persons based on the evidence presented at the hearing (Report of the Chief Administrative Officer and City Solicitor dated November 26, 2002 attached to Notice of Motion J34 approved by City Council at its meeting held on November 26, 27 and 28, 2002). However, City Council's current instructions prevent outside counsel from criticizing current City employees unless the evidence shows fraud, criminal misconduct or bad faith on the part of the current employee.

Commission Counsel will not be making final submissions to the Commissioner. In the absence of such submissions, and in order for the City's submissions to be truly helpful to the Commissioner, it may be necessary for the City's submissions to contain some criticism of current City employees. Accordingly, it is recommended that our outside counsel be instructed that the City's submissions may criticize current employees only where such criticisms are justified on the evidence.

#### Good Governance Portion of the Inquiry

The good governance phase is expected to last three weeks and will focus on four main themes: conflict of interest, lobbying, procurement and municipal governance. As Commissioner Bellamy pointed out at the opening of the good government phase on January 19, 2004:

My Terms of Reference require that I also make recommendations for change that will improve City government and hopefully prevent, in the future, the kinds of mistakes or misconduct that may have occurred in the past...

Before making such recommendations, I intend to benefit from the knowledge and experience of experts on municipal government. The good government phase of this Inquiry is designed to provide me with their insight and expertise, which I can then consider in formulating my recommendations on the various issues that will form part of my report.

On November 4, 2003, Commissioner Bellamy announced that the good government phase would immediately follow TCLI so that the City could consider the work of the Inquiry as it moved to deal with the issues related to the four themes to be explored.

The Commission retained experts who have produced reports on the four themes. These reports have been posted publicly on the Inquiry web site and the experts will appear as witnesses, but will not give evidence under oath. The Chief Administrative Officer was the first witness at the good government phase and will be followed by panels of witnesses selected by the Commission.

#### Status of TECI and Commissioner Bellamy's Letter

Commissioner Bellamy wrote a letter dated December 30, 2003, attached as Appendix "A", to Mayor Miller. Commissioner Bellamy has asked City Council to consider whether the value to the public of holding public TECI hearings may be outweighed by its potential cost and the attendant delay in the delivery of her report. The Commissioner has advised that it is not likely that the anticipated TECI evidence would materially enhance her recommendations. The Commissioner has made it very clear that she is prepared to carry out her mandate if City Council decides that TECI should proceed.

On September 30, 2002, at the opening session of TCLI, the Commissioner adjourned the Inquiry to permit the Ontario Provincial Police to investigate certain information that Commission Counsel had discovered during their investigation. On October 1, 2002, City Council considered a status report dated September 20, 2002 from the City Solicitor and passed a motion recommending that the Inquiry's terms of reference be amended to include the IT consulting contracts involving Beacon and Remarkable software. City Council also requested that the City Solicitor commence discussions with Commission Counsel regarding how to accomplish this goal.

On October 3, 2002, the City Solicitor reported back to City Council on the discussions with Commission Counsel regarding amended terms of reference. Commission Counsel advised that there were two areas that Commission Counsel wanted to investigate and explore further that may not have been expressly included in the TCLI terms of reference: consulting contracts between Ball Hsu Associates and the City and the City's acquisition of the computer hardware and software that subsequently formed the basis of the computer leasing RFQ that is the subject of TCLI.

On October 3, 2003, City Council approved terms of reference for an inquiry, subsequent or concurrent, concerning:

1. The Beacon and Remarkable contracts (as requested by City Council);
2. The external contracts being Ball Hsu Associates Inc. (as requested by Commission Counsel); and

3. The contracts for the purchase of the computer hardware and software that subsequently formed the basis of the computer leasing RFQ that it the subject of TCLI (as requested by Commission Counsel).

The Commissioner advised in her letter that she has three concerns with respect to proceeding with TECI:

1. The cost of TECI in view of the City's budgetary pressures (the financial status of the Inquiry is discussed below);
2. The timeliness of her report. TECI is currently scheduled for 70 hearing days. If TECI does not proceed, the Commissioner expects to release her report to City Council by the end of the summer 2004. If City Council chooses to proceed with TECI, the Commissioner's report will not be available until early to mid 2005.
3. The value of TECI to City Council. The Commissioner has advised that while TECI will examine different transactions than TCLI, and while there may be merit in such an examination, there is some overlap with many of the same participants and it is not likely that the evidence to be presented will materially enhance her recommendations to City Council.

Council should consider the Commissioner's concerns and determine whether the value to the public of continuing with TECI may be outweighed by its potential cost and the resulting delay in the delivery of her report.

#### Inquiry Budget Status and Financial Implications

At its meeting held on September 22, 23, 24 and 25, 2003, Council approved a revised estimated budget of \$15,470,000 for costs relating to or associated with the public inquiries. At that time, the preliminary budget estimates for the inquiry components were as follows:

Inquiries (TCLI & TECI) including contingency	\$9,940,300
Additional KPMG retainer	\$ 30,000
City's Outside Counsel	\$3,250,000
Funding for Individuals with standing and Current and former City employees	<u>\$2,250,000</u>
Total	\$15,470,300

As of January 15, 2004, actual costs expended by the City are as follows:

Inquiries cost for 2002	\$1,921,016
Inquiries cost for 2003	\$4,565,200
Additional KPMG retainer	\$ 22,447
City's Outside Counsel	\$2,809,938

Funding for Individuals with standing and Current and former City employees	\$1,427,357
Miscellaneous Expenses (printing, software etc)	<u>\$ 13,349</u>
 Total	 \$10,759,307

In the event that TECI does not proceed, the Commissioner estimates that \$1.5 million will not be expended by the Inquiry. In addition, additional expenditures for funding for individuals with standing and current and former City employees will not be required. The City has currently expended \$1,427,357 to fund current and former employees. Whether or not TECI proceeds, these persons will incur further costs to prepare their final submissions. While it is difficult to estimate the final total, it is currently anticipated to be within the \$2,250,000 amount approved by Council. If TECI proceeds and takes 70 hearing days, the total costs for funding current and former employees will exceed the original budgeted amount.

The City has paid its outside counsel \$2,809,938. This number is higher than anticipated due to the length of TCLI, significant issues of witness credibility, the number of parties with standing and unexpected matters such as the Paula Leggieri allegations and the judicial review application concerning the Jeff Lyons boxes. In some cases, our outside counsel has been able to assist City staff with Inquiry matters thereby reducing those employees' legal bills. Staff feel that the firm of Paliare Roland has ably represented the City's interest and that their cost is justified.

If TECI does not proceed, it is estimated that the City will expend \$190,000 beyond the original budgeted amount for its outside counsel bringing the total estimated cost to \$3,440,000 from \$3,250,000. The major component of the increased cost is expected to be the preparation of final submissions. If TECI proceeds, it is estimated that the City will expend \$760,000 beyond the original budgeted amount bringing the total budgeted amount to 4,010,000.

The revised preliminary budget estimate comparing costs with and without TECI proceeding would be:

	Without TECI	With TECI
Inquiry	\$8,440,300	\$9,940,300
Additional KPMG retainer	\$ 30,000	\$ 30,000
City's Outside Counsel	\$3,440,000	\$4,010,000
Funding for Individuals with Standing and current and former City employees	<u>\$2,250,000</u>	<u>\$3,250,000*</u>
 Total	 \$14,160,300	 \$17,230,300

\*Includes TCLI and estimate only for TECI

By not proceeding with TECI, the City would not expend at least \$3,070,000. As Council has been previously advised, the City has little, if any, control over the length of hearing time required and the nature of issues raised. It is possible that the costs of TECI may exceed this



estimate depending on the actual length of the hearing and if new issues arise which are not currently foreseen or if more individuals seek and are granted standing and participate in TECI.

Conclusions :

Commissioner Bellamy has asked City Council to consider whether the value to the public of holding public TECI hearings might be outweighed by its potential cost and the attendant delay in the delivery of her report. The Commissioner also advises that it is not likely that the anticipated TECI evidence would materially alter her recommendations. The Commissioner has made it very clear that if City Council decides that TECI should proceed, she is prepared to carry out her mandate.

In the event that City Council decides to request Commissioner Bellamy to continue to proceed with TECI, the City Solicitor should be requested to report back to City Council through the Policy and Finance Committee with a revised budget estimate.

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City Solicitor

List of Attachments:

Commissioner Bellamy's letter to Mayor Miller dated December 30, 2003