



J(40)

NOTICE OF MOTION

Toronto Computer Leasing Inquiry (“TCLP”) and Toronto External Contracts Inquiry (“TECP”)

Moved by: Mayor Miller

Seconded by: Councillor Walker

“WHEREAS the City Solicitor has prepared a report providing City Council with an update on the Toronto Computer Leasing Inquiry (‘TCLI’); and

WHEREAS this report seeks Council’s instruction with respect to the resumption of the Toronto External Consultants Inquiry (‘TECI’);

NOW THEREFORE BE IT RESOLVED THAT Council consider the report of the City Solicitor dated May 18, 2004, entitled ‘Toronto Computer Leasing Inquiry and Toronto External Consultants Inquiry’ and provide instructions to staff;

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 May 18, 2004.”

May 18, 2004

Attachment

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

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| Notice was previously given | |
| Meets Municipal Code provisions and only requires a simple majority to introduce and debate | |
| Requires two-thirds to waive notice | (v) |
| 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 | (v) |
| Requires two-thirds to waive referral if Council wishes to debate | |
| Recommendations are time sensitive | (v) |

* Chief Financial Officer and Treasurer to advise.

TORONTO STAFF REPORT

May 18, 2004

To: City Council

From: City Solicitor

Subject: Toronto Computer Leasing Inquiry and Toronto External Consultants Inquiry

Purpose:

To provide City Council with an update on the Toronto Computer Leasing Inquiry ("TCLI") and to seek Council's instructions with respect to the resumption of the Toronto External Consultants Inquiry ("TECI").

Financial Implications and Impact Statement:

City Council has approved a preliminary estimate of \$15,470,300 for the Inquiries. In January 2004, it was estimated that if TECI did not proceed, the estimated cost would be \$14,160,300 and if TECI proceeded, the estimated cost of both Inquiries would be in the range of \$17,230,000. These estimates do not take into account the costs of the current proceedings in Divisional Court. If City Council wishes to proceed with TECI, the Chief Financial Officer and Treasurer should be directed to report back on a source of funding for the amount in excess of \$15,470,300. At this time, our estimate of the total cost for TECI is \$3,070,000.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) City Council direct the City Solicitor to advise Commission Counsel that it wishes TECI to proceed;

OR

- (2) City Council direct the City Solicitor to advise Commission Counsel that it does not wish TECI to proceed at this time.

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 September 22, 23, 24 and 25, 2003.

At its meeting held on January 27, 28 and 29, 2004, City Council considered the report of the City Solicitor and the letter dated December 30, 2003 from Commissioner Bellamy to Mayor Miller. With respect to the deferral of TECI, City Council resolved among other matters, as follows:

1. The Commission be urged to investigate fully all information relevant to the TCLI terms of reference and to complete that investigation as soon as possible;
2. The Commission be encouraged to call all evidence that may shed light on the issues raised in the TCLI terms of reference;
3. City Council defer further consideration of the letter dated December 30, 2003, to Mayor Miller, from Commissioner Bellamy, until Commissioner Bellamy or her Counsel advise the City that all evidence related to TCLI has been called. In the interim, Council does not expect the Commissioner to begin hearings in the TECI;

Comments:

Since Council’s consideration of this matter in January, the Divisional Court released its decision with respect to the judicial review application dealing with the opening of sealed boxes belonging to Mr. Jeffrey Lyons. The Divisional Court upheld the Commissioner’s ruling that Commission Counsel could unseal the boxes and review their contents for relevance, helpfulness and possible privilege, taking into account all issues in both TCLI and TECI. The Divisional Court decision was not appealed and Commission Counsel has now completed its review of the boxes.

Commissioner Bellamy resumed TCLI on April 19, 2004. The Inquiry heard from two witnesses. The Inquiry was scheduled to hear from at least five further witnesses including Mr. Peter Wolfraim, Mr. Jeffrey Lyons, Mr. Tom Jakobek and Ms. Deborah Morrish. Prior to testifying, Mr. Tom Jakobek and his wife, Ms. Deborah Morrish brought motions before Commissioner Bellamy. Mr. Jakobek refused to respond to the summons to answer questions with respect to new evidence which was before the Commissioner. He argued that the Commissioner should give the information to the police because it is constitutionally impermissible for the Commissioner to examine this new evidence at a public inquiry. In the alternative he requested that the Commissioner adjourn TCLI so that he can bring an application

before the Divisional Court to quash the summons to appear. Ms. Morrish accepted service of the summons to testify at the Inquiry but requested an adjournment to bring an application before the Divisional Court to quash the summons. On April 30, 2004, Commissioner Bellamy issued her decision rejecting the arguments made on the motions. She concluded that she would not limit the recall evidence as requested by Mr. Jakobek.

However, in light of the applications for judicial review, the Commissioner adjourned TCLI to allow Mr. Jakobek and Ms. Morrish to proceed with their applications before the Divisional Court. This matter has now been scheduled to be heard on June 16 and 17, 2004. The Commissioner has retained outside counsel to oppose the applications. The City's outside counsel is also appearing to oppose the applications. There may be further delay if any of the parties seek to appeal the Divisional Court's decision to a higher court.

In response to inquiries, Commission Counsel has provided the attached letter dated May 18, 2004 which provides information on the nature of the issues which form the basis of TECI. If Council now wishes to proceed with TECI, the Commissioner must be advised so that further investigative work can be undertaken. Depending on the length of time for the Divisional Court decision to issue and whether there are appeals of the decision, there may be adequate time to complete the investigation and to commence hearings into TECI. The Commissioner has retained legal, investigative and support staff to assist her during the course of the inquiries. It would be efficient to use these resources to continue with TECI during the adjournment period.

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:

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| 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 May 6, 2004, actual costs expended by the City are as follows:

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| Inquiries cost for 2002 | \$1,921,016 |
| Inquiries cost for 2003 | \$4,565,200 |
| Inquiries cost for 2004 | \$ 584,334 |
| Additional KPMG retainer | \$ 22,447 |
| City's Outside Counsel | \$2,987,021 |
| Funding for Individuals with standing and Current and former City employees | \$1,445,755 |
| Miscellaneous Expenses (printing, software etc) | <u>\$ 13,349</u> |
| Total | \$11,539,122 |

As set out in the attached letter from Commission Counsel, the Commission's budget estimate for TECI is \$1.5 million, based on an estimated 70 hearing days. This figure does not include costs for the City's outside counsel nor funding for certain individuals at the Inquiry. At this time we estimate these costs to be \$570,000 (for the City's outside counsel) and \$1 million (for funding certain individuals). Accordingly, our estimate of costs for TECI at this time are a total of \$3,070,000.

Conclusions :

If Council wishes TECI to move forward, it would be appropriate to advise Commissioner Bellamy accordingly and to direct the City Solicitor and the Chief Financial Officer and Treasurer to report to Policy and Finance Committee with a revised budget and a source of funding.

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City Solicitor

List of Attachments:

Commission Counsel's letter dated May 18, 2004