

Clause embodied in Report No. 1 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its regular meeting held on February 4, 5 and 6, 2003, and its Special Meetings held on February 7, 2003 and February 10 and 11, 2003.

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

(City Council, at its regular meeting held on February 4, 5 and 6, 2003, and its Special Meetings held on February 7, 2003, and February 10 and 11, 2003, amended this Clause by adding thereto the following:

“It is further recommended that:

- (1) City Council inform Madam Justice Bellamy of its concern with regard to the rising costs of the Inquiry, and request that a copy of the Inquiry budget be provided to Council, and, if appropriate, a revised Inquiry budget be submitted to the April 14, 2003 meeting of Council; and*
- (2) the Chief Administrative Officer and the City Solicitor be requested to submit a report to the Policy and Finance Committee on possible options to manage the costs of the Inquiry.”)*

The Policy and Finance Committee recommends the adoption of the following joint report (January 17, 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 and the Toronto External Contracts Inquiry and to provide information on the costs incurred to date relating to the inquiries.

Financial Implications and Impact Statement:

Revised Preliminary Budget Estimates:

(a)	Revised Budget for Inquiry	\$12,000,000
(b)	Revised Estimate of additional KPMG retainer	\$ 30,000
(c)	Revised Estimate of Costs for City’s outside counsel at public inquiries	\$ 2,250,000
(d)	Estimate of Costs for Funding to certain individuals with standing and current City employees or councillors	<u>\$1,250,000</u>
(e)	Estimated total cost	\$15,530,000

If the hearing time for the Inquiries extends beyond that estimated in this report, the Budget will also exceed that set out in this report.

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 2001/2002 to finance the preliminary estimated cost of the Inquiry(s).

The revised additional estimate of \$9,530,000.00 for 2003, has not been included in the tabled City 2003 Operating Budget. Thus, the additional funding must be included in the revised 2003 Non- Program budget resulting in a further 2003 Budget pressure.

Recommendations:

It is recommended that:

- (1) Council approve an estimated budget of \$15,530,000.00 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 (\$6.0 million) and an increase in the 2003 Non-Program operating budget of \$9,530,000.00;
- (2) 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
- (3) 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").

The report dated June 10, 2002, from the City Solicitor and Chief Administrative Officer commented on the preliminary budget for the TCLI and attached as Appendix "A" the preliminary budget submitted by the Inquiry. That budget was for the sum of \$1,960,000.00, and was based on an estimated 40-day hearing. The report also estimated the costs for the City's outside counsel to be \$500,000. - \$750,000. At that time the total estimate for the TCLI was approximately \$4 Million.

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. It is anticipated that the hearing portion for the TECI will immediately follow the hearing portion of the TCLI and that the Commissioner will present one report dealing with both inquiries.

Comments:

Status of the TCLI and TECI:

As City Council is aware, there was a delay in the start of the hearing while an OPP investigation was carried out.

As of January 15, 2003, there have been 20 hearing days with only six witnesses giving evidence at the TCLI. It is anticipated that at least another 45 witnesses will be called at the TCLI. Based on the progress to date, the hearing portion will be much longer than the initial estimate of 40 hearing days. Some of the possible reasons for the extra time being taken for the hearing are:

- (i) there are more parties who have sought standing at the Inquiry and have retained counsel. For example, subsequent to our last report, Jim Andrew, Jeff Lyons, Dash Domi, Dell Computers and Ball Hsu have all sought standing and obtained counsel. Some witnesses have also retained counsel;
- (ii) credibility issues have arisen over numerous documents and events, which is adding to the length of examinations and has resulted in the need for additional witnesses; and
- (iii) certain documents which were unknown to us at the time of the initial time estimates have added to the length of examinations.

Based on the current rate of progress, it is estimated that the TCLI could last an additional 20 weeks or 80 hearing days. Our preliminary estimate is that the TECI may last 20 weeks or 80 hearing days. The TECI estimate is preliminary because all of the documents have not yet been received from all of the parties, reviewed or analysed. In addition, interviews with all individuals having information relevant to TECI have not yet been held by Commission Counsel. At this rate, the hearing portion for both inquiries could run for most of 2003.

Costs Incurred to Date:

Below is a list of the costs incurred to date relating to KPMG's initial review and the costs incurred on the inquiries. In a separate companion report we have provided an update on the costs incurred by the City in the MFP litigation.

KPMG - Costs for Initial Retainer	\$407,320.98
Costs Relating to Support for Inquiry	\$16,821.79
Paliare Roland (to the end of December 2002)	\$781,801.66
Platinum Legal Inc. - Software and Training Costs	\$8,570.50
Inquiry Commission Costs (to the end of December, 2002)	\$1,759,759.60
Miscellaneous Costs, i.e. Office Supplies, Locks, IDC, copying	\$2,659.87
Total	<u>\$2,976,934.40</u>

Revised Inquiry Budget:

On January 8, 2003, the City Solicitor received a revised interim budget estimate from the Inquiry for the TCLI and TECI, which is attached as Appendix "A". This revised interim budget was prepared based on certain assumptions, which are set out in the document. The latest estimated budget is at \$5,906,250.00. However, we note that it is based on the assumption provided in the original staff report to Audit Committee early in 2002 that there will be 40 days of hearing required for the TCLI. The Inquiry has communicated to the City Solicitor that the latest estimated budget will be significantly exceeded as the number of hearing days will be much greater than originally assumed. We note that the City of Waterloo's Inquiry will likely extend to 70 hearing days, more than three times the original estimate of 20 hearing days. Accordingly, we have provided a rough revised estimate of \$12 Million for the two inquiries for the Commission.

Council should be aware, however, that this estimated budget will increase if the hearing takes longer than estimated above, if the number of parties represented by legal counsel increases and if there continues to be issues of witness credibility. We will continue to monitor expenses and will report to Council in the event that substantial changes to the estimated budget are anticipated.

KPMG Retainer:

KPMG was retained to undertake a review of various matters relating to the lease transactions. KPMG completed their assignment and has been paid for that retainer. On occasion KPMG has had to provide some assistance relating to the Inquiry, such as providing material and information to the Inquiry or to the City and its counsel to assist in connection with the Inquiry. In the report dated June 10, 2002 we estimated that the cost for this work would be \$15,000.00. KPMG has now billed the City in total \$16,821.79. It is estimated that an additional \$15,000.00 may be billed by KPMG for any work they are asked to do relating to the Inquiry in the future.

City's Outside Counsel:

As set out above, 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 of June 10, 2002, it was estimated that the budget for outside counsel for the TCLI would be \$500,000.00 to \$750,000.00. It is now clear that the actual costs will be far greater than the estimated amount. Based on the anticipated length of the Inquiries and the increased complexity of issues arising at the Inquiries, we estimate that the future costs for outside counsel will be approximately an additional \$1.5 Million for a total of approximately \$2.25 Million. We have met with our outside solicitors to discuss possible ways to try and limit their costs and the overall costs of the inquiries. Efforts will be made where it is possible and appropriate to do so.

Costs for Individuals with Standing and Current Employees:

At its meeting of October 29, 30 and 31, 2002, Council considered a report from the City Solicitor with respect to funding for parties with standing and approved funding for two

individuals with standing on terms set out in that report. It was estimated that the total funding could be in the range of \$400,000.00 based on a forty (40)- day hearing.

At its meeting of December 3, 4 and 5, 2002, Council approved the Notice of Motion moved by Councillor Miller and seconded by Councillor Johnston and adopted the joint report of the Chief Administrative Officer and the City Solicitor with respect to additional funding for legal representation for current City employees. It was estimated that those costs could be in the range of \$450,000.00.

We are recommending in a separate report that funding be available for legal representation for a member of Council. In addition we are aware that other individuals may request funding for legal representation from the City. On receipt of any such request, we will prepare a report for Council's consideration of the matter.

While \$850,000.00 has been approved by Council for this purpose, in view of the expanded length of the hearing, \$1,250,000.00 has been estimated for this purpose. This figure may also increase if the length of the hearing increases and if further individuals seek financial assistance from the City.

2003 Budget and Financing:

Based on preliminary estimates provided above, \$6.0 million was set aside in the Computer Leasing Liability account financed from 2001 operating surplus funds. Given the projected additional costs of \$9,530,000.00, the 2003 Non-Program budget must be increased to finance these costs.

The Chief Financial Officer and Treasurer will review funding options inclusive of any available 2002 surplus funds to minimize the 2003 Operating Budget impact.

Conclusion:

Unfortunately, we have little, if any, control over the length of hearing time being required for the Inquiries and the nature of the issues now being raised. The budget presented in this report for Council's consideration takes into account a hearing that is significantly longer than originally anticipated. It is still possible that the costs may exceed this estimate if the hearing takes even longer than set out in this report, if further investigative work is required by Commission Counsel as a result of issues not currently foreseen or if more individuals seek and are granted standing and participate at the hearing. The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial implications and impact statement.

Contact:

Diana Dimmer, Director of Litigation

Tel: (416) 392-7229, Fax: (416) 392-0005; e-mail: Ddimmer@toronto.ca

Anna Kinastowski, City Solicitor

Tel: (416) 392-8040, Fax: (416) 397-5624; e-mail: Akinasto@toronto.ca

List of Attachments:

“Appendix “A” - Revised Interim Budget Estimate

Appendix A

Toronto Computer Leasing Inquiry /
Toronto External Contracts Inquiry

Interim Budget Review and Interim Determination of Additional Required
Funding Based Upon Expanded Mandate from City Council

An estimated budget, based upon the knowledge available in the very early setup days of the Toronto Computer Leasing Inquiry (TCLI), was provided to the City in early June 2002 at the request of the City Solicitor. That budget estimate was a preliminary one. The Inquiry indicated it would provide the City with a further budget estimate in September 2002. That further budget estimate was delayed until December 2002 pending consideration of the impact of expanded terms of reference from Toronto Council for the Toronto External Contracts Inquiry (TECI) and confirmation of any additional funding required to meet the original terms of reference.

The original June 2002 budget for TCLI was estimated at \$1.9 million. City staff indicated, in a Report to Council on October 1, 2 and 3, 2002, that there will be a significant increase in costs related to TECI. A preliminary estimate by City staff was an additional \$3 to \$4 million for the expanded terms of reference (includes additional direct costs for the Inquiry and additional City legal contract staff). This December 2002 further budget estimate is for \$5.9 million including unallocated contingency funding of \$0.5 million.

It is essential to note that this is still an interim budget estimate until the Inquiry is able to verify or modify the many assumptions noted for budget purposes below.

The Inquiry has made many assumptions in the preparation of this further budget estimate. These are as follows:

- (1) Office and hearing room space are 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. Most furniture, computers, printers, etc. are being provided from existing surplus City stock and no new cost or budget is associated with that. Some budget is required for limited facilities improvements such as re-keying and locksmith costs; minimal painting; original moving of furniture and setting up of workstations and offices; required electrical costs; furniture costs from City surplus warehouse; limited equipment and furniture not readily available from City stock; two notebook computers and accessories; fax machine; telephones; etc.;

- (2) It is very difficult to estimate the potential costs of an inquiry due to the unknowns in hearing length; potential delays in receiving all documents and materials from the City and Parties; unknown potential volume of documents that are provided to or must be located by the Inquiry; unknown forensic audit and investigative needs; potential for legal challenges; impact of the Parties participation at the hearing; etc.;
- (3) For budget purposes only, it is now assumed that the Inquiry will complete its responsibilities by December 2003. Hearings were only able to commence in December 2002 as a result of a necessary delay to allow the OPP to undertake and complete a related investigation;
- (4) The length of time for witness examination will increase significantly as the number of Parties with standing has continued to increase and many witnesses have retained Counsel. This will increase the overall length of hearings;
- (5) As the length of hearings is still unknown at this time, for budget purposes it is assumed that there will be 40 days of hearings required for TCLI. This was the estimate provided by City staff in the January 2002 Report to Audit Committee. It must be noted however that this estimate is likely to be exceeded based upon the experience in December 2002 when the Inquiry had 14 days of evidence and heard from only 5 witnesses (the fifth witness will in fact not be finished until January 2003). There are at least 37 additional witnesses to give evidence. Contingency funding noted below is expected to be required primarily for possible additional days of hearings;
- (6) At this extremely preliminary stage of TECI, the expanded mandate for TECI is assumed for budget purposes to require an additional 40 days of hearings. It is further assumed that there will be 10 hearing days on "good governance". Contingency funding noted below is expected to be required primarily for possible additional days of hearings;
- (7) Court reporting and transcript costs posted to the Inquiries' website are directly related to and are based upon the assumed number of hearing days noted above;
- (8) Assumptions have to be made and estimates arrived at related to anticipated forensic audit services and investigative services for TECI. At the time of preparing this estimate, the Inquiry still does not have many documents related to TECI and hence the estimate of \$250,000 and \$90,000 respectively for such estimates is really a guess pending receipt of factual information and materials;
- (9) Expert services related to good governance are estimated at \$100,000;
- (10) As, at the time of preparing this budget estimate, there are many unknowns and assumptions, a contingency amount of \$500,000 has been included in the 2003 budget. The primary purpose of the contingency funding is anticipated to be for costs associated with the actual number of hearing days exceeding the number of assumed days as noted above;

- (11) Certain budget items (such as counsel fees, court reporting and transcript fees) would be reduced if the Inquiries proceed faster than expected;
- (12) No monies have been included in this budget for intervenor funding to people with standing; and
- (13) The website (www.torontoinquiry.ca) of the Inquiries is a major means to communicate with the public. It includes same day posting of the transcripts by the court reporting service provider. Costs have increased from the June 2002 budget estimate as a result of required updating and ongoing maintenance for TECI as well as TCLI over the estimated term of the Inquiries.

Toronto Computer Leasing Inquiry /Toronto External Contracts Inquiry
Revised Interim Budget (As of December 2002)

Cost Category	Budget 2002	Budget 2003	Budget Total
Salaries and Benefits:	nil	nil	nil
Materials and Supplies:	\$10,000	\$10,000	\$20,000
Furniture and Equipment:	\$15,000	\$2,000	\$17,000
Corporate Services:	\$17,000	\$55,000	\$72,000
Services and Rents:			
Staff	\$108,000	\$313,250	\$421,250
Counsel	\$1,241,000	\$2,451,000	\$3,692,000
Advertising	\$50,000	\$10,000	\$60,000
Reporting / transcripts	\$20,000	\$180,000	\$200,000
Experts and Witnesses	\$80,000	\$210,000	\$290,000
Other	\$115,000	\$519,000	\$634,000
Total	\$1,614,000	\$3,683,250	\$5,297,250
Contingency	nil	\$500,000	\$500,000
Budget Total:	\$1,656,000	\$4,250,250	\$5,906,250

Toronto Computer Leasing Inquiry / Toronto External
Contracts Inquiry Details of Revised Interim Budget
for 2002 And 2003 (As Of December 2002)

Fiscal Year 2002 (April to December):

Salaries and Benefits:

Nil – The short-term nature of the Public Inquiry results in retaining staff on short-term personal services contracts.

Commissioner Denise Bellamy Paid by Federal Government as Justice of Superior Court

Materials and Supplies:

Misc. Office Supplies \$10,000

Furniture and Equipment:

Furniture (most furniture is available from
the City at no charge) \$5,000

Technology (technology and support
provided by City) \$10,000

Corporate Services:

Mail / courier \$2,000

Printing \$2,000

Copying \$3,000

Other Services \$10,000

Services and Rents:

Consult - Technical and Professional:

CAO David Henderson \$30,000 \$600 per day

Communications Officer Peter Rehak \$34,000 \$600 per day

Senior Legal Secretary Clita Saldanha \$22,000 \$24 per hour

Legal Secretary Various \$15,000 \$20 per hour

Hearings Registrar Joyce Ihamaki \$1,000 \$170 per day

Hearing Room Officer Andy Pandoff \$1,000 \$18 per hour

Temporary Agency The Affiliates \$5,000

Professional and Technical Legal (*Counsel):		
Torkin Manes Cohen Arbus:	\$900,000	
*Ron Manes - \$385 per hour		
*David Butt - \$290 per hour		
*Daina Groskaufmanis - \$210 per hour		
*Junior - \$90 per hour		
Rogers, Moore:	\$310,000	
*Pat Moore - \$310 per hour		
*Julie Dabrusin - \$160 per hour		
Stockwood Spies:	\$2,000	
*Brian Gover - \$310 per hour		
Ronda Bessner (Senior Legal Analyst)	\$29,000	\$700 per day
Advertising and commun. - News releases, notices of meetings and hearings	\$50,000	
Court Reporting and Transcript fees	\$20,000	
Experts and Witness Fees:		
NETTEC	\$30,000	
Other	50,000	
Other Professional and Technical Services:		
Investigators (B.Blake)	\$2,000	
Audio Services (B. Sandor)	\$5,000	
Document Management	\$60,000	
Website Development / Updating	\$35,000	
Travel and Accommodation	\$1,000	
Telephone	\$12,000	
Total 2002	\$1,956,000	
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Fiscal Year 2003 (January To December):		
Salaries and Benefits:	Nil	
Materials and Supplies:		
Misc. Office Supplies	\$10,000	
Furniture and Equipment:	\$2,000	

Corporate Services:

Mail / courier	\$3,000
Printing	\$20,000
Copying	\$7,000
Other Services	\$25,000

Services and Rents:

Consult - Technical and Professional:

CAO	David Henderson	\$70,800	\$600 per day
Communications Officer	Peter Rehak	\$76,800	\$600 per day
Senior Legal Secretary	Clita Saldanha	\$47,500	\$24 per hour
Legal Secretary	Various	\$39,000	\$20 per hour
Hearings Registrar	Joyce Ihamaki	\$16,150	\$170 per day
Hearing Room Officer	Andy Pandoff	\$13,000	\$18 per hour
Temporary Agency	The Affiliates	\$50,000	

Professional and Technical Legal (*Counsel):

Torkin Manes Cohen Arbus:

*Ron Manes	\$681,000	\$385 per hour
*David Butt	\$513,000	\$290 per hour
*Daina Groskaufmanis	\$291,000	\$210 per hour
*Junior	\$160,000	\$90 per hour
Total	\$1,645,000	

Rogers, Moore

*Pat Moore	\$350,000	\$310 per hour
*Julie Dabrusin	\$283,000	\$160 per hour
Total	\$633,000	

Ronda Bessner (Senior Legal Analyst)	\$173,000	\$700 per day
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Advertising and commun.	\$10,000
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Court Reporters and Transcript fees	\$180,000
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Experts and Witness Fees:

Assetlinx	\$30,000
NETTEC	\$30,000
Good Governance	\$100,000
Other	\$50,000

Other Professional and Technical Services:

Investigators (B. Blake \$68,000 and Other \$22,000)	\$90,000
Forensic audit expert services	\$250,000
Audio Services (B. Sandor)	\$30,000
Document Management (Platinum Legal)	\$60,000
Website Development / Updating	\$72,000
Travel and Accommodation	\$5,000
Telephone	\$12,000
Contingency	\$500,000
Total 2003	\$4,250,250

* Counsel hourly rates set by City Solicitor