

Clause embodied in Report No. 3 of the Policy and Finance Committee, as adopted by the Council of the City of Toronto at its meeting held on April 14, 15 and 16, 2003.

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

(City Council on April 14, 15 and 16, 2003, amended this Clause by adding thereto the following:

“It is further recommended that the Commissioner of Corporate Services be requested to submit a report to the Policy and Finance Committee on the feasibility of:

- (1) the cancellation of leases on unused computer licences that are not required by the City of Toronto; and*
- (2) the selling of the more than 50 percent of the unused computer licences that were purchased for lease back to the City; and*
- (3) applying any funds accruing from the sale of these licences towards the cost of the Inquiry.”)*

The Policy and Finance Committee recommends that the following joint report (March 31, 2003) from the Chief Administrative Officer and the City Solicitor be received for information:

Purpose:

To advise the Policy and Finance Committee and City Council of the revised preliminary budget received from the Commission for the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry.

Financial Implications and Impact Statement:

The Commission has prepared a revised preliminary budget for the two inquiries of \$8,440,300 with a contingency of an additional \$1,500,000.00.

Recommendation:

It is recommended that this report be received for information.

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 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.

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.

At its meeting on February 4-6, 2003, Council had before it a report from the Chief Administrative Officer and City Solicitor, which provided a revised preliminary budget for the inquiries. At its February 4-6, 2003, meeting City Council 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.

Comments:

Status of the TCLI and TECI:

As of March 28, 2003, there have been fifty-one (51) hearing days with thirteen witnesses completing their evidence at the TCLI. The Inquiry will complete the evidence of the fourteenth witness, Brendan Power on March 31, 2003. It is anticipated that approximately forty-three (43) additional 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 forty (40) hearing days. The Commission has now published its hearing dates to the end of August 2003. It is anticipated that additional hearing days will be required beyond August 2003.

At this time, the Commission anticipates that TCLI will last 160 hearing days in total. This represents an additional 109 hearing days. The preliminary estimate for the TECI is 70 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. The preliminary

estimate is for 25 days of hearing for good governance, which will follow the factual portion of the TCLI and TECI.

Revised Inquiry Budget:

Madam Justice Bellamy was advised of Council's concern with respect to the rising costs of the Inquiry and the request for a revised budget.

On March 14, 2003, the City Solicitor received a revised interim budget estimate from the Inquiry for the TCLI and TECI, which is attached as Appendix "A". The current revised budget estimate is \$8,440,300.00 over the full term of the Inquiries with a possible contingency of an additional \$1,500,000.00.

The length of the public hearings is the primary factor affecting the budget of the Inquiry. It is impossible to predict with certainty the length of the hearings. The Commissioner is aware of the City's concerns with regard to the rising costs of the Inquiry. The Commissioner has asked her counsel and staff to take all reasonable steps to keep the goal of conducting the Inquiries efficiently and expeditiously to minimize the expenditure of public funds. The Commission is looking at ways to ensure the Inquiries are completed in a timely manner. Some of the steps they will be taking to achieve this goal are:

- (i) identifying witnesses whose evidence in chief can largely be presented by way of affidavit, rather than exclusively in person, and
- (ii) preparing more detailed witness summaries, which will allow other parties to prepare more thoroughly in advance, which should result in shorter cross-examinations.

As set out above and in the Commission's Budget attached, concerted efforts are underway to try and manage the costs of the Inquiry. It is too early to tell whether these efforts will assist in limiting the hearing time and consequently the overall costs. We will be in a better position to report on this at a future Council meeting. The Commissioner and her counsel are clearly mindful of the costs and are making efforts to manage the costs. As set out in earlier reports, we have little, if any, control over the length of hearing time being required for the Inquiries.

Conclusion:

City staff will continue to monitor the budget estimates of the Inquiries and will continue to report to City Council on any developments or changes. It is recommended that Council receive this report for information.

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List of Attachments:

“Appendix “A” - Revised Interim Budget Estimate

Toronto Computer Leasing Inquiry/
 Toronto External Contracts Inquiry
 Revised Budget (As of March 2003)

Cost Category	Expenditure 2002	Budget 2003	Budget 2004	Budget Total
Salaries and Benefits	\$0	\$0	\$0	\$0
Materials and Supplies	\$10,000	\$20,000	\$20,000	\$50,000
Furniture and Equipment	\$6,000	\$2,000	\$2,000	\$10,000
Corporate Services	\$28,000	\$56,000	\$92,000	\$176,000
Services and Rents:				
Staff	\$116,800	\$497,962	\$417,166	\$1,031,928
Counsel	\$1,241,000	\$2,488,116	\$1,469,836	\$5,198,952
Advertising	\$50,000	\$2,000	\$2,000	\$54,000
Reporting/transcripts	\$20,000	\$286,000	\$142,000	\$448,000
Experts and Witnesses	\$82,700	\$290,000	\$125,000	\$497,700
Other	\$84,000	\$0	\$0	\$84,000
Other Prof. And Tech.:				
Investigators	\$12,000	\$144,000	\$19,200	\$175,200
Forensic Audit Services	\$0	\$200,000	\$50,000	\$250,000
Audio Services	\$5,000	\$69,865	\$35,155	\$110,020
Document Management	\$50,000	\$50,000	\$20,000	\$120,000
Web site	\$38,500	\$72,000	\$72,000	\$182,500
Travel	\$1,000	\$5,000	\$1,000	\$7,000
Telephone	\$15,000	\$15,000	\$15,000	\$45,000
Budget Total	\$1,760,000	\$4,197,943	\$2,482,357	\$8,440,300
Contingency	\$0	\$500,000	\$1,000,000	\$1,500,000
Budget and Contingency	\$1,760,000	\$4,697,943	\$3,482,357	\$9,940,300

Toronto Computer Leasing Inquiry/
Toronto External Contracts Inquiry
Revised Budget - March 2003

Background:

The Toronto Computer Leasing Inquiry (TCLI) was initiated by a Resolution of Toronto City Council in February 2002. TCLI provided the City with a start-up budget of \$1.9 million in early June 2002. This budget was preliminary only, because at the time it was impossible to know what the Inquiry's investigations might reveal, and how many hearing days the Inquiry would need. To prepare this preliminary budget, the Inquiry simply accepted the assumption contained in City staff's January 2002 Report to Audit Committee that TCLI would need 40 hearing days.

In early October 2002, City Council expanded the Inquiry's mandate by creating a second inquiry, the Toronto External Contracts Inquiry (TECI). TECI was created to look into four separate topics that are additional to the topics being investigated in TCLI.

In December 2002, the Inquiry gave the City a second preliminary budget estimate of \$5.9 million, taking into account the impact of TECI. At that time the Inquiry confirmed that this second preliminary budget would be exceeded, because many unknowns still remained. The primary unknowns were what the TECI investigations might reveal, and how many hearing days TECI might require. Among the other unknowns were: additional parties with standing; an increasing length in the TCLI hearings due to witness examinations taking longer than originally estimated; an increasing number of anticipated witnesses; participation of counsel of various witnesses; increasing number of documents; and increased submission time for the participating lawyers.

In early February 2003, on the basis of their own estimates of the anticipated hearing length, City staff recommended a revised preliminary estimate of \$12 million for the Inquiry. City Council approved that revised preliminary estimate.

In a letter dated February 20, 2003, Anna Kinastowski, City Solicitor, advised David Henderson, Chief Administrative Officer of the Inquiry, of Clause No. 5 of Report No. 1 of the Policy and Finance Committee as adopted by City Council in early February. That Clause requested a further updated budget estimate for the meeting of City Council in April. The attached revised budget is provided to meet that request.

Revised Budget:

What Affects the Budget?

The length of the public hearings is the primary factor affecting the budget of the Inquiry. At the same time, the length of the public hearings is directly affected by factors that are very difficult to predict and control. Below are some examples that explain why it is difficult to estimate the length of the hearings.

When the Inquiry began the public hearings, there were five parties with standing. The Inquiry has expanded to eleven parties with standing. This undoubtedly has an impact on the length of the hearings. Moreover, the length of the hearings depends on the time required for each lawyer to question each witness. The Commissioner has asked each lawyer to provide time estimates for their examinations and to refrain from repetitive questions; however, it is integral to the fairness of the Inquiry process that lawyers for parties with standing have the opportunity to adequately examine each witness.

According to the Inquiry Rules of Procedure, parties with standing are required to provide all helpful documents in their possession to the Commission. The Commission cannot anticipate the length of time it will take for each party to locate their documents, and the number of helpful documents that will be produced. As a result, it is difficult for the Commission to estimate the time to receive, review, and organize the documents for presentation in the public hearings. Moreover, the receipt of new documents may require new avenues of investigation that in turn may lead to the addition of witnesses. Because TECI has not received full production, Commission Counsel cannot determine the forensic audits and other investigations that need to be pursued. Consequently, the length of time to conduct these investigations is uncertain at this juncture.

A further issue is whether decisions of the Commissioner will be challenged in a court of law. Individuals involved in a public inquiry have the legal right to challenge decisions of a Commissioner. This is to ensure that the Commissioner is accountable and that the Inquiry process is conducted in a fair manner. One cannot estimate whether any legal challenges will be initiated, how many, or how long they would take to resolve.

The Commissioner's Budget Control:

On a number of occasions, the Commissioner has publicly expressed her resolve to conduct the inquiries efficiently and expeditiously to minimize the expenditure of public funds. From the inception of TCLI, the Commissioner has asked her Counsel and staff to take all reasonable steps to achieve that goal. Commission Counsel have taken several measures to control the Inquiry budget. For example, although Commission Counsel have now interviewed more than 150 witnesses, only approximately one third of those witnesses were placed on the anticipated witness list on the Inquiry website.

To assist her in preparing this specific budget, the Commissioner asked Commission Counsel to meet with all parties' counsel on February 17, 2003 to obtain an estimate of the number of remaining days for the TCLI hearings, based on the current witness list. Since then, it is clear that these estimates demonstrate how truly difficult it is to anticipate how long it will actually take to complete a witness' testimony. For example, the first two witnesses far exceeded the length estimated by counsel.

To ensure that the two inquiries are completed in a timely manner, the Commissioner asked Commission Counsel to revisit the anticipated witness list and to take a hard look to determine whether the hearing time can be reduced without compromising the effectiveness of the witness' evidence. Accordingly, Commission Counsel are currently identifying those witnesses whose evidence in chief can largely be presented by way of affidavit, rather than exclusively in person.

This has the potential to significantly reduce the time spent in the hearing room and consequently, the costs for the presentation of the evidence. For those witnesses who must give their evidence exclusively by oral testimony, Commission Counsel will prepare more detailed witness summaries. Like affidavits, these detailed witness summaries will allow other parties to prepare more thoroughly in advance. As a result, the Commissioner can expect parties to be more focused and shorter in cross-examination.

Commission Counsel have taken on expanded roles to ensure that the additional workload occasioned by changes to the witness materials will not cause delay. Commission counsel retained for TECI will assist with the TCLI workload, and vice versa.

As has been the practice from the outset of the Inquiry, Commission Counsel have an open door policy for all counsel, to ensure that differences can be resolved with a minimum of hearing time being consumed by legal challenges.

A large Inquiry budget item is counsel cost. Counsel reduction opportunities have been identified and planned for in the Inquiry's work schedule.

As a result of the February 17 meeting of all parties with standing and subsequent analysis, it was anticipated that TCLI would last about 160 days in total. Having said that, as a consequence of the new initiatives introduced above, the Commissioner is optimistic that these will result in reduced hearing days for both inquiries. However, it is still too early to tell. The Commission will closely monitor the length of each witness' time at the actual hearing and will be in a better position to assess the length after the affidavit initiative takes effect.

Estimating the hearing length and costs of the TECI and the Good Governance parts of the Inquiry is more difficult as receipt and review of documents, interviews and investigations are underway but not complete. The best guess for now is 70 days of hearings for TECI and 25 days of hearing for Good Governance.

The Commissioner will require time after the hearings to finish her Report. Counsel costs will be reduced during this time, and there will be no hearing room related costs.

Assumptions and estimates have to be made for forensic audit services and investigators for TECI. At present, the Inquiry still does not have all TECI documents. Therefore the estimate of \$250,000.00 for forensic audits, and \$150,000.00 for investigators is necessarily a guess. Similarly, expert services for good governance are estimated at \$100,000.00.

Since there are still many unknowns and assumptions that affect budgeting, contingencies of \$500,000.00 for 2003 and \$1,000,000.00 for 2004 have been included. While it is prudent to include contingencies, the Commissioner's cost saving measures described above seek to reduce or eliminate the need to use them.

The current revised budget estimate is \$8,440,300.00 over the full term of the Inquiries.