

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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**Requests for Funding for Legal Fees for Certain
Individuals Who Have Standing or Will Be Called as
Witnesses at the Toronto Computer Leasing Inquiry
and the Toronto External Contracts Inquiry**

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

- (1) *adding the words “and Members of Council” after the words “City employees”, in Recommendation No. (2), embodied in the joint report dated March 31, 2003, from the Chief Administrative Officer and the City Solicitor, so that such recommendation now reads as follows:*

“(2) confirm that funding for legal representation to City employees and Members of Council who will be called as witnesses will also be available to staff who leave their employment with the City before the completion of the Inquiry on the terms set out in this report.”; and

- (2) *adding thereto the following:*

“It is further recommended that:

- (a) *Council adopt the joint report dated April 11, 2003, from the Chief Administrative Officer and the City Solicitor, embodying the following recommendation:*

‘It is recommended that City Council approve funding for legal representation for Brendan Power who has standing at the Inquiry, based on the terms set out in this report’; and

- (b) *the City Solicitor be requested to submit a report to Council, through the Policy and Finance Committee, with a list of current and former employees who have sought funding for legal fees, such report to include information on those who are being funded, those who are not, and the extent to which funding is, will or has been granted.”)*

The Policy and Finance Committee recommends:

- (1) **the adoption of the following joint report (March 31, 2003) from the Chief Administrative Officer and the City Solicitor;**

- (2) that the City Solicitor be requested to ensure that any disbursements for photocopy charges are necessary and reasonable and that outside law firms not charge for copies that they can obtain from the Commission; and**
- (3) that the costs for photocopying be itemised in future reports as to costs incurred at the Inquiry:**

Purpose:

To report on requests for funding for legal fees for certain individuals who have standing or will be called as witnesses at the Inquiry.

Financial Implications and Impact Statement:

The report adopted by City Council at its meeting of February 4-6, 2003, and its Special Meetings held on February 7, 10 and 11, 2003, identified a budget estimate of \$1,250,000.00 for the costs of funding for legal fees for certain individuals with standing and City employees who will be called as witnesses at the Inquiry.

Recommendations:

It is recommended that City Council:

- (1) approve funding for legal representation for Jim Andrew who has standing at the Inquiry based on the terms set out in this report; and
- (2) confirm that funding for legal representation to City employees who will be called as witnesses will also be available to staff who leave their employment with the City before the completion of the Inquiry on the terms set out in this report.

Background:

There have been earlier reports to City Council dealing with requests from individuals for funding for legal fees in connection with the Inquiry. As set out in these earlier reports, legal funding is being provided to two former employees who have standing at the Inquiry, namely Lana Viinamae and Wanda Liczyk. In addition, funding is being provided for legal fees for current City employees who will be called as witnesses. We have received certain additional requests for funding as set out in this report.

Comments:

Request for Funding by Jim Andrew:

Jim Andrew applied for and obtained full standing at the Inquiry. Jim Andrew is the former Executive Director of Information and Technology for the City of Toronto. He is represented by counsel at the Inquiry. His counsel is actively participating in a significant portion of the Inquiry. His counsel has written to the City Solicitor requesting funding for Mr. Andrew's legal

costs. It is recommended that Jim Andrew be provided with funding on the same basis as that being provided to Wanda Liczyk and Lana Viinamae, as he is in a similar position to them in terms of being a significant witness at the Inquiry and a former senior employee at the City.

Accordingly, it is recommended that Jim Andrew be provided with funding on the following terms:

- (1) The total amount of funding available will be based on the number of hearing days when the evidence may directly affect the client's interests ("Funded Days"). The number of Funded Days cannot be established at this time. The City anticipates that it will designate many, but by no means all of the hearing days as Funded Days. The details will be worked out once the City has received a tentative schedule from the Commissioner.
- (2) The City will provide funding at a rate of \$200.00 per hour for senior counsel and \$110.00 per hour for any junior lawyer to attend at the Inquiry. The City will also provide funding for the use of students and law clerks at the rate of \$75.00 per hour. This amount is consistent with suggested hourly rates for Counsel at the Waterloo Inquiry. The firm may only claim for hours spent attending the Inquiry on Funded Days, to a maximum of ten hours per Funded Day. The City will pay only for one lawyer to attend on a Funded Day, pre-hearing attendance, meetings with Commission counsel or interviews with Commission counsel. Given that the transcripts of each day's proceedings will be available that evening on the Commission's website, the necessity to appear at the hearings should be limited to a direct engagement of the client's interest.
- (3) The same hourly rates will apply for preparation time. The firm may claim up to one hour of preparation time for every hour spent attending the Inquiry on Funded Days ("Preparation Time"). The City is not concerned when this preparation takes place. However, the Preparation Time will not exceed the total number of hours spent in attendance at the Inquiry on Funded Days.
- (4) In addition to the Preparation Time, the firm shall be entitled to 75 hours of junior counsel time and 25 hours of senior counsel time for document review.
- (5) Counsel should undertake to make the most efficient use of their resources, using law clerks, students and junior counsel where it is more efficient and cost effective to do so. Where preparation time is concerned, counsel should use less expensive resources.
- (6) The City will not pay for any investigators or experts.
- (7) The City will pay reasonable disbursements. The photocopy rate the City is prepared to pay is \$0.15 a page.
- (8) The City will provide funding for Funded Days only. The City will determine how many Funded Days it will designate once the Commissioner's schedule is released.
- (9) No fees incurred before February 14, 2002 (the date of Council's decision to hold a public inquiry) will be paid.

- (10) No fees related to any other matter (e.g. civil litigation) will be paid.
- (11) Accounts should be subject to assessment. The City will appoint a third party to review any disputes regarding fees.
- (12) The firm will forward to the City a detailed monthly bill which should identify the date and time spent by each lawyer or student, a description of the work performed and a detailed listing of any disbursements.
- (13) The total amount that may be recovered will be limited by application of the principles set out above.

City Employees:

At its meeting of November 26, 27 and 28, 2002, City Council also approved providing funding for legal fees to current City employees who will be called as witnesses at the Inquiry. The terms approved by Council for providing funding are as follows:

- (i) The total amount of funding available will be based on the number of hearing days in which the employee is giving evidence or in which the employee's interests are directly affected ("Funded Days").
- (ii) The City will provide funding at a rate of \$200.00 per hour for senior counsel and \$110.00 per hour for any junior lawyer to attend at the Inquiry. The City will also provide funding for the use of students and law clerks at the rate of \$75.00 per hour. These amounts are the same as that being provided to the individuals with standing. The firm may only claim for hours spent attending the Inquiry on Funded Days, to a maximum of ten hours per Funded Day. The City will pay only for one lawyer to attend on a Funded Day, meetings with Commission Counsel or interviews with Commission Counsel.
- (iii) The same hourly rates will apply for preparation time. The firm may claim up to one hour of preparation time for every hour spent attending the Inquiry on Funded Days ("Preparation Time"). The City is not concerned when this preparation takes place. However, the Preparation Time will not exceed the total number of hours spent in attendance at the Inquiry on Funded Days.
- (iv) In addition to the Preparation Time, the firm shall be entitled to up to 20 hours of senior counsel time and 30 hours of junior counsel time for document review. Counsel should undertake to make the most efficient use of their resources, using law clerks, students and junior counsel where it is more efficient and cost effective to do so.
- (v) The City will pay for one lawyer to attend when their client is being interviewed by Commission counsel.
- (vi) The City will pay reasonable disbursements. The photocopy rate the City is prepared to pay is \$0.15 a page.

- (vii) Accounts should be subject to assessment. The City will appoint a third party to review any disputes regarding fees.
- (viii) The firm will forward to the City a detailed bill, which should identify the date and time spent by each lawyer or student, a description of the work performed and a detailed listing of any disbursements.

The funding information was communicated to all City employees who will likely be called as witnesses at the Inquiry. To date, only a few employees have chosen to retain their own counsel. We have received questions as to whether funding will be available on these same terms to employees who may leave their employment with the City before the Inquiry is completed. In our view, funding should be provided to City employees who leave their employment with the City prior to the completion of the Inquiry on the same terms as are set out above.

Conclusion:

It is recommended that City Council approve the recommendation set out at the beginning of this report dealing with funding for Jim Andrew who has standing at the Inquiry and the recommendation that funding for legal fees be provided to City employees who will be called as witnesses at the Inquiry who leave their employment with the City before the completion of the Inquiry.

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(City Council, at its meeting on April 14, 15 and 16, 2003, had before it, during consideration of the foregoing Clause, the following joint report (April 11, 2003) from the Chief Administrative Officer and the City Solicitor:

Purpose:

To report on the request for funding for legal fees for Brendan Power who has standing at the Inquiry. This report is supplementary to the report of the Chief Administrative Officer and City Solicitor dated March 31, 2003 which is before City Council as Clause 15 of Report Number 3 of the Policy and Finance Committee.

Financial Implications and Impact Statement:

The report adopted by City Council at its meeting of February 4 - 6, 2003 and its Special Meetings held on February 7, 10 and 11, 2003, identified a budget estimate of \$1,250,000. for the costs of funding for legal fees for certain individuals with standing and City employees who will be called as witnesses at the Inquiry.

Recommendations:

It is recommended that City Council approve funding for legal representation for Brendan Power who has standing at the Inquiry based on the terms set out in this report.

Background:

There have been earlier reports to City Council dealing with requests from certain individuals for funding for legal fees in connection with the Inquiry. As set out in those earlier reports, legal funding is currently being provided to two former employees who have standing at the Inquiry, namely Lana Viinamae and Wanda Liczyk. In addition, funding is being provided for legal fees for current City employees who will be called as witnesses. We received an additional request for funding from Jim Andrew which is addressed in Clause 15 of Report Number 3 of the Policy and Finance Committee before this Council. In addition, we received a request for funding from Brendan Power.

Comments:

Brendan Power applied for and obtained full standing at the Inquiry. Brendan Power was a consultant hired by the City to work on the City's Year 2000 Project. He worked for the City from 1998 until July of 2001. He is represented by counsel at the Inquiry. His counsel wrote to the City Solicitor requesting funding for Mr. Power's legal costs.

We have reviewed the request for funding from Mr. Power and have discussed the matter with the City's outside counsel at the Inquiry and with Mr. Power's solicitor. Mr. Power was unable to obtain any funding support from EDS Canada Inc. with whom Mr. Power acted as an independent contractor and through EDS provided his services to the City. In many ways, Mr. Power acted like a City employee. He was involved in many of the City's processes relating to the computer leasing RFQ that are in issue at the Inquiry. In our view, taking into account Mr. Power's close working relationship with the City, his financial circumstances and his importance as a witness at the Inquiry, it is fair and reasonable that he be provided with funding for legal fees relating to the Inquiry. Our outside counsel have reviewed this matter and concur.

It is recommended that Brendan Power be provided with funding on the same basis as that being provided to Wanda Liczyk and Lana Viinamae, as he is in a similar position to them in terms of being an important witness at the Inquiry, and acted in a similar capacity to that of former senior employees at the City.

Accordingly, it is recommended that Brendan Power be provided with funding on the following terms:

- (1) The total amount of funding available will be based on the number of hearing days when the evidence may directly affect the client's interests ("Funded Days"). The number of Funded Days cannot be established at this time. The City anticipates that it will designate many, but by no means all of the hearing days as Funded Days. The details will be worked out once the City has received a tentative schedule from the Commissioner.*

- (2) *The City will provide funding at a rate of \$200 per hour for senior counsel and \$110 per hour for any junior lawyer to attend at the Inquiry. The City will also provide funding for the use of students and law clerks at the rate of \$75.00 per hour. This amount is consistent with suggested hourly rates for Counsel at the Waterloo Inquiry. The firm may only claim for hours spent attending the Inquiry on Funded Days, to a maximum of ten hours per Funded Day. The City will pay only for one lawyer to attend on a Funded Day, pre-hearing attendance, meetings with Commission counsel or interviews with Commission counsel. Given that the transcripts of each days's proceedings will be available that evening on the Commission's website, the necessity to appear at the hearings should be limited to a direct engagement of the client's interest.*
- (3) *The same hourly rates will apply for preparation time. The firm may claim up to one hour of preparation time for every hour spent attending the Inquiry on Funded Days ("Preparation Time"). The City is not concerned when this preparation takes place. However, the Preparation Time will not exceed the total number of hours spent in attendance at the Inquiry on Funded Days.*
- (4) *In addition to the Preparation Time, the firm shall be entitled to 75 hours of junior counsel time and 25 hours of senior counsel time for document review.*
- (5) *Counsel should undertake to make the most efficient use of their resources, using law clerks, students and junior counsel where it is more efficient and cost effective to do so. Where preparation time is concerned, counsel should use less expensive recourses.*
- (6) *The City will not pay for any investigators or experts.*
- (7) *The City will pay reasonable disbursements. The photocopy rate the City is prepared to pay is \$0.15 a page.*
- (8) *The City will provide funding for Funded Days only. The City will determine how many Funded Days it will designate once the Commissioner's schedule is released.*
- (9) *No fees incurred before February 14, 2002 (the date of Council's decision to hold a public inquiry) will be paid.*
- (10) *No fees related to any other matter (e.g. civil litigation) will be paid.*
- (11) *Accounts should be subject to assessment. The City will appoint a third party to review any disputes regarding fees.*
- (12) *The firm will forward to the City a detailed monthly bill which should identify the date and time spent by each lawyer or student, a description of the work performed and a detailed listing of any disbursements.*
- (13) *The total amount that may be recovered will be limited by application of the principles set out above.*

The above formula allows us to limit funding to the hearing days in which it is necessary for Mr. Power's counsel to attend at the Inquiry.

Conclusion:

It is recommended that City Council approve the recommendation set out at the beginning of this report dealing with funding for Brendan Power who has standing at the Inquiry.

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(Councillor Berardinetti, at the meeting of Council held on April 14, 15 and 16, 2003, declared an interest in the foregoing Clause, as it relates to the motion moved by Councillor Walker, in that he could be called as a potential witness at the Inquiry.)

(Councillor Miller, at the meeting of Council held on April 14, 15 and 16, 2003, declared an interest in the foregoing Clause, as it relates to the motion moved by Councillor Walker, in that he could be called as a potential witness at the Inquiry.)