IN THE MATTER OF THE TORONTO COMPUTER LEASING INQUIRY

JAMES (JIM) ANDREW

General Introduction

The modern day bureaucratic organizational structure is derived from a model initially described in the book "On War" by Carl von Clausewitz, a Prussian military officer in 1832. The book is considered to be not only a masterpiece on grand strategy, strategy and tactics but in its application of these it provides a detailed analysis on how the bureaucratic organizational structure must work to achieve long and short-term objectives effectively.

1. Characteristics of Bureaucracy

The organizational structure is pyramidal in shape with the most senior general manager at the apex of the structure. The organizational structure must be rational. It must make sense. There is little room for anomalies. Reporting to the most senior management position in the organizational structure would be the most senior program or functional director level positions. Reporting to them would be the most senior sub-program or activity managers, etc.. In addition to "line" manager positions that report to the more senior manager level positions in the organizational structure above them with respect to their programs, policies and activities there are "staff" officer positions whose expertise is more policy and planning oriented than it is management oriented. These staff adviser positions generally have few, if any, management duties or responsibilities associated with them. Rather, their function is to provide advice and information on policies, programs, activities and systems.

By way of example, the position of Auditor General in the City of Toronto is a staff position with some, although limited, management responsibilities.

2. **Span of Control**

In bureaucratic organizational analysis the generally accepted span of control is between 6 and 8. Where the activities of the subordinate positions reporting to a particular managerial position are either identical or reasonably similar, the span of control may be increased. Where the areas of activity are disparate, the span of control is generally fewer, i.e., 4 to 6.

3. **Top Down Management**

In bureaucratic organization, management is top down. The more senior managers are responsible for the decisions they make and accountable for the decisions made by those in positions reporting to them.

Decisions on programs or activities by individuals in less senior management positions are made only after consultation with and approval from one's superior manager. Approvals from one's superior manager must be clearly given and based on maximum (perfect) information. Senior management makes decisions on policy, programs, activities and systems based on comprehensive, accurate and timely information, insight and advice from their immediately subordinate managers and staff officers. Literally, as much timely, comprehensive and accurate information, insight and advice from those direct reports whether in staff or line positions as is reasonably available is the sine qua non of effective management within a bureaucratic organization.

4. **Bottom Up Information and Advice**

The flip side of top down management is bottom up information and advice on the policies, programs, activities or systems for which an individual in a subordinate management position or an officer position is accountable. Goals and objectives must be set on a regular (at least annual) basis by the superior manager and the success or failure of the program, activity or system is then measured, analysed and reported on by the accountable manager or officer to the superior manager. In addition, the subordinate manager is accountable for providing advice, guidance and information on the successes, shortcomings, achievements, etc. of the program or activity and as well for providing advice and guidance on how the program can be made more effective or efficient.

5. **Perfect Communication and Coordination**

According to the classical model for bureaucratic organization, it is critical and indeed mandatory that reporting on programs or activities be regular, up-to-date, accurate and complete. Individuals in peer level management positions from within a group or division of the organization work cooperatively as is called for in their job descriptions on programs and activities or on group or division management matters. They report to a project leader or more senior level manager on results, achievements, issues and problems. They provide guidance and information to those in more senior management positions to assist them in understanding the broader picture and in making decisions on the program or project.

6. **Level or Degree of Supervision**

Those in the more senior positions in the organizational structure are deemed to require less and less intense or comprehensive supervision. Those in the more senior positions of the organization are expected to be the most skilled, knowledgeable and experienced. Presumably experience (length of service) provides one with an understanding as to "how the organization works". Phrases such as under the general direction, under the direction, under the general supervision and under the supervision have been used for over 150 years to connote the increasing level and degree of supervision that is required as one passes from the highest level of the organizational structure to the lowest levels.

7. **Job Descriptions**

Every position within the bureaucratic organizational structure shall have an up-to-date description that accurately reflects the duties and responsibilities of that particular position. In addition, it is critical that the job description accurately reflect the existing reporting relationships.

8. **Reporting Relationships**

In traditionally-described bureaucratic organization there was and could only be one position to which a subordinate position reported. More modern bureaucratic organization has permitted the entry of "functional" accountabilities. For instance, in an organizational structure such as the City of Toronto, there are IT experts assigned to various programs, i.e., Community and Neighbourhood Services. Those positions report to the program managers however, there is a functional accountability (i.e., for standards on training and development purposes, say) to the IT Division. Such bureaucratic "anomalies" have occurred and become relatively common in non-homogenous organizations, i.e., where the organizational structure consists of a combination of centralized and decentralized functions or activities as in the City of Toronto.

9. **Job Descriptions – Continued**

Job descriptions must accurately reflect the duties and responsibilities of the position and generally should not necessarily reflect the skills or abilities of the person in that position.

Job descriptions are a management tool. Job descriptions for subordinate positions that report to a more senior position are generally drafted by the person holding the superior position. Position descriptions are reviewed on an ongoing basis by the occupier of the superior management position to ensure their accuracy and completeness. Where job duties or responsibilities change it is due to a change in programs, policies, activities or priorities established by the senior manager. A change to duties of a position emanates from the superior manager. Job descriptions are used by management for purposes of performance expectations or planning and as well for purposes of performance evaluation. The performance evaluation process is one in which both the manager and the employee participate although the roles of each are quite different. The employee provides information to the superior manager on program or activity results and achievements, problems, concerns or potential solutions, etc. over the time period since the prior performance evaluation at which time tasks, duties and objectives were discussed and set. Milestones regarding performance or achievements are set by the senior manager following discussion (to obtain "perfect" information) and the subordinate manager or officer sets out to achieve these under an appropriate level of supervision. At the ensuing performance evaluation, results and achievements are reviewed and assessed against milestones or previously agreed upon objectives. Certain fixed and known criteria are used as measuring tools against which the individual's performance is measured or evaluated. Results are tallied and performance against (a number of) criteria is rated. A performance evaluation is to be used for purposes of identifying strengths and weaknesses in one's performance. The superior manager is to identify strengths and weaknesses in performance or behaviour and as well to identify and schedule training and development opportunities to improve the subordinate's performance in both areas of strength as well as in areas of weakness.

Although the subordinate is an active participant in the performance evaluation process, the role of the subordinate is limited to providing advice and information on programs or activities, achievements, problems and possible solutions to the superior manager and discussing training needs, etc.. The employee's agreement with or approval of the performance evaluation provided by the superior manager is not an issue in the management or evaluation of performance. The bureaucratic organizational model does not accommodate management by consensus. That the subordinate has reviewed the performance evaluation and had an opportunity to discuss it with the superior manager is the sole issue. Job descriptions, performance evaluations and the identification of skill training and development needs all fall within the prerogative of the superior manager.

10. **Program And Operational Guidelines**

Bureaucratic organization is constructed around the concepts of perfect information, cooperation and communication. Planning, whether based on time periods, i.e., one year or program-based, i.e., the Year 2000 Program, requires that clear performance objectives are set for each level of the organization (top down). Planning must recognize that in order to achieve a particular set of objectives, appropriate resources in terms of human resources, financial resources, materiel and operational resources must be provided. Having the appropriate resources available in a timely manner (in accordance with a written and approved plan) permits the program manager a reasonable opportunity to understand and achieve the program's objective fully, on time and on budget. Operational planning is critical to program management. Without good, clear and written plans which are known and understood by all who are involved in the program development, implementation and management functions, and which have been explained to and approved by the superior manager, successful and timely achievement of the agreed upon objectives becomes speculative. Written plans, known, agreed upon by stakeholders and approved by the appropriate level of senior management are mandated in bureaucratic organization. Plans can change as can programs, activities, systems or results. That said, information and advice on such changes, must be reported to the superior manager on an ongoing and timely basis. It is critical in successful bureaucratic organizations that a superior manager be kept absolutely and thoroughly informed of any and all changes.

The same is true for operational or performance guidelines, policies or procedures. These must be in writing, provided to the subordinate manager (again distribution and enforcement of these is top down) and subordinate managers must be provided an opportunity to learn and understand these guidelines, practices and procedures. Superior managers must know and understand these guidelines, policies and procedures thoroughly because it is they who are responsible for ensuring their implementation and application throughout that part of the organization over which they have control (or for which they are accountable). Where a superior or subordinate manager is uncertain as to the nature and extent of a particular written guideline, policy or procedure or where that manager is uncertain as to whether a particular behaviour or practice conforms with that guideline, policy or procedure, that manager has a duty to make enquiries of the next level superior manager. Where the policy, guideline or procedure is unclear or where they are not being adhered to, senior management is obligated to take appropriate steps to ensure that guidelines, policies or procedures are revised or clarified and then circulated to ensure that all subordinates in the organization are aware of the nature and extent of same, clear as to what the appropriate behaviour is and thus in a position to follow the particular guideline, policy or procedure. It is then the duty of subordinate management to (a) ensure that their actions comply with the guidelines, etc. and (b) to monitor and assure that the behaviour and performance or actions of their subordinates meet and comply with the clear and known guidelines, policies and procedures.

11. **<u>Strategic Planning And Priorities</u>**

Strategic planning and the establishment of programs, plans and priorities generally falls within the scope of senior or more senior management positions.

Strategic planning associated with City-Wide programs or which has substantial impact on a broad range of contractors providing services or products to the City or with a substantial budgetary impact on the City generally fall within the realm of the most senior level of management, i.e., the Chief Administrative Officer, the Chief Financial Officer and the Senior Program Officer. Advisors to that senior management group would likely include (for the Year 2000 program, again) the Director of Purchasing and Material Management, the closest related Program Director (Executive Director Information Technology) and the closest related Financial Program Director (Treasury and Financial Services). Others at the Director level would be invited to provide the senior management group with advice and information on strategy, program planning and implementation as necessary. Such arrangements can be incidental, temporary or more permanent in nature, depending on the strategy, plan, program or activity being identified by top City management as appropriate.

Priorities, as with strategies or strategic plans, are as well identified at the most senior levels of the bureaucratic organization. Once priorities have been established by the most appropriate senior level of management, senior program management staff are assigned the task of designing and developing the plan and implementing the program. That plan and the model for its implementation is then recommended to the most senior level of management which previously participated in its strategic planning.

The reporting relationship is between the position having responsibility for program design, development and implementation and one particular member of the senior management group previously charged with the strategic planning activity, and in particular, that one with accountability for the function most closely related to the program (Year 2000).

The program manager for a City-wide program of significance such as the Year 2000 program should report to the Commissioner, Corporate Services. From an organizational and operational perspective, it is critical that the program director of a major and important City-wide program report to (and thus benefit from its reporting relationship with) a senior management official in the organization. Such a major program should not be "buried" in the organizational structure.

It should be noted that in the classical bureaucratic model, the generally accepted number of organizational levels is 5 to 7. Thus, having a program as major as say the Year 2000 program report to a third level manager (even with the title of Executive Director) is organizationally inappropriate (it is buried in the organization).

12. **Organization Charts**

In the bureaucratic organization, the importance of the organization chart cannot be underestimated. Organization charts should reflect the up-to-date strategies of senior management. They are, again, critical planning tools which provide the manager of the organization, its branches, divisions or units a summary of the organizational structure, the management of which they are responsible for, human resources (including critical absences of staff in certain positions or programs), information on position classifications and whether positions are staffed with full-time, continuing, temporary staff or contract staff. A complete and accurate set of organization charts that reflects the organizational reality provides senior levels of management, including the most senior levels of management, with clear, concise information on their organization and the resources assigned to each program or activity. Such information is critical for purposes of strategic planning and program assessment. Anomalies in the organizational structure will likely be obvious or at least reasonably obvious to senior management and can be rectified as or when these are observed.

Organization charts also provide senior management an opportunity to identify under-funded or under-staffed programs or activities and to make or at least consider management solutions for certain issues or problems that may arise.

13. **Special Projects**

For a program having the scope and impact of the Year 2000 program, the traditional model of bureaucratic organization calls for strategic planning to be performed by the senior management team (CAO and Commissioners with a stake in the program, likely Finance and Corporate Services). Specialized advice would be sought from senior program or functional managers, i.e., Human Resources, IT, Legal, etc.. The program would be generally defined, i.e., objectives established, resource commitments considered, reporting relationships set out and a job description for the program manager prepared. Human Resources consultants would work with the superior manager to determine the skill set required to perform the duties of the position and a competition would be held. The position would report to the senior manager position.

The manager of that particular program (the Director Year 2000 for the City) manage in accordance with the strategy and plan would engage in program design, development, approval and implementation. As well, he or she would be expected to report on a regular, ongoing basis to the superior manager (the Commissioner of Corporate Services) and to cooperate and coordinate activities with peer level managers on an as-required basis (Directors and Executive Directors).

The manager of the particular program is obligated to provide leadership in all matters related to the program but as well was required to be sufficiently knowledgeable of the organization that when advice, information or guidance is called for from another program, activity or function, same could be readily provided.

Work groups form for special projects, activities or functions associated with a program or task. Upon completion of the task or activity, the functional specialists return to their work group. It is incumbent on each functional specialist and indeed on superior management who select them for the task force to present with appropriate skills and abilities to fully meet the team's needs. Where shortfalls are noted, the functional specialist must forthwith report this to his/her superior manager. No position works in isolation in bureaucratic organization. The tasks or duties associated with a position do not change with the individual in the position. Rather, the individual within a particular position who identifies a particular need that he does not have or which is not available from within the work unit but which is available elsewhere in the organization communicates that need to the individual in the position superior to him/her and that need is proposed, discussed, recommended and eventually approved by the appropriate level manager who then consults with his counterpart in the organization with the requisite expertise. The superior manager identifies how best to obtain the required expertise and consults with the appropriate subordinate manager. That superior manager provides direction downward to subordinate managers until the appropriate resource/consultant/officer is identified and requested to work with the particular individual in the work unit who expressed the need for certain expertise. Two assumptions are made in bureaucratic organization: (1) that that area of expertise exists and (2) that all levels of superior management who had been involved in putting the work group together will be kept informed of developments, issues or results achieved by the work group. Communication upwards through the organization is critical in the bureaucratic organizational model. To use our example above, the two officers working together would each report to their direct supervisors on the project regarding their contributions, the overall achievements, issues or problems, whether further or additional expertise was required, etc.. Those superior managers would in turn report to their superior managers apprising them of developments, successes and needs, etc.. All interested parties would be fully, accurately and appropriately informed. Communication was to be in writing so that records could be reviewed, and assessed by senior management as necessary.

14. **Accessibility of Information**

As noted previously, the grease on the wheels of the train that is bureaucratic organization is perfect information and its availability to all stakeholders or otherwise involved parties.

In order to ensure that up-to-date, complete and accurate information is readily available to superior officers having an interest in programs and activities, there is a duty on subordinate managers to report on an ongoing and regular basis. Systems are designed and implemented in order to facilitate the production of good, complete and accurate information for management and planning purposes.

15. **<u>Briefing and Report Writing</u>**

In bureaucratic organization, communication upward through the organization on achievements, successes, failures, needs or issues is critical. Such communication must be timely, detailed and accurate such that those in more senior management positions will be in a position to make decisions and authorize changes to the program, or activity. Records must be maintained, updated, summarized and provided to senior managers and the more senior manager or managers must be kept informed both on a regular basis and as well at pre-established points in the rollout of the program or activity. Where issues arise the superior manager must be kept informed and updated. Written reports must be provided. Briefing notes should be developed and provided to the superior manager for information purposes. Information almost without exception should be communicated in writing.

Where a subordinate is to brief a superior manager or officer in the organization, the information provided should be complete, accurate and timely. Where information is not available, the subordinate shall seek and obtain that information forthwith, again providing it to the superior manager in a timely manner. Briefings should include not just those results, decisions or summaries that the superior manager has requested or that the subordinate manager wishes to focus on but as well should identify potential or real issues of concern, problems and proposed or potential solutions.

There are briefing and reporting protocols in place in bureaucratic organizations. These must be adhered to however all relevant matters must be reported so that the superior manager has "perfect" knowledge, i.e. the best possible knowledge, so that issues are fully understood and good, informed decisions can be made.

ISSUES FOR JIM ANDREW

1. Selection of RFQ Rather than an RFP

Lou Pagano held the position entitled Director Purchasing & Material Management Services ("PMMS"). As Director PMMS, Mr. Pagano was the chief purchasing officer at and for the City of Toronto. The Director PMMS reported to the Chief Financial Officer and Treasurer for the City.

The principal accountability of the PMMS Division and of its Director was the assurance that all purchasing and material management activities across the City complied with existing policies, practices and procedures. PMMS was to achieve this objective principally by providing advice, information and guidance to branches, divisions and departments in all purchasing and material management activities, i.e., with respect to the policies, procedures and methods and with respect to protocols and by actively controlling, managing and monitoring the procedures, activities and methodologies used or proposed to ensure that these were reasonable, appropriate and in compliance with PMMS guidelines, procedures and policies.

One of the initial drafts of the RFQ, prepared by Brendan Power and dated May 7, 1999 was an RFP (**021834**). Throughout their communication on the document, Mr. Power and Mr. Rabadi continue to refer to the document as an RFP.

The decision to proceed by means of RFQ rather than by way of an RFP was a decision properly made by and indeed which was made by a representative of PMMS.

That decision was apparently made following a meeting or meetings between Brendan Power and Lana Viinamae on behalf of Year 2000/IT and Dave Beattie or Frank Spizarsky.

The form of the discussion should have been and likely was that the representatives of Year 2000 discussed with Purchasing experts the nature and extent of their program and the equipment they would be purchasing or leasing. In reply to the program review and needs assessment, the PMMS experts ought to have provided detailed and accurate advice and guidance to Ms. Viinamae or Mr. Power on how best to achieve their objective while ensuring strict compliance with the PMMS policies, procedures and guidelines, for the integrity of which they were accountable.

The PMMS experts ought to have obtained information from Ms. Viinamae and Mr. Power sufficient for them to determine that the RFP format was the appropriate procedure in the circumstances. Certainly, it was a purchasing issue within the scope of directions that PMMS was to make.

Mr. Andrew did not consider that an RFQ was appropriate. Neither did Brendan Power. Apparently neither Mr. Andrew nor Mr. Power questioned this selection believing that the Purchasing Division experts knew what they were doing. After all, the general practice in the City appeared to be that the functional experts, i.e., PMMS in this case, knew what they were doing and should not be challenged or questioned. That said, in his statement to KPMG on September 25, 2001, Mr. Power acknowledged that "the Purchasing Department of the City was not very sophisticated or knowledgeable in terms of leasing negotiations" (**012078**).

Good bureaucratic organization encourages such confidence in the functional experts. In fact, it relies on functional expertise (that the employee in the position can perform all the duties of the position in a fully satisfactory manner). That said, it is clear that PMMS Division failed to provide reasonable, or any, leadership and by that failure to provide leadership at virtually every stage of the purchasing/leasing/tendering process, the IT Division was pretty much left to fend for itself.

Good examples of this failure by PMMS can be taken from the affidavit of Dave Beattie, sworn March 27, 2003.

At paragraph 41, Mr. Beattie confirms that he had limited experience with leasing and no formal training in this subject area. Despite this, he is selected to provide advice and guidance to senior program managers in need of precisely that expertise.

At paragraph 42, Mr. Beattie acknowledges receiving a draft quotation document for Leasing Services (**005801**). Mr. Beattie does not, apparently, inform Mr. Spizarsky that in his view he is unqualified to process that document appropriately but rather, he decided to "muddle through". Mr. Beattie does not consult with Mr. Power or Mr. Andrew regarding their needs but rather accepts that as the Leasing Services is written as an RFQ that it should be an RFQ. Mr. Beattie transfers the leadership role on purchasing matters (i.e., to provide advice and guidance) to Mr. Power. Mr. Beattie's next comment is that the language in places was imprecise. Mr. Beattie, even when writing the affidavit, failed to focus on the big picture, i.e., "how to purchase the better option, i.e., leasing or purchasing IT equipment". Mr. Beattie, at paragraphs 43 and 44 acknowledges that the issuing department was under immense time pressure. Clearly, Mr. Beattie failed to provide leadership on the Leasing Services Request document. He did not apparently know what to do and thus did little, if anything. What he did is set out at paragraphs 46 and 47. Effectively, Mr. Beattie ignored the conceptual issues and focussed on minor word changes and the addition of boiler plate.

What should Mr. Beattie have done? Mr. Beattie should have met with Mr. Power and Mr. Rabadi and confirmed what it was that Year 2000/IT hoped to achieve, the nature and extent of the proposed program and how it would operate. As well, from Mr. Rabadi and Mr. Power he should have established the cost-related criteria to be analyzed and from that determined whether the leasing vehicle should be an RFP or an RFQ.

The fact that both Mr. Power and Mr. Andrew were of the opinion that the experts at PMMS had mis-selected the format for purchasing should likely have raised issues for them. These issues or concerns should perhaps have been raised with more senior PMMS personnel, i.e., the Director, PMMS, particularly if Year 2000/IT had focussed on the fact that the inappropriate selection could have arisen from poor communication regarding what the program really required in terms of equipment purchasing/leasing.

The RFQ should have been drafted by representatives from each of IT/ Year 2000, PMMS and Finance (Financial Services). The expertise of each of these functions was required and was critical to the selection of the format (RFP or RFQ) as well as the success of the RFQ.

In bureaucratic organization, information and advice related to problems, issues or concerns travels upward through the organization. From Mr. Power, such issues or concerns related to the drafting of the RFQ would flow upward to Ms. Viinamae for Year 2000 matters or to Mr. Andrew for IT issues or concerns. Mr. Power's knowledge, skills and abilities were well-known to Mr. Andrew who had worked with Mr. Power in the Government of Ontario. Mr. Andrew was personally acquainted with Mr. Power having performed similar activities with apparent success on several occasions.

If Mr. Power did have issues or concerns regarding the drafting of the RFQ or his level of training, skill or knowledge, the appropriate response would have been for him to communicate these to Mr. Andrew and/or Ms. Viinamae. Equally, if

Mr. Beattie had such issues, he should have referred these to Mr. Spizarsky or Mr. Pagano. Employees at the Executive Director level (particularly where they are acting without benefit of a Commissioner of Corporate Services) do not and indeed cannot micromanage. Rather, as they are briefed or consulted on issues, concerns or problems, they alone, i.e., with Mr. Power directly or in cooperation with the other stakeholders in similar levels of the organization (Len Brittain, Lou Pagano, etc.) identify means by which to resolve these issues, concerns or problems. The managerial role of Mr. Andrew is to manage senior level managers "under general direction". There were too many other planning issues, advisory obligations and competing program priorities for him to perform in any other manner.

The determination as to whether or not to engage external counsel or consultants was never made an issue for Mr. Andrew. He spoke with Ms. Viinamae to inform her of his proposal to have Mr. Power serve as the IT/ Year 2000 representative on the interdisciplinary committee drafting the RFQ. He then spoke with Mr. Power who expressed no issues or concerns regarding his knowledge or skills related to the proposed task. No issues, problems or concerns arose from Mr. Power at a later date. All who worked with Mr. Power in drafting the RFQ were comfortable with his level of skill, ability and knowledge. In the circumstances, there would be no reason for Mr. Andrew to question the need for consultants or to become personally involved. Mr. Andrew was well aware that Mr. Power had access to external counsel with respect to matters related to the Year 2000 Program. Mr. Andrew had no reason to believe that if Mr. Power felt a need to consult external counsel that he would not do so. We know that Mr. Power did consult external counsel from time to time.

2&3 Mr. Andrew was in no way responsible or accountable for the training, skill level or expertise of those persons from the Finance Department. Mr. Andrew was well aware of the knowledge, training, skill level and expertise of Mr. Power. As well, Mr. Andrew knew of the way Mr. Power worked and knew of the resources available to Mr. Power. As well, Mr. Andrew knew that it was Mr. Power's way to utilize these external resources as and when he needed. Mr. Andrew also knew that Mr. Power understood how bureaucratic organization worked and relied on the fact that if issues, problems or concerns arose, Mr. Power would consult the appropriate resource including Mr. Andrew.

Brendan Power was not requested to draft the RFQ in a vacuum and neither did he proceed in that manner. Rather, Mr. Power was part of a team. The drafting of the RFQ required and proceeded with input from Nadir Rabadi of the Treasury and Financial Services Division and from Dave Beattie of the PMMS Division. The evaluation of the responses was performed by Mr. Rabadi principally but with input (double checking) performed by others including Mr. Power, Mr. Altman and Mr. Brittain (**14114**) (**031946**), etc.. The evaluation of responses was principally, indeed exclusively, a financial analysis, to be performed by the Finance Department. Mr. Rabadi provided information on an ongoing basis to Messrs. Altman and Brittain and consulted them on an ongoing basis as issues, problems or concerns arose.

Where the team concept broke down was in terms of what each project principal understood the Year 2000 computer leasing program to entail and what each project principal brought to the project. In the answer above, we have assessed what Mr Beattie brought to the group and how inadequate or inappropriate this was. As well, we discussed the fact that Mr Rabadi was unable to provide insights into the more technically complex but clearly Purchasing mandated issues contained in the RFQ. In his affidavit, Mr Beattie focussed on wording and the addition of boiler plate. He failed entirely to address such issues as sale and leaseback, the sufficiency of 90 days, s.1.1.17 or s.1.1.21 of the RFQ and the responses received. At paragraph 51, he states his understanding that the City intended to lease up to $43.15 million in computer hardware and software for 36 months but nowhere does he state that he met with Mr Power, Mr Rabadi or anyone else to confirm or clarify the nature and extent of the program, how it would function or their needs. It is submitted that these are PMMS functions.

Clearly, what Mr. Beattie and Mr. Rabadi understood to be the way the program would operate was different from how Mr. Andrew or Mr. Power understood that the program would operate. None of Messrs Beattie, Power or Rabadi understood that they conceived the program in wholly inconsistent ways and as a result none of them apparently reported the inconsistencies or their concerns to more senior managers. Clearly, the working group failed to comprehend the full scope of the equipment leasing program.

Obviously, the failure to explain to PMMS and to Treasury/Financial Services the nature and scope of the program can be viewed as an IT problem. More appropriately, it should be viewed as a communication problem.

Input from Purchasing on such matters as the adequacy of the 90 day window, the form and content of the RFP (rather than an RFQ which focussed on price to the exclusion of all other criteria that should have been assessed), downstream purchases, sale and leaseback issues, estimated leasing volumes, etc. was as critical as it was absent. PMMS failed to engage. PMMS failed to understand its role. PMMS, and in particular, Mr. Beattie, failed to ask for, seek or obtain information or guidance from any of Mr. Spizarsky, Mr. Pagano or even Mr. Brittain or Mr. Rabadi.

As well, once Mr. Rabadi completed his involvement in the price analysis and drafting of the report to Policy and Finance Committee, he transferred from the Treasury and Financial Services Division and was not replaced. Mr. Rabadi knew about quarterly "lease rate factors" but failed to transfer this information to Mr. Brittain or Mr. Altman prior to his departure.

It is simply wrong to say that Mr. Andrew should have "divined" that Mr. Power had insufficient skill or experience to participate in drafting the leasing RFQ, participate in the evaluation process or evaluate lease rate factors.

Did Mr. Andrew Simply Promote Leasing Without Sufficient Analysis?

4. At the time of amalgamation, Mr. Andrew inherited various pieces of IT hardware and software, much of it aged or of unknown age, of various qualities and capacities, running inconsistent and often pirated or out-of-date software.

Seven organizations were being pared down to one and many high-skilled, experienced managers and consultants left the City. Staffing into permanent positions was slow and cumbersome.

In his first appearance before the Budget Chief, Councillor Jakobek, to propose a budget for the first year post-amalgamation, Mr. Andrew had his budget slashed to virtually unworkable levels. Even worse, it was clear that Councillor Jakobek had little, if any, understanding of the benefits of Information Technology and considered it a low priority.

In addition to this, Mr. Andrew was well aware that along with the amalgamation the Province had downloaded additional services onto the City for which they simply had no money.

The Year 2000 Program was an approved City-wide initiative which impacted IT among other areas. Much of the City IT hardware and software failed to comply with Year 2000 standards and would require upgrading or replacement. All that said, there were severe financial limitations faced by the City and the City chose to proceed by means of a <u>short-term</u> remediation/replacement program which would presumably (or at least hopefully) result in cost efficiencies.

With the financial realities of the City in mind, IT Division was charged with developing a viable IT upgrade plan.

Leasing IT hardware was well-known and often used as a financial methodology within the various Cities and Metro pre-amalgamation. As well, it had been used with great success at the Province, in other cities, regions and municipalities around Ontario as well as at various Ontario colleges and universities.

Mr. Andrew did not and does not simply support "leasing". Rather, he was at all times aware that leasing has advantages as well as disadvantages. Mr. Andrew supported the concept of providing options and having selected the option that most benefited the City of Toronto from a financial perspective. The analysis in the RFQ was a financial analysis that compared the leasing option with the City's cost to purchase. The lowest cost option would be pursued. Mr. Andrew supported this as did Ms. Liczyk and Mr. Brittain (**057016**).

5. Leasing was not Selected to Circumvent Approvals by City Council

At no time did Mr. Andrew support the leasing of I & T hardware or software for improper purposes. There is simply no evidence to support that proposition. Leasing was a reasonable consideration in the circumstances, one that MFP had pitched to Len Brittain and others in his Division in March of 1999 (**025215**) (**025142**) and (**064000**) and Dell Financial Services pitched to him and Ms. Liczyk and others in Finance in May 1999 (**014311**). Leasing was an established funding mechanism in a vast number of major corporations in North America and elsewhere.

City Council approved the leasing of hardware and software at the Council Meetings of July 27 - 29, 1999. At that point in time, the proposal, though poorly written (the final draft Report being the workmanship of Ms. Liczyk) was approved by Council based on the Report and other information.

Council did, in that Report, call for ongoing financial reporting on the IT hardware and software program as the program expanded beyond what quantities were initially called for in the Report. Ms. Liczyk, as a member of the Year 2000 Steering Committee and as well through her annual budgetary activities and communication with Ms. Viinamae would be well aware of the status of the program and whether/when to report to Council. Mr. Andrew was of the opinion that the financial reporting obligations were obligations of the CFO and further that the CFO, Ms. Liczyk, had complied with these obligations by means of ongoing Reports. Mr. Andrew was further aware of the Year 2000 Program financial reporting obligations (monthly reporting) to the Budget Committee. Mr. Andrew believed that the financial reporting obligations set out in the Council Report had been complied with.

6. A leasing transaction does not require much more than good planning and organization. Again, although Mr. Andrew is accountable for operational shortcomings within the IT Division, he is not accountable for the operations or activities of the Year 2000 Program or the training needs of its staff. Even if Mr. Andrew were accountable for the Year 2000 Program, the fact is that much of the operational activities in that program was two or three organizational levels below

Mr. Andrew and thus, although he would have been accountable, he would not have been responsible for training or development shortfalls.

Where staff training or experience problems, issues or concerns exist with respect to the operation of a program or the delivery of a service, staff are obligated to refer that matter to their direct supervisor to (1) keep them informed and (2) to obtain from them certain guidance or direction on the particular issue, concern or problem. Where that particular manager, in this case, Ms. Viinamae or Mr. Franey is unable to resolve the matter, it is incumbent on her or him to refer the matter to the superior manager. Whether that manager is Mr. Andrew (on IT matters) or either the Commissioner, Corporate Services (CCS) or the Year 2000 Steering Committee (**064388 at 064402**) (for Year 2000 matters), the fact is that Ms. Viinamae is charged with the duty of referring such matters to her superior (a) to keep them apprised of issues, concerns or problems and (b) to obtain information, guidance or direction from them on how to resolve or coordinate the resolution of those issues. Ms. Viinamae has made the point that she had absolutely no training or experience with respect to leasing and that she so informed Mr. Andrew. Despite that, Ms. Viinamae in her capacity as City Year 2000 Program Director, had a duty to work to develop some degree of knowledge and understanding of leasing, at least to a level sufficient that she could participate effectively in the management of a/the leasing program. It is not simply sufficient to say I manage the leasing program but I had no knowledge or training in leasing. There is a duty to develop a fundamental understanding of leasing so that you can effectively perform the duties and obligations of the position as Year 2000 Program Director. That expertise can be developed by various means including asking questions, reading Gartner Group and leasing related documents, reading the bid, the bid responses and the report to Policy and Finance Committee.

It is Mr. Andrew's position that Ms. Viinamae was so busy running the Year 2000 Program that issues, problems or concerns that perhaps could have been referred to him (Year 2999 Steering Committee) or to the Commissioner, Corporate Services were seldom, if ever, referred to them. Ms. Viinamae, in the position of Year 2000 Project Manager sat on Commissioner Rodrigues's Departmental Management Team. In his capacity as IT Executive Director, Mr. Andrew was a Management Team member as well. For purposes of the Year 2000 Project, Ms. Viinamae's position and Mr. Andrew's position were peer level positions.

Ms. Viinamae indicated in her testimony that she and Mr. Andrew communicated regularly on the Year 2000 Program. The real issue is not the regularity of the communication but rather the nature, substance and quality of that communication. Mr. Andrew testified that he and Ms. Viinamae talked often but that in his position as IT Executive Director he played no role in the management of the Year 2000 Project and neither did he supervise or manage staff in that project, including Ms. Viinamae. Mr. Andrew did advise that in his role as IT Adviser on the Year 2000 Steering Committee he did have an advisory role in the program. That said, he had no formal management role and played no role in the management of the Year 2000 Project. Few e-mails on Year 2000 Project management issues emanated from Ms. Viinamae to Mr. Andrew or were copied to him. When senior department managers had issues, problems or concerns about Year 2000 Project matters, be they budgetary, purchasing or operational in nature, contact or communication was with Ms. Viinamae. Mr. Andrew was seldom copied and believed this to be appropriate. If Ms. Viinamae, in the position of Year 2000 Program Director, had concerns about her or the skill levels, training needs or performance levels of her staff, i.e., with respect to lease-related analytical skills, she ought to have referred these concerns to the CCS, the CAO or the Year 2000 Steering Committee. There is no evidence that she did this or even that she referred such issues to Mr. Andrew. The obligation on a senior line manager running a program such as the Year 2000 program is to monitor and ensure that full and proper information on the program and on the timely achievement of program goals and objectives is collected, analyzed, documented, summarized and referred (in writing) to the superior manager for consideration. Issues or concerns must be identified and communicated to her superior for resolution as part of the program reporting package. In the case of Ms. Viinamae, in the Year 2000 Project Director position, her direct superior was either (a) the Commissioner, Corporate Services or the individual acting in that position or (b) the Year 2000 Steering Committee (**064388 at 064402**) . It was not Mr. Andrew. If indeed it was Mr. Andrew who was the direct superior of the Year 2000 Project Director, there should be clear, consistent documentation including operational records and e-mails, etc. to that effect from all directions within the organization. There are not.

7. Ms. Viinamae and Mr. Power were well aware of their roles in the leasing transaction. Keep in mind that the leasing transaction was a Year 2000 program initiative and that Ms. Viinamae headed up that program at least according to her job description and the organization chart. The problem was much greater than just whether or not two senior officers in the Year 2000 program understood their roles. Rather, what is critical is the fact that the City failed to identify or put together a senior management team to coordinate the leasing program despite repeated requests from Ms Viinamae. The leasing program required input from several areas of Finance at various times. All of Len Brittain, Lou Pagano, Glenn Vollebregt and Al Shultz had roles to play in the leasing transaction as did various representatives of their staff to whom projects, issues or activities were delegated.

None of them and thus none of their respective staffs was sufficiently aware of their ongoing roles with respect to the leasing transaction (**015690**).

Many of the issues facing the Year 2000 Program Director at least with respect to the IT "refresh" activity were financial in nature. The Year 2000 Program Director attempted repeatedly to resolve these issues directly with her Finance Department counterparts – almost always without informing Mr. Andrew about the issues she faced or the plans or activities she intended to initiate to resolve these. When, eventually either Ms. Viinamae or one of the Financial Division managers did contact or c.c. Mr. Andrew, Mr. Andrew would act to resolve the problem or issue (**64008**), (**015529**), (**13539**), (**12226**), (**015707**), (**03867**), (**011065**).

The information technology leasing program was principally a Year 2000 program project. One of the clients was Corporate IT. The rollout of computers, software, services, etc., was to be managed by the Year 2000 Program. It would be helpful if the Commissioner would refer to the job profiles for the Executive Director, Information & Technology (**077299**) and the Year 2000 Project Director (**031541**) and (which Ms. Viinamae defined under cross-examination).

8. This raises a substantial issue, i.e., what was the reporting relationship of the position, <u>Director Year 2000 Project</u>. It appears that the response differs with who it is you ask.

<u>To Margaret Rodriguez – C.S.C. to May 1999</u>.

P.17, L.12, 13 – Transcript, November 20, 2003 – Year 2000 program could not be handled through the regular IT line arrangements.

P.18, L.19-21 – Ms. Viinamae reported into the Year 2000 Steering Committee.

P.19, L.7-11 – Lana was to manage … the Year 2000 initiative and report monthly into the Year 2000 Steering Committee.

P.19, L.20-21 – The Year 2000 Steering Committee reported to Council.

P.21, L.21-23 – Lana reported to Mr. Andrew for IT purposes but as I (Ms. Rodrigues) was the lead Commissioner (for Year 2000) we felt it would be too cumbersome to go through Mr. Andrew to talk to me.

P.25 – Ms. Viinamae was still on Mr. Andrew's staff but she had a "special assignment".

P.27-28, L.18-25 – Ms. Rodrigues disagreed with Michael Garrett's description of the relationship between Ms. Viinamae as Year 2000 Director and Mr. Andrew in his position as Executive Director, IT.

P.33, L.18-25 – Ms. Rodrigues had no knowledge as to Ms. Viinamae's signing authority for the Year 2000 Program. Neither did she know that Mr. Andrew had no such signing authority.

P.34, L.1-2 – Ms. Rodrigues agreed that Mr. Andrew had no budget control or signing authority for the Year 2000 Project.

P.38-39, (**00007**) – Ms. Rodrigues reviewed monthly reports to Council prepared by Ms. Viinamae. She was unaware as to whether these were also reviewed by Mr. Andrew but expected they were even though they came to her directly from Ms. Viinamae. Apparently, she never spoke with Mr. Andrew to confirm his involvement. (Mr. Andrew denied having reviewed any of these monthly reports and stated that they were provided by Ms. Viinamae directly to Ms. Rodrigues.)

P.40, L.10-17 – Ms. Rodrigues met as frequently as necessary with Ms. Viinamae directly and without Mr. Andrew (formally once or twice a month, usually at her management team meetings of which Lana had become a member in the position of Year 2000 Director, but informally as well).

P.41, L2-5 and 13-19 – Ms. Rodrigues's management style was to meet with staff who were responsible for particular initiatives. She did not necessarily believe in a hierarchical management style. This management style made sense to her in that Ms. Viinamae reported directly to her on the Year 2000 Project.

P.43 – Ms. Rodrigues disagreed with Ms. Viinamae's testimony that on only one occasion did she and Ms. Viinamae meet without Mr. Andrew.

To Michael Garrett – CAO.

Ms. Viinamae was the Director of the Year 2000 Year 2000 Program and reported to the Year 2000 Steering Committee. Because Steering Committees do not show up on the Organization Charts, therefore the performance appraisal is prepared by the home division manager and the position is said, for administrative purposes, to report to the home division manager as well. The Year 2000 Program had a significant IT component. Thus it made sense that the Director Year 2000 Program position report to the Executive Director Information & Technology for administrative purposes. Mr. Franey occupied Ms. Viinamae's position in the Corporate IT Division as Director Computer Operations and Telecommunication Services on an acting basis between about May 1998 until after Ms. Viinamae left the City at which time he won a competition for the position.

The organization chart for the Year 2000 Program dated February 9, 1999 (**064388 at 064402**) has the Project Director position reporting to the Year 2000 Steering Committee. That organizational relationship is as proposed by Ms. Rodrigues and Mr. Garrett.

To Jim Andrew

Jim Andrew concurred with Mr. Garrett's testimony regarding the functional reporting relationship between his position and the Year 2000 Project Director position held by Ms Viinamae. Mr. Andrew stated that solely for administrative purposes did the Year 2000 Project Director position report to his position as shown in the IT organization chart (**70850**) and his position description (**77299**). None of the duties in the job description for the Executive Director position related to the Year 2000 Program.

The Year 2000 Project Executive "temporary job opportunity notice" (**31541**) indicated that the position reported to the CCS. The organization chart for the Year 2000 Project (**032058**) does not show a relationship above the Director position (a substantive oversight)

The announcement to staff of Ms. Viinamae's appointment (**02073**) describes the Year 2000 Director as reporting to both the Executive Director and the CCS. Mr. Andrew agreed with Mr. Garrett that this meant the position reported to the CCS for program responsibility purposes and to the Director IT for administrative purposes only.

Clause #1 in the Joint Report of the CS Committee and the Budget Committee entitled Toronto Year 2000 Project adopted by Council on July 29-31, 1998 (**30382 at 30402**) was signed by Mr. Garrett, Ms. Rodriguez and Ms. Viinamae. It was not signed by Mr. Andrew. The named contact person was Ms. Viinamae.

Mr. Andrew was not a contact person. Neither was a copy of that Report ever sent to him.

Mr. Andrew stated categorically that at no time did he review or revise the reports that Ms. Viinamae drafted and submitted to the Strategic Policy & Planning Committee or the Policy and Finance Committee.

The Year 2000 budget accountabilities were not included in the budgetary accountabilities section of the position description for the Executive Director Information Technology.

The fact is that the organizational relationship that existed between the Year 2000 Director position and the Executive Director, IT was ill-defined and unclear. In addition, by her own admission, organizational principals or protocols were not followed by Ms. Rodrigues.

Mr. Andrew played an advisory role on the YEAR 2000 Steering Committee and in that capacity he had a role to play in the Year 2000 Program. For administrative purposes, Mr. Andrew's position was the one to which the Year 2000 Director position "reported". For operational purposes, it reported to the CCS position or the Year 2000 Steering Committee. It was to the CCS position that the Year 2000 Program Director position should properly have reported in any event. A major City-wide initiative should report to the most senior level possible. It should not be buried in the organization as has been proposed by Commission Counsel.

Ms. Viinamae had worked with Mr. Andrew for many years and enjoyed a good working relationship with him. She respected his technical expertise as well as his approach to management. She had a lot to learn from Mr. Andrew in terms of operational management. She spoke with Mr. Andrew on both an informal and a formal capacity (in his role as an adviser to the Steering Committee) and not as the Executive Director, Information & Technology.

9. It must be remembered that Ms. Rodrigues left the CCS position in early June of 1999 and Joan Anderton was not hired by the City and in the CCS position until mid-February 2000, about eight months later. There are no senior management program directives from the CAO or any senior City manager indicating that the formal reporting relationship between the Year 2000 Program Director and the CCS position had changed.

Between Commissioners Rodrigues and Anderton, the duties of the position were handled in part by Mr. Garrett and Brenda Glover, the Executive Director of Human Resources. Both were overworked and had little time or energy for matters related to IT. Mr. Garrett was a member of the Year 2000 Steering Committee and was well aware of Ms. Viinamae's responsibility for that program. Ms. Glover testified that she acted in the position of Commissioner but accepted no role with or accountability for the Year 2000 Program or that she directed that that program report through IT. That said, there is no documentation to staff or to senior program managers at the City confirming this, i.e., that she would not be managing or assuming all the responsibilities of the Commissioner with respect to the Year 2000 Project or that IT's Executive Director would be taking on more than an "organizational relationship" with the Year 2000 Program. Such a reorganization would certainly have required the written approval of the CAO, Mr.Garrett. There is no such request to reorganize or written approval to same.

Mr. Andrew was perfectly clear as to the nature of the interrelationship between his position as Executive Director, Information & Technology and the Year 2000 Program Director position. There was no need for him to make further enquiries regarding that relationship and Ms. Viinamae certainly never raised the issue with him.

There should have been clear written guidelines, directives, policies or procedures governing the inter-relationship between the Executive Director IT position and the Year 2000 Program Director position that technically reported to the Year 2000 Program Steering Committee (or the CCS). Such guidelines, etc., should have been established at the time the position of Year 2000 Director was contemplated. They should have been drafted by the CCS, perhaps with input from and certainly with the approval of the C.A.O.. The Executive Director would have no role in the duties or responsibilities of that Year 2000 Director position. In bureaucracy, planning and implementation of plans are top down functions. Where, as here, there are found, after the fact, to be unclear organizational and operational relationships, accountability rests with senior management (the CCS). Further, if Ms. Glover wished to transfer accountability for the Year 2000 Program, such a transfer should be preceeded by meetings with senior management personnel, i.e., with her superior manager and as well with the program leads for IT and Year 2000. Clear written guidelines announcing the reorganization should have been drafted and circulated.

Responsibility for the RFQ

10. Development of the leasing tender is not a task that required the attention of the Executive Director, Information & Technology. The IT input into the leasing tender was a rather straightforward task to be delegated to a qualified and competent representative of the IT Division. The leasing tender would require that a team of representatives from stakeholders, principally from Finance, and including Purchasing be formed to work together cooperatively to create a reasonable, accurate and appropriate RFQ document.

Brendan Power was selected by Mr. Andrew as the representative from IT on the drafting team. Lana Viinamae met with Len Brittain of Treasury and Financial Services on May 7, 1999 to discuss the issues faced by the team, i.e., leasing or purchasing of IT hardware and software (**013141**). If Ms. Viinamae considered herself unqualified to accept this role or type of role, she had a duty to so inform Mr. Andrew or Ms. Rodrigues. She did not.

In his chronology, Don Altman states that his first involvement with the RFQ tender drafting project occurred on May 7, 1999, when he received a draft RFQ, presumably from Len Brittain who apparently received the draft from Mr. Power (**012834**). Mr. Brittain delegated the role of drafting Finance's input into the RFQ to Don Altman and Mr. Altman in turn delegated the role to Nadir Rabadi, a financial analyst who had recently jointed the Division (March 1999) and who would leave the department very shortly after completing the analysis of the responses and the submissions to Council in mid July of 1999. (Loss of expertise due to high employee turnover is clearly a problem at the City at this time.)

Mr. Power's initial draft RFP is dated May 7, 1999 and is found at tab 3 of Mr. Altman's volume 2 of productions (no begdoc). (**012834**).

Shortly thereafter, on May 14, 1999, Mr. Rabadi received lease vs. buy analytical documentation from Scott Marentette from D.F.S. which Mr. Rabadi reviewed, analyzed and reported to Mr. Altman and Mr. Brittain on. (p. 238 – 250 Brittain white binder). (**014331**), (**043243**).

On May 27, 1999, Frank Spizarsky, a Purchasing Manager, sent an e-mail to David Beattie, a purchasing officer reporting to him and with IT experience, and requested that he "open this document and work with Brendan to issue it as soon as possible". Mr. Spizarsky adds that he is to be kept apprised (**005800**). Mr. Power is provided a copy of that e-mail.

In his e-mail to Mr. Brittain and Mr. Altman, dated May 17, 1999 (**012753**), it is clear that Mr. Rabadi understands that the analysis to be performed is a comparative analysis of lease rates versus price to purchase. He also understands that there are several other financing options, all of which he is prepared to explore and indeed which he explored. He also recognized that the project had three distinct components, a distinctly IT component, a PMMS component and of course, a financial component. Input from PMMS Division (PMMS) would include all matters related to the purchasing process while the IT input would principally relate to the numbers and kinds of equipment sought, technical specifications of that equipment, expected lifespan of the equipment, etc..

Mr. Andrew took a one week vacation from May 25, 1999 until June 2, 1999. Prior to leaving, Mr. Andrew met with Ms. Viinamae and transferred acting authority (to perform the duties of the Executive Director position in an acting capacity during his absence). As well, he believes he both briefed and as well consulted with Mr. Power and Ms. Viinamae on the status of activities prior to taking vacation. Neither Mr. Power nor Ms. Viinamae raised problems, concerns or issues with their various projects or activities. Mr. Power raised no concerns and Mr. Andrew was aware of and had no concerns upon his departure. On his return he again consulted with and was debriefed by Ms. Viinamae and Mr. Power. Again, they expressed no issues, concerns or problems. On his return on June 2, 1999, he met Mr. Rabadi and they briefly discuss the status of the RFQ. Mr. Rabadi reported that discussion in an e-mail to Messrs. Altman and Brittain (**014312**).

The RFQ contained input from PMMS (Dave Beattie and presumably Frank Spizarsky although he did not testify). PMMS and in particular, Lou Pagano as its Director, is accountable for those areas and matters related to the purchasing process. As well, the RFQ contained input from Treasury and Financial Services, i.e., principally from Nadir Rabadi however, both Len Brittain and Don Altman were kept apprised of developments and issues by Mr. Rabadi. Neither Mr. Brittain nor Mr. Altman read the RFQ or the responses to it, believing that Mr. Rabadi would raise with them any issues, problems or concerns he had with the

RFQ and later, with the bids responses and the analysis of the bids responses from the six bidders (**031946**). Finally, the RFQ contained input from IT. Principally, Mr. Power contributed the IT-related information to the RFQ document although both Ms Viinamae and Mr Andrew were kept informed and provided technical input and advice upon request (**031846**) (**031847**). That said, it must be repeated that Ms. Viinamae was kept apprised and actively participated in providing IT-related information for use in the RFQ (all above e-mails cc'd to her).

It was absolutely reasonable for Mr. Andrew to delegate the IT related aspect of the drafting function to Mr. Power. As well, it was reasonable for Mr. Andrew to expect that Mr. Power either fully understood the IT-related information to be inputted into the RFQ or that if he did not have such information, he would consult with others in IT and Year 2000 to obtain such IT-related information. Mr. Andrew was at all times available to Mr. Power and for that matter to Ms. Viinamae with respect to IT information that they might need for the RFQ. Neither approached him formally and he provided information and advice as requested.

Mr. Andrew did not have overall responsibility for the lease tender. Rather, it was a joint function with Financial Services and PMMS. Each contributed or should have contributed according to their area of expertise and the need for that expertise in the lease tender in order to draft the lease tender. In a bureaucratic organizational structure, the most senior level of manager who delegates an activity one, two or more levels down the organization generally has no duty or obligation whatever to review, assess or approve the nature or quality of the final document unless issues, problems or concerns are raised by the IT team member to him or her. Rather, he has every right following delegation of a task to rely upon a skilled, trained, senior officer knowing his duties and performing them in a fully satisfactory manner. The senior manager has a right to rely on the fact that an officer having such delegated authority who experiences difficulty, i.e., with respect to issues or problems will forthwith bring these issues to his attention or to the attention of the direct manager. In this case, any issues or concerns on the part of Mr. Power should have been brought to Mr. Andrew's attention. They were not. If Mr. Power had such issues, problems or concerns arise during Mr. Andrew's vacation, he could have referred same to the Acting Executive Director, Ms. Viinamae or sought to withhold the RFQ for three days until he received whatever additional input he required from Mr. Andrew.

In Mr. Beattie's affidavit at paragraph 11, he states "a PMMD manager would review the purchasing requisitions and notices to determine what the initiating department wished to acquire. This manager would then assign the purchase requisition or notice to the appropriate manager based on the goods and/or services to be acquired. The assigned manager would in turn assign it to one of their buyers".

In the very next paragraph, Mr. Beattie then seeks to minimize the role or function performed by PMMS Division in the purchasing process. Rather than playing an advisory or consultative role to management of the initiating department, Mr. Beattie puts the onus on the Initiating Department to identify their purchasing needs. The buyer, according to Mr. Beattie, reviews the specifications in the

RFQ/RFP <u>only</u> to ensure that the call is not <u>obviously</u> deficient or in breach of the PMMS Department requirements. He notes that his task was to check the document to:

(1) ensure the goods are properly (broadly) described;

(2) ensure proper purchasing language is used; and

(3) with some bids, to ensure sufficient detail was contained.

In Mr. Andrew's view, this is an extremely narrow interpretation for the PMMS to take in all the circumstances. The objective of the PMMS Division is to assure the integrity of the City of Toronto's purchasing activities. In order to do this, it is critical that guidelines, policies, procedures and protocols be written out and accessible to both staff (in detail) and to City managers considering purchases (simple handbook form). According to Mr. Pagano, no such guidelines existed at the time. In addition, it is the duty of PMMS Division Managers and staff to provide leadership, guidance, advice, assistance and direction to initiating department officers and managers seeking to purchase. The role of PMMS Division is not to simply add the purchasing words to the RFQ as necessary and to add boiler plate (paragraph 48 of Beattie affidavit). Rather, the role is to take the lead with respect to purchasing matters, to provide advice and guidance on purchasing matters and to manage the leasing process in cooperation with the initiating departmental staff and other stakeholders.

At paragraph 15 of his affidavit, Mr. Beattie confirms that PMMS and the initiating departments (in this case, Finance and IT) must agree on the form of the quotation call. Again, what Mr. Beattie proposes is that purchasing authority within the City government is a shared responsibility. It is not and cannot be. Leadership on all matters related to purchasing is provided by PMMS. The Chief Purchasing Agent for the City has full and final control on purchasing policies, practices, procedures, guidelines and protocols.

From an organizational point of view, the role of PMMS is to establish the purchasing policies, procedures and guidelines and to monitor all purchasing activity to ensure that these policies, procedures and guidelines are complied with and to provide advice, information and leadership to senior program managers engaged in the purchasing function on all purchasing and material management issues. The role proposed by Mr. Beattie and as well, by Mr. Pagano, is not and was not sufficient in these circumstances.

(a) The issue as to whether or not the 90-day period was sufficient for the submission of lease rates was purely a purchasing matter and thus was within the expertise of the PMMS. There should have been written guidelines available to PMMS Division staff and line managers alike to assist them with issues such as this. PMMS Division is best positioned to know and understand how long it would take to move an RFQ through to council approval and contract execution. They serve as the City's advisors on precisely those matters.

(b) This issue, i.e., that the City intended to sell and lease IT equipment back, was certainly well-known to Nadir Rabadi, Don Altman and Len Brittain as early as May 17, 1999 (**012753**). Although it was not particularly well or clearly worded in the RFQ, three of six bids submitted contemplated a sale and leaseback. The others may well have known of the sale and leaseback but in the circumstances were not prepared to bid on it. It is submitted that this particular issue is finance-related and further clarification ought to have been provided by Mr. Rabadi. That said, Mr. Power knew of the situation regarding previously purchased equipment (since January 1999) and failed to ensure that this was reasonably and accurately reflected in the RFQ.

(c) Particularizing the equipment to be sold to the successful bidder and leased back was not an IT function. Rather, it was a Year 2000 function. Ms. Viinamae was accountable for failing to have this task performed on a reasonable or timely basis. Clear and full records ought to have been maintained by the PMO/CMO. They were not and the workload was apparently such that the appropriate information could not be collected for months.

(d) By definition, estimates cannot be stated with accuracy. In section 5 of the RFQ, Usage Assumptions, (**005228**), approximately 9,000 desktops would be installed in calendar 1999 with a further 4,000 desktops installed during the term of the agreement. Those estimates were accurate. Section 6 of the RFQ also set out the type of technology that would be included in the leases. Included were printers, notebooks and servers as well as desktops. Also included was operating system and network software. The leasing volume estimates were relatively accurate. What was not fully known was that other departments throughout the City would order more equipment than could reasonably have been estimated, particularly when they learned that much of the equipment would not be fully charged back against their budgets.

(e) It was the roles of each of PMMS, Treasury and Financial Services and Information & Technology Division to identify criteria that, from their perspective, were critical or mandatory. In reviewing MFP's Response to the RFQ, Mr. Rabadi took exception to the response to point 1.1.17. He wrote out his concern and forwarded it by fax to Messrs. Brittain and Altman (**12290**). Neither gentleman responds decisively. Mr. Rabadi requests their advice and guidance on a critical requirement of the RFQ. None of Mr. Brittain, Mr. Altman or Mr. Rabadi addresses the real issue, i.e., what is the meaning of the response and can it be assessed by the City. If it cannot, should the proposal be disqualified. No such financial criteria was established by Mr. Brittain's division. Criteria ought to have been established by Mr. Brittain's division expressly for this purpose. They were not.

By e-mail dated June 29, 1999 (**018126**) from Mr. Rabadi to Messrs. Spizarsky and Beattie of PMMS, Mr. Rabadi posed the same question, i.e., did MFP's monthly bid rate set out as its response to 1.1.17 of the RFQ constitute a fixed rate or a variable interest rate and did it "provide an adequate or acceptable mechanism for changes to the lease rate" as requested at 1.1.17 of the City's RFQ (**018126 – 018139**). Typically, PMMS did not respond or demonstrate the leadership called for.

(f) Only MFP's bid was lower than the City's cost to borrow money to purchase. Thus, from the Finance Department's perspective, only one bidder qualified, MFP. If two or more had qualified then there would not have been just one exclusive vendor of record. Rather, there would have been two or more. The decision on whether to go with MFP's quarterly price, i.e., quarterly lease rate factor, was one for the Financial Services Division, based on their assessment of the quarterly lease rate factors. If the lease rate factors did not represent a good price for the City, the City had numerous options including:

- negotiate a lower price with MFP;
- purchase nothing that quarter;
- purchase outside the MFP contract;
- hold another RFP/Q.

The issue of lease rate factors and their ongoing analysis was a Financial issue, one that fell within the parameters of Len Brittain's Division (Treasure and Financial Services). Mr. Rabadi should have reported to Mr. Altman and/or Mr. Brittain how that procedure was to work for downstream purchases, i.e., after October 1, 1999. Plans, policies, procedures or guidelines on that process ought to have been drafted by the Finance Department (as it was a financial issue, the lead should have taken by Treasury and Financial Services) with information or input from Year 2000 and IT. Treasury and Financial Services hold the mandate to provide leadership across the City in all matters related to treasury issues and special finance-related projects.

It is submitted that no such policies, plans, procedures or guidelines were drafted or in effect and on his departure from the Division, Mr. Rabadi did not leave a briefing memo nor did he debrief Mr. Altman or Mr. Brittain on ongoing financial duties or activities associated with this program.

(g) The estimated value of the RFQ ought to have been disclosed. That calculation should have been performed by Finance with input on quantum and costing of IT equipment provided by IT. It is fair to say that the working group from PMMS, Treasury and Financial Services and IT did not work particularly well as a cohesive unit. The end result, i.e., the RFQ demonstrated that none of the participants performed to a satisfactory level. The end result should have been substantially better. That said, it is not up to Directors or Executive Directors to monitor or review the RFQ to ensure its completeness, form and accuracy prior to its being sent out. Managers at those levels are accountable for the errors or shortcomings of their staff. That said, they are equally entitled to trust that the work performed by qualified, trained, skilled and experienced staff who have not identified to them their or any issues, concerns or problems will be of a fully satisfactory quality. Where there are said issues or concerns on the part of either the officer or the mid-level manager, the document or issues within it that are the source of the problem or concern should be forwarded to the superior manager for review and resolution. Where there are no such concerns, such a review is unlikely. Mr. Andrew is accountable for any shortcomings on the part of Mr. Power, i.e., for errors made with respect to IT related matters. He is <u>not</u> accountable for the shortcomings of the entire work group.

11. At the request of Councillor Jakobek, Mr. Andrew sent him by e-mail a draft of the RFQ for computer leasing on May 17, 1999 (**074511**). Councillor Jakobek in his testimony denied that he requested it, denied having received it and denied having read it. For good measure, Councillor Jakobek even denied knowledge on the most basic functions of operating his office computer, i.e., turning it on, scrolling through e-mails and printing from an attachment.

It is submitted that when a superior officer in the bureaucracy requests a document from a subordinate that the subordinate has no option but to send that document expeditiously.

That the request of Councillor Jakobek appeared odd, indeed unique, to Mr. Andrew is admitted. That Mr. Andrew had a duty to report Councillor Jakobek's request to Commissioner Rodrigues is denied. Mr. Andrew did exactly as he should have. To ask more of Mr. Andrew in these circumstances would serve only to undermine the trust and respect underlying the superior-subordinate relationship at play in this matter. To report such a request to the Commissioner could correctly be seen as an act of insubordination.

If censure is deserved, such censure should be directed toward Councillor Jakobek whose request of a draft RFQ from a senior bureaucrat appears to have been inappropriate. The city had no written guidelines governing such senior bureaucrat - Councillor intercourse. They should have.

12. In a note to file dated April 1, 1999 (**075439**), Jeff Lyons writes that he met with a senior official in IT on March 29, 1999. Mr. Andrew denies that he was the senior IT official referred to in this memorandum.

There are several issues with the form and content of that memo that Mr. Andrew takes issue with including the following:

(a) Mr. Andrew knew that the report to Council was approved by Council on November 27, 1998;

(b) Mr. Andrew would not have used the word "refurbish";

(c) the approvals process set out in the memo was clearly incorrect; Mr. Andrew knew that the order of recommendations and approvals was first to Budget Committee, second to Strategic Policy & Planning Committee and third to Council for approval;

(d) Mr. Andrew knew that Committees made recommendations while Council granted approvals;

(e) the third paragraph makes absolutely no sense to Mr. Andrew and for that matter neither does the fourth paragraph; and

(f) what is referred to as likely the first report on Year 2000 was to Mr. Andrew's recollection at all material times the third such report.

In reviewing the content of the memorandum of April 1, 1999, it is submitted that there is nothing raised in it that is confidential or inappropriate for transmittal to a third party. The memorandum deals with the issue of leasing versus buying and the fact that the City was interested in the least expensive option. Further, there is mention that the City would be considering and valuing value added services. Finally, the memo speaks to the fact that some of the existing equipment would be upgraded while other equipment would be replaced. Mr. Andrew testified that this is the kind of information he would be providing to sales representatives of all IT leasing companies as well as to IT equipment manufacturers or distributors with whom he met or spoke from time to time.

In a note to file dated June 10, 1999 (**075418**) which was then faxed by Mr. Lyons to Scott Marentette of DFS (**075417**), Mr. Lyons refers again to a meeting on June 7, 1999 at which he and representatives of DFS had met with an "official" at the City of Toronto. Jim Andrew denies that he was the official referred to. Once again, there are numerous reasons cited by Mr. Andrew in defence of his denial. These include the following:

(a) Mr. Andrew was knowledgeable of the existence of the blackout period and that any discussion with respect to the issues raised and allegedly discussed in the subject fax, i.e., assessment of the bids, contravened the blackout guidelines;

(b) Mr. Andrew was not a "City official";

(c) Mr. Andrew knew that the committee to "invite" the bids would not be as set out and knew that IT would be a contributor to the Report;

(d) The second to last paragraph (where it refers to using Dell parts to rebuild computers and other acts of cannibalism) makes no sense to Mr. Andrew; and

(e) The list of interested bidders set out is completely and utterly inaccurate. Mr. Andrew testified that he had never heard of Microwear House, Mid-Range Computer Brokers, Barrie Computer Corporation, MCR or Office Central. Mr. Andrew did not know of Pace Communication and Mr. Andrew stated that Storage Tech Canada was not in the leasing business. Mr. Andrew further noted that the name Bombardier Data Mix Technologies was clearly incorrect and that he would have known this. Fully 50% of the list of interested bidders according to Mr. Lyons was known by Mr. Andrew to be incorrect at that time. If indeed this were an accurate list, it could only have come from Purchasing (PMMS). The list from Purchasing was not available to Mr. Andrew in IT.

Finally, it should be noted that both Mr. Lyons and as well Mr. Andrew denied that Mr. Andrew was the "senior IT official" or "the official at the City" referred to in these two memoranda. Mr. Lyons could not recall to whom he referred. As well, he acknowledged that great pressure had been exerted on him by Commission Counsel to agree that likely it was Mr. Andrew referred to in one or both memoranda. Mr. Lyons refused in any way to compromise Mr. Andrew. Mr. Andrew denies that he was the individual referred to on either occasion and in support of that position refers the Honourable Commissioner to the numerous inconsistencies between what he would have said and what is set out in the memoranda.

13. The Evaluation of the Responses to the RFQ

The task of reviewing the six responses to the RFQ was one that would fall to an inter-disciplinary team of representatives from stakeholder divisions. Brendan Power was the representative from IT. The other representative, Nadir Rabadi, was selected by Len Brittain and Don Altman of Treasury and Financial Services. Mr. Power made his approach through Mr. Brittain and Mr. Brittain correctly delegated the task downward (as did Mr. Altman). In a memorandum dated June 18, 1999 from Mr. Brittain to Ms. Liczyk (**064002**), Mr. Brittain provided Ms. Liczyk a status update on the RFQ analysis and progress.

The provision of advice and direction in the bureaucratic organization from a superior manager to a subordinate occurs where issues, problems or concerns occur. Such advice and direction flows downwards after the subordinate seeks information, direction or guidance on particular issues or concerns. From Mr. Rabadi requests for advice flowed upwards to Mr. Altman and Mr. Brittain generally although later Mr. Rabadi reported directly to Ms. Liczyk. Mr. Power provided regular status reports to Ms. Viinamae and to Mr. Andrew however on no occasion did he bring to their attention issues, concerns or problems. When Mr. Rabadi had issues or concerns regarding IT related matters he generally e-mailed to Mr. Andrew and Ms. Viinamae as well as to Mr. Brittain and Mr. Altman (**031846 bottom e-mail**).

It was at all times clear to Mr. Rabadi and as well to Mr. Power that the report was principally a Finance Department report with technical input from IT (**031948**). In the bottom e-mail, Mr. Rabadi e-mails to Mr. Andrew and Ms. Viinamae. The topic line is "Joint Report to PFC" and the content reads in part: "could you please forward to me by e-mail, the text with respect to your piece which you wish to incorporate in your report".

If Mr. Power were to have experienced issues or problems in setting up the evaluative team or in proceeding with the evaluation, it would have been incumbent on him to report such an issue or concern to Ms. Viinamae or Mr. Andrew. No such issues or concerns were raised to Mr. Andrew by Ms. Viinamae, Mr. Power or Mr. Brittain.

It was not Mr. Andrew's responsibility to join or chair the assessment team. Neither should he have micromanaged the assessment process or the IT role in it. That would not have been an appropriate activity for an extremely busy senior level manager at the Executive Director level. Rather, that would have been an example of over-management (failure to delegate). Neither was it Mr. Andrew's role to review the responses to the RFQ. Mr. Rabadi had issues with certain aspects of the bids (see above) and he brought these to the attention of Messrs. Brittain and Altman, Spizarsky and Beattie. The role or interrelationship between Mr. Power and Mr. Andrew and Ms. Viinamae is operationally identical. The project is assigned to an appropriate officer in whom the superior manager has confidence. That officer is to report on the project to senior management both on a regular ongoing basis (for informational purposes) as well as on an as-needed basis (when problems, issues or concerns arise). Following completion of the project, the subordinate officer debriefs the superior officers who delegated the task to him or her.

That the drafting of the report went off the rails is as much an issue of poor communication among the drafting team including (and particularly) Ms. Liczyk, a failure to participate on the part of PMMS staff (Messrs. Pagano, Spizarsky and Beattie) as well as an issue of poor communication from the drafting team members to their superior managers (Mr. Andrew and Ms. Viinamae, Mr. Brittain and Mr. Altman and Ms. Liczyk and Mr. Pagano and Spizarsky). It is not the role of an Executive Director to "supervise" the activities of staff. Rather, the Executive Director provides either "general direction" or "direction" to his direct reports who in turn provide "direction" or "general supervision" to their direct reports who in turn provide "general supervision" or "supervision" to their direct reports, etc.. Only when a subordinate manager or officer informs the superior manager of issues, problems or concerns does the superior manager become more involved in the project or engage on a more personal or micromanagement level.

14. **Ensuring RFQ Responses were Thoroughly and Accurately Assessed**

(a) Senior level managers delegated the role of assessing the responses to the RFQ to what they believed to be competent, skilled and qualified officers. The reporting and management roles are set out above. The MFP response to paragraph 1.1.17 was questioned by Mr. Rabadi who reported his concerns in writing to Mr. Altman and Mr. Brittain (**12290**) and to Mr. Spizarsky and Mr. Beattie (**018126**). In that situation, where an issue or concern is raised on a financial and purchasing matter to superior level managers, those superior level managers have a duty to become more involved and to ensure the issue or concern is resolved. Mr. Spizarsky had a duty to inform Mr. Pagano of the issue or concerns raised. With respect to this particular issue (1.1.17) the issue was not resolved appropriately or at all. Messrs. Altman and Brittain as well as Pagano and Spizarsky are accountable for accepting the MFP response without at least following up to obtain further information.

(b) Again, such issues as end of lease options, early return of equipment, mid-lease equipment upgrades, etc. are all issues that should have been in the contemplation of Mr. Power, the senior staff officer assigned to this particular project. If Mr. Power had issues, concerns or problems related to the consideration or inclusion of these, he should have brought them to the attention of Ms. Viinamae or Mr. Andrew. He did not and thus quite appropriately, Mr. Andrew did not engage in consulting or providing direction on such matters.

Perhaps Mr. Power was not the appropriate person to represent IT on the assessment team. For that selection, Mr. Andrew is ultimately accountable. Mr. Andrew perhaps should have raised these kinds of issues (knowledge, experience, etc., on such leases), etc. with Mr. Power at the time of his selection for the project. As well, perhaps Mr. Andrew could have provided Mr. Power with a better or more thorough overview of the program so that Mr. Power could communicate IT's perspective or paradigm to other stakeholder divisions more clearly. Mr. Andrew believed Mr. Power was the appropriate representative and on no occasion did Mr. Power report back to Mr. Andrew in a manner such that Mr. Andrew was required to reconsider Mr. Power's appointment. The information received by Mr. Andrew at all times and from all sources was that the project was proceeding without issues or concerns and that Mr. Power's participation was fully satisfactory.

(c) Mr. Rabadi's analysis of the six bids confirmed that only one of the bids, MFP's, would cost the City less than its cost to purchase (**014312**), (**012833**). Certainly this analysis was at all times within the contemplation of Messrs. Rabadi, Altman and Brittain who discussed it as early as June 2, 1999 (**014312**) and who were accountable (Brittain) and responsible (Rabadi) for such analysis.

Such financial analysis and such financial issues and considerations were the responsibility of Treasury and Financial Services. Other aspects of the analysis were purchasing-related in nature and were thus referred to PMMS by Mr. Rabadi (**018126**). Financial and purchasing issues were not within the program responsibilities of IT.

15. **Contact with Dash Domi During the Blackout Period**

There was no formal written policy on the "Blackout Period" at the City and neither was there a clear or clearly known understood practice or understanding as to what the blackout covered or its duration. This is a critical policy oversight. Mr. Andrew was at all material times aware that a "blackout period" was in effect from the time an RFQ hit the street (May 31, 1999) until the successful bid had been approved by Council (July 28, 1999). Mr. Andrew further knew that during the blackout period, staff of the initiating department could not communicate with prospective bidders except with respect to matters not associated with the RFQ or RFP. Contact between prospective bidders and the City with respect to the RFQ or RFP could only take place between prospective bidders and the designated purchasing agent, in this case, Dave Beattie.

Mr. Andrew has stated (a) that he believed he spoke with Irene Payne about Mr. Domi's telephone calls during the blackout period and (b) that he spoke with Mr. Domi regarding his telephone calls touching on matters related to the RFQ during the blackout period. Mr. Andrew did not consider such contact worthy of further censure.

Mr. Andrew returned from a holiday in Scotland on June 2, 1999. On that date, he spoke with Mr. Domi on two occasions, at 1:52 p.m. (4:06) and 5:08 p.m. (1:26). Mr. Andrew recalled discussing the marketing of sports paraphernalia with Mr. Domi in at least the first of those calls. Mr. Andrew did not recall the nature of their discussions in the second call of June 2, 1999 or in the telephone conversations of June 3, (1:27) at 6:17 p.m. or June 4, 1999 (0:32) at 2:29 p.m.. Mr. Andrew did not believe these conversations were in breach of the blackout period protocols and there is no evidence otherwise.

Mr. Andrew's telephone call to Mr. Domi on June 7, 1999, regarding hockey tickets for Mr. Andrew's son did not breach blackout period protocols.

Mr. Andrew did not attend Il Posto Nuovo with Mr. Domi on June 8, 1999 and Mr. Domi had no information or evidence to support such an allegation. Mr. Domi telephoned Mr. Andrew on June 10 (0:27) which call Mr. Andrew returned (1:27) later that day as was his practice. Mr. Domi telephoned Mr. Andrew at 8:45 a.m. on June 11, (2:28) however neither could recall the substance of that conversation.

On June 18, 1999, Mr. Domi telephoned Mr. Andrew on two occasions at 2:07 p.m. (0:43) and 2:16 p.m. (2 :28). Mr. Domi also documents that Mr. Andrew and Mr. Wilkinson join him that evening for dinner at Al Frisco's, an event that both Wilkinson and Mr. Andrew deny attending. Mr. Andrew has produced documentation from several witnesses confirming that late that afternoon and evening Mr. Andrew was in Whitby serving as the co-tournament convenor of the

Whitby Canadians Senior Invitational Baseball Tournament. Mr. Andrew further states that prior to driving to the tournament he had attended a reception/lunch for an IT employee leaving the City. Mr. Andrew denies that he breached blackout protocols in the above phone calls from Mr. Domi or the next two occurring on July 16, 1999 at 12:15 p.m. (6:09) and 12:35 p.m. (0:54). Again, Mr. Andrew has no recollection of what these phone calls related to. If in the telephone conversations Mr. Domi breached blackout protocols Mr. Andrew would have uttered a warning and if such a violation had continued he would have warned Mr. Domi again and hung up.

On July 28, 1999 at 2:13 p.m., Mr. Domi telephoned Mr. Andrew again (no length of call stated). The question was asked as to whether Mr. Andrew on that occasion informed Mr. Domi that MFP had been the successful bidder. Mr. Andrew expressly denied that allegation. Mr. Domi had no recollection. Mr. Wilkinson who met with Mr. Andrew, Ms. Bulko and Mr. Domi for breakfast on August 3, 1999, denied that he had learned of MFP's success directly or indirectly from Mr. Andrew. It is proposed that when Mr. Domi telephoned Mr. Andrew at 2:13 p.m. on July 28, 1999, Mr. Domi had already learned of MFP's success.

All of the above said, it is not accepted that Mr. Andrew's communication with Mr. Domi throughout the blackout period was inappropriate. It is inappropriate to draw an adverse inference on the facts, i.e., that if there were telephone calls between Mr. Domi and Mr. Andrew during the blackout period, therefore at least one of them had to breach the (unwritten) blackout protocols. It is further inappropriate to state that Mr. Andrew's means of dealing with Mr. Domi's breach(es) of blackout protocol were anything but reasonable in all the circumstances.

The City would benefit from a clear, written guideline setting out the blackout period and appropriate protocols.

16&17 All issues related to s1.1.17 of the RFQ have been responded to at 14(1) above.

18. In the RFQ, the primary criteria for determining the successful bidder was price. There were six bidders each of whom could fulfill the City of Toronto's IT needs. IT's input was to determine whether the equipment proposed by the bidders complied with City needs. All did. It was price that differentiated the bids of the various bidders and each of them sought to differentiate their bids in various ways. For instance, Bombardier chose to eliminate "gotchas" at an additional cost. Despite that, Treasury and Financial Services Division in the Finance Department compared the bids on the basis of bottom line costs exclusively. They did not consider the hidden costs except superficially. They were aware of these costs and how they operated. That said, their financial analysis did not consider these (to the detriment of the analysis). Mr. Rabadi in his testimony considered the cover letter from Bombardier to be nothing more than a marketing ploy.

The financial analysis of the bids was properly performed by the representative(s) of the Finance department on the assessment team. It is proposed that PMMS Division should have been more active in providing advice and guidance with respect to purchasing considerations. Such considerations would have included s.1.1.17 (90 days and mechanisms for changing rates), sale and leaseback, mid term returns and purchases, end of term equipment returns, etc.. These are purchasing issues and Mr. Beattie confirmed in his testimony that he was the PMMS Division resource assigned to manage IT purchases and acquisition transactions.

19. (a) The drafting of the Report to Policy and Finance Committee is a Financial report with IT input. The signatories to the report are Mr. Andrew and Ms. Liczyk. Contact names on the report included Don Altman, Len Brittain, Lou Pagano, Nadir Rabadi (all of Finance Department) and Ms. Viinamae (in her capacity as Year 2000 Program Director). The report receives input from Treasury and Financial Services personnel (principally Mr. Rabadi) and from PMMS (principally Mr. Beattie) as well as from Ms. Liczyk. Ms. Liczyk's management style is far more hands on than is Mr. Andrew's. From the point of view of "good management" of a bureaucratic organization, Ms. Liczyk's participation in the drafting of the report constitutes micromanagement and is grossly excessive and inappropriate. That said, Ms. Liczyk is an excellent writer who prides herself on the quality of report she participated in the drafting of for submission to Committees and Council. Without exception, all who worked with Ms. Liczyk considered her extremely capable and immensely hardworking. Much of what work she did could have and should have been delegated downward to others. Ms. Liczyk chose not to delegate but rather to "over manage".

By comparison, Mr. Andrew's participation in the creation of the Report was more appropriate in terms of senior management participation in a bureaucratic organization. Mr. Andrew's role was to provide technical advice and information on request which he did. Mr. Andrew's changes to the text were never to financial or purchasing-related matters. Rather, he and Ms. Viinamae both limited their input to IT and Year 2000 related matters and issues respectively.

Mr. Power's role was greater in that he was part of the drafting team and thus was more involved in the general drafting of the report.

It is the report of July 9, 1999 marked 'Confidential' (**29855**) that was referred by the Office of the Clerk to the Policy and Finance Committee.

With the greatest respect, the final Report is not well drafted. As Ms. Liczyk testified, it was not her best effort. Ms. Liczyk further admitted that she would be late for her golf game on the afternoon of July 9, 1999 so rather than revising the report further or demanding production of her red pen copy of the draft Report (**12694**) which she considered critical to her analysis and assessment of the final Report, she decided to break with her practice (to review the final version by comparing it with her red copy draft) and simply to accept the substandard draft before her and have her name signed by Mr. Andrew. Ms. Liczyk was tired (due to overwork) and in a hurry (to get to her tee time). It was at all times known to IT, PMMS and Treasury and Financial Services as well as to Ms. Liczyk, the CFO of the City that the City had been purchasing IT equipment and software since about January 1999. As well, all the above knew that the IT leasing activity would involve the placement of that equipment, already purchased, on lease (**012753**).

That information is missing from the final version of the Report to Policy and Finance Committee and is as well missing from the red pen copy of the report that eventually went missing (in Mr. Altman's file). Either Mr. Andrew or Ms. Liczyk should have noticed that this information on the "sale and leaseback" transaction had been left out. Equally, so should Mr. Rabadi (**012753**) Mr. Beattie and Mr. Power as well as their direct managers.

At the end of the day, the report went out under the signatures of Mr. Andrew and Ms. Liczyk. Both ought to have taken a good hard look at the report and both ought to have taken a few minutes prior to their final review of it to plan out the principal aspects of the program. This plan included sale and leaseback, downstream purchases, etc.. No one provided the report with a fresh, independent final review and it is submitted that that fresh, independent, critical review prior to the report being approved and executed by Mr. Andrew on his and Ms. Liczyk's behalf should have been provided by Ms. Liczyk and Mr. Andrew. They are jointly accountable for that failure.

(b) It was not incumbent on Mr. Andrew to ensure that the report contained a statement that the cost of the computer hardware and software would exceed $43 million. The Report indicated that the value of equipment relating to the proposed lease would be "approximately $43 million". Mr. Andrew knew this was an estimate provided to Mr. Rabadi by Mr. Power (**31464**). Mr. Andrew further knew that the fact this was merely an estimate had been disclosed throughout the process to Ms. Liczyk, Mr. Brittain, Mr. Altman (**031465**), (**012275**) and others. (012272) Mr. Andrew had every reason to believe that the estimate of $43 million was exactly that, an estimate. Mr. Andrew further submits that the estimated value of the program, at least initially, was well and clearly disclosed. Mr. Andrew refers to the fact that that estimated amount is repeated twice in the first page of the report under the title: "Funding Sources, Financial Implications and Impact Statement".

(c) Because the amount of $43 million was merely an estimate, Mr. Andrew saw no reason to repeatedly report that number so as to codify it. Neither obviously did the Senior Managers at Finance including Ms. Liczyk who was accountable for the contents and accuracy of the report and its financial content at the end of the day. The Report clearly contemplated downstream purchases that would increase the purchase price of IT equipment on lease beyond $43 million. It was for that reason that recommendation #4 was introduced into the Report (i.e., to have the CFO and Executive Director, IT report back to Policy and Finance Committee periodically on new leasing proposals and financial impact for the balance of the equipment and software).

(d) That the MFP rates were good for 90 days only after which rates could vary was an issue raised on a number of occasions by Mr. Rabadi with his superior managers (Messrs. Brittain and Altman) and with Messrs. Spizarsky and Beattie in PMMS (**012290**), (**018124**). Mr. Rabadi noted in this second reference that all the bidders bids contained the same 90 day clause. Once again, the issue is financial or purchasing in nature (or both) and should have been included by Mr. Rabadi in his various drafts. As well, the issue should likely have been referred to Mr. Altman and/or Mr. Brittain for their consideration.

(e) These issues, i.e., the consideration of refreshing or changing hardware or other options during the term of the lease were just some of the issues raised in the cover letter of Bombardier (the gotchas letter). These are primarily financial issues and Mr. Rabadi who ought to have taken the lead on such issues, assigned no value to them. In hindsight, had Mr. Beattie, Mr. Power or Mr. Rabadi valued these, the issue, concern or problem would have been referred to their supervisors or supervisors including, for Mr. Power, Ms. Viinamae or perhaps to Mr. Andrew for their consideration. Mr. Power did not identify this as an issue or concern and thus the matter was never referred upward to Mr. Andrew for his consideration or direction. Mr. Rabadi did not, apparently, fully comprehend the issues or the analysis to be performed and may well have failed to understand the role assigned to him (**014311**). This is perhaps one of the situations referred to by City of Toronto counsel as "independent silos". What should have occurred is that one or other of Mr. Rabadi, Mr. Power or Mr. Beattie ought to have raised this issue or these issues and the senior managers, i.e., Brittain, Pagano, Andrew and/or Viinamae ought to have met to discuss and comprehend the issue and identify a means by which to deal with it or them. What happened, of course, is that the failure to bring forward issues, problems or concerns on the part of the project officers to the attention of senior managers prevented these senior managers from consulting together and developing/implementing appropriate decisions. (Failure to provide bottom up information prevents top down decision making.)

Keep in mind that the refresh strategy contemplated by Mr. Andrew and others in IT was based on a three-year life cycle for equipment and software. Such a model provided the City of Toronto with considerable flexibility where decisions did not need to be made at the beginning of the three year term but rather could have been made well before the end of it. Only when Finance changed the model to a locked in five year model without apparent input from IT was the flexibility of the model compromised.

(f) Mr. Andrew, Ms. Viinamae and others in IT were at all times of the view that MFP was a vendor of record to the City for a period of three years. Apparently MFP were of that opinion as well. The principal contact in

Finance (Treasury and Financial Services) was Mr. Rabadi who departed from the Finance Department in July 1999, i.e., scant days after completing his involvement in the subject Report to the Policy and Finance Committee.

In his statement to KPMG on October 5, 2001 (**013003 at 013005**), Mr. Brittain apparently stated:

- he didn't believe the City was constrained by the $43 million expenditures which was the amount estimated in the report to the Policy and Finance Committee or the Report to Council;

- he believed the purpose of the RFQ was to establish a vendor of record for the leasing program who would finance all future equipment leases.

Mr. Brittain presented the Commission with a set of comments on the KPMG notes dated July 25, 2003, wherein he attributes use of the words "vendor of record" to KPMG and wherein he moves away from the issue of limits of $43 million for the program and replaces same with confirmation that the figure of $43 million was an estimate from IT and a rationalization that such an estimate likely was or should be viewed as reasonably accurate (± 10%).

The only truly meaningful input from Mr. Brittain in his revised statement is in the section entitled "Involvement in RFQ" where he states that his

Division's main objective was to provide an analysis on the decision to either lease, finance internally or purchase/debenture the equipment.

In a second KPMG statement (p.6 (**013036**)) it would appear that Mr. Brittain agreed with the statement that this was a new program for which there was to be selected a vendor of record.

Finally, it should be noted that in the handwritten notes of the meeting of September 22, 1999 at which Mr. Brittain was a principal participant, the top two lines of the notes read: "MFP Leasing - Len Brittain & Glen *MFP* - Approved Vendor of Record for hardware & software for IT". Clearly, Mr. Brittain and others throughout the Finance Department knew and accepted that MFP was the City's Vendor of Record for IT hardware and software.

20. It was and remains Mr. Andrew's recollection that he did not attend the in-camera portion of the meeting of Policy and Finance Committee on July 20, 1999, at which the Report of July 12, 1999 was discussed. It was Mr. Andrew's understanding that only those senior bureaucrats to whom an invitation to attend was extended were to attend. Mr. Andrew received no such invitation and thus did not attend. No written policy on participation of senior staff at meetings of Policy and Finance Committee meetings have been produced. Apparently, none existed.

Clearly, the City should have had in place and should have circulated to the appropriate senior level of bureaucrat clear, concise written guidelines on attendance and purpose of attendances at such meetings. Mr. Andrew was simply complying with the unwritten practice on attendance of which he was aware and which were relevant to him (those of Metro).

21. Mr. Andrew neither agreed to nor directed a change in the term of the lease from 36 to 60 months. Mr. Andrew was first informed of the change from a 36 month lease to a 60 month lease when he received the e-mail of Ms. Viinamae dated October 1, 1999 (**064348**) and sent to him, cc'd to Ms. Liczyk, Mr. Brittain, Mr. Pagano and others at 3:47 p.m.. That e-mail stated that the amended lease term was "requested" by Finance. The amendment of a lease term is a PMMS issue and it would be incumbent on Mr. Pagano to make enquiries to understand what was proposed and whether it complied with Purchasing practices and protocols.

Ms. Viinamae in her testimony indicated that she had been angered by the subject amendment. Mr. Andrew, when she allegedly confronted him, informed her that it was a financial decision and there was nothing she could do to reverse it. Ms. Liczyk testified before the Commissioner that she had relied on Ms. Viinamae and Mr. Brittain, following a meeting on September 21, 1999 to provide her with an analysis of which lease term was in the best interest of the City. Ms. Liczyk was of the opinion that the flexibility clause proposed on July 20, 1999 by Councillor Jakobek and accepted by the Policy and Finance Committee assigned her authority to implement a term of lease that best served the City of Toronto from a financial and operational perspective.

It would appear that Mr. Rabadi was the first one to consider a five year (3 + 2 year) lease option (**031872**), (**016097**), (**013055**).

There is ample documentation to support the position of Ms. Liczyk (**036589 to 036592**), (**013063**), (**026815 to 026819**), (**015570**), (**015770 to 015774**), i.e., that Mr. Brittain had been delegated to assess the 3, 4 or 5 year options and advise her as to which most benefited the City. Although Mr. Brittain has denied any such assignment or having performed any analysis in that area, he did acknowledge that notes from a meeting of September 22, 1999 (**064006**) and (**015770 - 015774**) spoke to the issue of extended (3, 4 and 5 year) lease terms. He further acknowledged having attended the meeting with MFP and Ms. Liczyk on September 21, 1999 at which 60 month leases were proposed by MFP as providing a more "constant annual lease payment" than a 36 month lease (**036590 – 036592**), (**013063**), (**029302**).

In his statement to KPMG on October 5, 2001, Mr. Brittain's interpretation as to the meaning of the flexibility clause proposed by Councillor Jakobek at the Policy and Finance Committee meeting on July 20, 1999 was identical to Ms. Liczyk's and Mr. Andrew's understanding, i.e., that if equipment could be leased for a term greater than three years, then the term of the lease should be extended to reflect the lifespan of the particular (though not necessarily all) equipment.

Mr. Brittain did not recall having been assigned the task by Ms. Liczyk to analyze which lease term best reflected the City's needs. That said, it was certainly a Finance initiative, likely spearheaded by Mr. Brittain at Ms. Liczyk's request

(**015570**). Mr. Andrew played no part whatever in the decision and merely acquiesced, on the grounds that he knew and appreciated the financial plight of the City.

22. Ms. Liczyk and Mr. Brittain apparently both spoke with Councillor Jakobek following the July 20, 1999 flexibility clause amendment at the Policy and Finance Committee meeting. Mr. Andrew did not attend that meeting however it was his evidence that he was debriefed on the amendment and its meaning by Ms. Liczyk. Mr. Andrew's understanding of the meaning of the flexibility clause was at all material times identical to Ms. Liczyk's and Mr. Brittain's understanding.

23. (a) The financial analysis regarding the cost/benefit of the City moving to five year leases from three year leases was strictly a Finance Department initiative. Mr. Andrew, along with all other senior bureaucrats involved with this particular project including Ms. Liczyk, Mr. Brittain and likely Mr. Pagano, were of the belief that the Policy and Finance Committee and later Council had approved the mating of IT equipment life expectancies to the term of the lease. Ms. Liczyk testified that she had delegated the determination of IT equipment life expectancy to Ms. Viinamae and the financial analysis of the options to Mr. Brittain. Ms. Liczyk was certain that Mr. Brittain recommended 5 years across the board and that this options was consistent with the flexibility clause. On that basis, Mr. Brittain's recommendation was accepted or approved by Ms. Liczyk, the Treasurer and Chief Financial Officer of the City of Toronto. The issue that arises from the change in lease terms is a Purchasing or PMMS issue.

Ms. Viinamae's e-mail of October 1, 1999, was sent to the Chief Purchasing Officer, Mr. Pagano and even he raised no issues or concerns.

(b) Mr. Andrew was never made aware of the lease rewrites. The act was one performed by Ms. Liczyk without input from IT. Apparently CMO staff were aware that the rewrite would be performed however as previously noted, the CMO was part of the Year 2000 program and reported to Ms. Viinamae. On no occasion did Ms. Viinamae or staff of the CMO make Mr. Andrew aware of the lease rewrite or its implications (**067356**), (**067357**), (**067404**), (**024197**), (**063892**).

24. Kathryn Bulko confirmed that in her position she was responsible for running the desktop rollout and later for the activities of the CMO. From January 1, 1999 until about August, the City had actively engaged in the purchase of computer equipment under the Year 2000 program run by Ms. Viinamae. Mr. Andrew did not manage the Year 2000 program although he was the IT delegate or adviser to the Year 2000 Steering Committee. In order to engage on an issue such as the PST issue, generally the Program Manager, Ms. Viinamae, would bring the issue forth to the Steering Committee for its consideration and direction (to her) on how the issue should be handled.

The issue was not recognized by Ms. Viinamae and neither was it brought forward by Mr. Rabadi, Mr. Altman, Mr. Brittain or Ms. Liczyk all of whom were well aware of the sale and leaseback dimension to the Year 2000 Program. Neither was it brought forward as an issue by any of the IBM consultants to the

City or the City Auditor. Rather, the issue was brought forward by MFP in an e-mail dated August 2, 2000. The recipient at the City, Ms. Leggieri, immediately forwarded the information to her supervisor, Kathryn Bulko (**063976** and **063977**).

The PST issue on the sale and lease back transaction was not an issue that Mr. Andrew would be responsible to bring forward in a bureaucratic organization. It was reported to Michael Franey and Ms. Viinamae on August 22, 2000 (**063978**) however no copy was sent to Mr. Andrew. Had the issue been brought to him by Ms. Viinamae or by any of the staff or consultants at the City, Mr. Andrew would have referred the issue to Ms. Liczyk or Mr. Brittain. It is a finance issue that requires specific finance-related expertise. MFP was at all times aware of the PST issue where goods had been purchased first and then placed on lease. At no time was this information disclosed by MFP to the City prior to August of 2000. It should have been, for analytical purposes, disclosed to Finance. Clearly, it was a "selling feature" for leasing over purchasing. As well, Finance (Mr. Brittain or Mr. Vollebregt) ought to have known of this issue prior to July 1, 1999. As it was, when the issue arose after the fact, Mr. Andrew provided a letter of the City's intention to lease computers which apparently benefited the City of Toronto in its rebate application (**063980**).

Failure to put IT Interests before those of Finance with Respect to IT Equipment Lease Term of 60 Months

25. Mr. Andrew was well aware of the "Jakobek amendment" made at the Policy and Finance Committee meeting of July 20, 1999. He was further aware that Council

approved that amendment in its deliberations at the Council meetings of July 26-28, 1999. Mr. Andrew clearly understood the City of Toronto's financial plight post-amalgamation and post-Province of Ontario program downloading. Mr. Andrew knew that the intention of the amendment made by Councillor Jakobek was to prolong the lease period for IT software and hardware for as long as possible. Mr. Andrew was well aware by the end of July 1999 that IT hardware and software were not a priority for Councillor Jakobek and that the Jakobek amendment transferred to Finance (the CFO) the decision as to what constituted the reasonable lifespan for the particular IT hardware and software. Mr. Andrew was further well aware that no matter what his thoughts, i.e., that various IT hardware and software had life spans of from 3 – 5 years (**014321**) on average, Mr. Andrew was well aware that the decision on the lifespan of IT equipment would be made by the CFO and would be strongly influenced by the financial plight of the City. Mr. Andrew expected that maximum possible life cycles for IT equipment would be reflected in the lease terms. There was no question in Mr. Andrew's mind that the move from 3 to 5 year leases would render much of the equipment not only obsolete but rather even more obsolete than it otherwise would have been after the three year lease term.. That said, the issue was one of getting the best possible IT solution at a price the City could afford.

When, on October 1, 1999, he learned from Lana Viinamae's e-mail, i.e., of 6:22 p.m. (**064348**), (**013064**) that "as requested by Finance, the lease term of 60 months has been used for this certificate" (of acceptance), Mr. Andrew considered this decision to be consistent with the Jakobek amendment and its spirit. He further considered it a decision properly made by Finance and in particular properly approved by Ms. Liczyk. As to whether the 5 year or 60 month term of the lease actually matched the reasonable life expectancy of the IT equipment, Mr. Andrew considered it somewhat optimistic however he considered the decision to be a reasonable one in all the circumstances. For him it was the best possible IT solution at a price the City could afford. For him, acceptance of the financial reality in which the City was required to exist demonstrated leadership and "team play".

Mr. Andrew notes that it was Ms. Viinamae who writes in her October 1, 1999 e-mail that at Finance's request the lease had been extended to 60 months. If, as she alleges, she were so upset about this decision, it is most surprising that she did not e-mail Ms. Liczyk, Mr. Andrew or Mr. Brittain expressing her concerns. On the other hand, Mr. Brittain received the e-mail from Ms. Viinamae and forwarded it to Mr. Altman for his information (**064348**). He did not seek clarification from Ms. Viinamae as to who in Finance had requested the extended lease term which would suggest that Mr. Brittain knew who had requested the extension and that the extension benefited the City from a Finance Department perspective.

With Respect to the Rewrites

As to the rewrite of the leases in the summer of 2000, the fact is that on no occasion did Mr. Andrew become aware of the rewrites. Mr. Andrew was cc'd an e-mail from Ms. Viinamae dated December 18, 2000 to Mr. Colley which was also copied to Joan Anderton (CCS), Wanda Liczyk and others (**067404**) entitled

'Non Program Budget Analysis' in which the "original schedules rewritten this summer" are referred to as "the inactive leases". Mr. Andrew did not catch the reference.

Documentation effecting the rewrites was executed by Ms. Liczyk. In signing the documentation effecting the rewrites, Ms. Liczyk broke several of the protocols that she alleges she valued and used without exception to ensure the integrity of her decision making process.

Ms. Liczyk stated that without exception, her assistant would review the documents to confirm the appropriate due diligence had been performed by the appropriate senior program manager (in this case, Ms. Viinamae) and to tab where the documents were to be executed by Ms. Liczyk. Ms. Liczyk's protocol was that she would not sign without her assistant's approval and without the documents first being initialled or signed by the appropriate (program) manager whose signature confirmed that reasonable due diligence had been performed and that the contents of the documents had been reviewed, assessed and approved and were recommended for Ms. Liczyk's execution. Ms. Liczyk testified that her signature was effectively a rubber stamp placed in reliance on the review and analysis performed by other senior management. According to Ms. Liczyk, if the appropriate program manager had not signed the documents, her assistant would return the documents unsigned. In this case, the documents were not approved by the appropriate senior program manager (Ms. Viinamae) and the documentation was not returned by her assistant for due diligence to be performed.

Rather, when Mr. Domi attended with these particular documents, Ms. Liczyk waived both of the above-noted and apparently valued protocols confirming that due diligence had been performed. Ms. Liczyk simply signed the documents based on representations made to her by Mr. Domi that the revisions/changes made were reasonable and appropriate. She apparently made no enquiries of her assistant, of Ms. Viinamae, of Kathryn Bulko or of any other program officer and neither did she make even the most cursory of document review prior to signing.

Ms. Viinamae's staff in the CMO apparently had knowledge of the "rewrites". In her statement of October 11, 2001 to KPMG, Paula Leggieri states that she became aware in June 2000 of the rewrites when invoices were received for equipment schedules for which the CMA had no record (**016532**). As set out in the introduction, in bureaucratic organization information and advice travel upwards through the organizational levels to senior management. Directions and decision making travel downward. For reasons absolutely unknown to Mr. Andrew, neither Ms. Viinamae nor Ms. Bulko informed him of the lease rewrites despite the fact that at least Ms. Bulko knew of the lease rewrites from June or July of 2000 (**067357**) and Ms. Viinamae seemed aware of the lease/rewrites at all material times (**067404**), (**003574**).

26. **Reporting Back to P & F Committee Regarding New Leasing Proposals**

Recommendation No. 4 in the Report of July 9, 1999, required that the CFO and Mr. Andrew, in his position as Executive Director, Information & Technology report back to the Policy and Finance Committee periodically on new leasing proposals and on the financial impact for the balance of the equipment and software. Although the recommendation is unclear and ill-drafted, there is no doubt that the duty to report on the financial impact arising from additional purchases (i.e., after September 1, 1999) may well have not been complied with.

Mr. Andrew was of the opinion that the actual reports to the Policy and Finance Committee would emanate from the Finance Department, would be prepared by Ms. Liczyk's staff and would simply be signed by Ms. Liczyk or by Ms. Viinamae and Ms. Liczyk. As well, in her position as Year 2000 Project Director, Ms. Viinamae was responsible for the CMO functions (**013801**). The CMO maintained statistics on new equipment (hardware and software) and provided statistical information on same to the Accounting Division of Finance. It was always Mr. Andrew's information and understanding, from Ms. Liczyk, Ms. Viinamae and others that issues related to the financial impact of the balance of new equipment and software was being managed appropriately. Ms. Liczyk informed him that she had reported appropriately by way of budgetary documentation and the budget process and Mr. Andrew accepted these representations. At no time did Ms. Viinamae inform or advise him that issues had arisen with respect to either the reporting of new lease proposals or reporting the financial impact for the balance of the equipment and software to the Policy and Finance Committee.

With the greatest of respect, it is submitted that the Finance Department and the CFO had a duty to report reasonably to the Policy and Finance Committee and the IT Division and Year 2000 Project had a duty to ensure that the appropriate information on additional purchases was provided to Finance. Mr. Andrew had every reason to believe that that information had been provided to Finance by Year 2000 Project staff and he had no reason to doubt that timely submissions had been made. In that, he relied on representations from Ms. Liczyk and, to a lesser degree, Ms. Viinamae.

27&28. The issues raised in these two questions relates to who should have been apprised of the increase in the lease term from 36 months to (1) 60 months and (b) to a new extended term even greater than 60 months as a result of the lease rewrites in June of 2000.

It should be noted that Ms. Viinamae's October 1, 1999 e-mail was forwarded to Jim Andrew and cc'd to the CFO, Wanda Liczyk, and two of her Directors, Mr. Pagano, Director PMMS and Mr. Brittain, Director, Treasury and Financial Services as well as Frank Spizarsky of PMMS and Brendan Power. None of them questioned the extension of the lease term without a fresh RFQ.

Reference to Mr. Pagano's job description (**040410**) indicates that in the position he held as Director, PMMS, he served as the Purchasing Agent for the City of Toronto. As Purchasing Agent, he is responsible for the development, implementation and management of a purchasing program for all acquisitions made by the City. Further, he is responsible for "ensuring clients are informed about procedures", "providing technical assistance and support to departments in all PMMS related issues", "ensuring compliance with Purchasing Bylaws" and "developing PMM personnel so that employees are competent and qualified to ensure adequate service levels". Last, but perhaps most important in terms of the issues raised above, the Director, PMMS "ensures Council bylaws, policies and directives and applicable legislation are followed in all purchases made for the City …". If issues did arise related to the Jakobek amendment or it interpretation, i.e., the change to lease term from 36 to 60 months which Mr. Pagano knew or should have known about or with respect to the 2000 rewrites (which he was unlikely aware of but which Ms. Liczyk, his superior officer was aware of) it was Mr. Pagano, if anyone, who should have determined that the amendments failed to comply with the Order of Council. Mr. Spizarsky held the position of Manager, Purchasing Goods and Services. It was he who in late January or early February of 2000 questioned whether or not Lana Viinamae had authority to execute the Master Equipment Lease Agreement with MFP on behalf of the City (**010578**), (**006240**), (**003864**), (**06223**), (**011065**), (**015438**), (**015761**). Thus, the issue as to whether the increased lease term from 36 - 60 months or due to the lease rewrites in June 2000 was appropriate, whether the first of these was acceptable and complied with the flexibility clause or whether such revisions to the lease should have resulted in a fresh leasing RFQ being drafted and sent to prospective suppliers is primarily, if not solely, one for the City's "Purchasing Agent".

The failure to engage with respect to these two purchasing-related issues is clearly within the mandate of PMMS. PMMS is a division reporting to the Chief Financial Officer and Treasurer for the City. The Director, PMMS is the principal adviser to the CFO in all Purchasing matters. Monitoring purchasing activity within the City to ensure compliance with policies, procedures, guidelines by-laws or protocols is within their mandate.

Mr. Andrew believed the move to 60 months was authorized. His opinion in that regard was confirmed by Ms. Liczyk. None of the "keepers of the keys on matters related to Purchasing" raised any concern about these two matters.

29. The Executive Director of Information Technology was not responsible for the micromanagement of each of the IT programs or subprograms. Neither was it responsible for the Year 2000 Program except as noted previously (administrative responsibility but <u>not</u> operational responsibility). Bureaucratic organization works on a set of assumptions, one of which is that the subordinate managers are capable and competent to accept and operate effectively within delegated authority and that if issues, concerns or problems arise, these are to be reported forthwith to the superior manager.

Lana Viinamae was the Year 2000 Program Director and at the material time the leaseback function was a Year 2000 activity. Mr. Andrew followed appropriate bureaucratic principles. He let his managers manage and was available to them to listen to their issues, problems and concerns and to provide information, advice, recommendations and, as necessary, make decisions for them. Ms. Viinamae did not come to Mr. Andrew with issues, concerns or problems related to the sale and leaseback of equipment either in his role as Executive Director or in his role with the Year 2000 Steering Committee. Mr. Andrew was not informed by Ms. Viinamae as to whether the appropriate information could be collected, sorted and provided to MFP. If Ms. Viinamae had come to Mr. Andrew with concerns, he would have dealt with these. Options were available including additional resources (and even shifts of additional resources). Mr. Andrew was aware that Ms. Viinamae did not delegate well and thus had much work on her plate. That said, he was never made aware by her that she was overwhelmed and needed assistance. What is most interesting however regarding this question is that Ms. Viinamae alleges that she undertook the management of this program activity but without even reading the successful MFP bid or other background or preliminary information which any reasonable manager should have known had to be read and understood before the initiative could properly be planned, organized and undertaken.

30. (a) Mr. Andrew sat on the Year 2000 Program Steering Committee in an advisory position. Mr. Andrew did not run the Year 2000 Program and neither was he ultimately responsible or accountable for it. Accountability for the Year 2000 Project rested with the CAO and the CCS. The Year 2000 program was managed or administered by Ms. Viinamae. As Ms. Rodrigues stated in her testimony, contrary to what Ms. Viinamae had testified to, she had met one on one with Ms. Viinamae on a large number of occasions prior to the termination of her employment in June 1999 to discuss program design and implementation issues. Mr. Andrew was involved in meeting with Ms. Viinamae and Ms. Rodrigues not because he was accountable for the program (he was not) but because (1) he was an

advisor to the year 2000 Steering Committee and (2) much of the program related to IT. IT was a major client of the Year 2000 Program.

The Finance Department under Al Shultz had installed an SAP system, i.e., a consolidated financial management system to replace the financial management systems in the pre-amalgamation cities. The development and implementation of the SAP system was extremely late with phase in commencing in January 1999 and continuing through 1999 and well into late 2000. As has been demonstrated, the SAP system contained totally inaccurate and incomplete information on the IT hardware and software placed on lease with MFP.

It would appear that there were ongoing and serious problems with virtually all aspects of the SAP program from training of users given access to the system to management of what the information on the system actually meant, if anything. Documentation in Mr. Shultz's book of documents (Tab 2) indicates that the Leasing Agreement with MFP was set up on SAP on September 26, 2000. Mr. Andrew executed the purchase requisition for IT equipment on September 15, 2000 (**012995**). At page 8 (of 20) of the SAP documentation, the total for all "Contract Release Orders" (without taxes) was $25.15 million (as at December 28, 2001, almost one year after Mr. Andrew's departure from the City). Certainly senior managers in the Year 2000 Program and Finance including Ms. Viinamae, Mr. Brittain, Ms. Liczyk, Mr. Colley and presumably even Mr. Shultz knew that this information was grossly inaccurate and incomplete.

That said, no effort was made to update or correct the information in the SAP financial management system. Rather, Ms. Viinamae maintained up-to-date and accurate financial documentation on her personal computer. She used this for purposes of financial planning, something in which Mr. Andrew was not involved.

Starting on about December 31, 1999, Ms. Liczyk e-mailed Messrs. Brittain, Shultz and Vollebregt (**013081**) advising that they should look into how the Year 2000 Program would be financed. On January 5, 2000, Ms. Viinamae provided Mr. Brittain with an updated briefing note that she had prepared (**064008**). In that note, she confirmed the initial lease request at $43.15 million. On January 6, 2000, Mr. Brittain writes Ms. Liczyk confirming that annual lease costs had decreased due to the move to a 5 year lease from 3 years but notes "New costs for leasing other equipment and software/maintenance adds $4.7 million and SAP and Public Health adds $1.7 million …" (**064007**). In an e-mail dated January 7, 2000, Mr. Brittain writes Ms. Viinamae with a copy to Mr. Shultz outlining the variance between the lease request of $43 million and the total hardware and software cost on lease of $48 million and asking that she explain the variance (**015690**). The e-mail was (correctly) not copied to Mr. Andrew. It was a Year 2000 budgetary matter for which Ms. Viinamae and the CCS were accountable. Ms. Viinamae apparently failed to respond to Mr. Brittain and Mr. Brittain apparently failed to follow up either with Ms. Viinamae or with Ms. Liczyk. Neither did he follow up with Mr. Andrew. Mr. Brittain deferred to Al Shultz on the basis that the issues raised by Ms. Viinamae were "generally Accounting in nature" (**015690**). Mr. Shultz did not follow up either and neither did he contact Mr. Andrew regarding the Year 2000 Program or its excessive spending, presumably because he knew that the Year 2000 Project was administered by Ms. Viinamae and that Mr. Andrew was only involved in that project in his capacity as an advisor to the Steering Committee.

It is wrong on the facts to hold Mr. Andrew accountable for the excesses of the Year 2000 program. When these excesses became known to Ms. Liczyk, Mr. Brittain and Mr. Shultz, they dealt directly with Ms. Viinamae. They did not involve Mr. Andrew and they neither e-mailed him or copied him on e-mails. Neither did they contact or meet with him to explain the issues, concerns or problems they or any of them may have had.

(b) With respect to Lease Rate Factors, the majority of these, particularly initially, were signed by Ms. Viinamae. Apparently, she had no idea as to what they meant or what she was agreeing to in signing them on behalf of the City. She simply signed them and returned them to MFP (**021720**), (**021794**), (**021825**). The fifth "Schedule A" (October 1 – December 31, 2000) was signed by Ms. Liczyk, apparently with little if any enquiry into what the Lease Rate Factor was, what it meant and what its impact would be on the equipment prices. Neither Ms. Liczyk or Ms. Viinamae consulted Mr. Andrew regarding the Lease Rate Factors before signing the documents. Apparently it was Mr. Power who eventually informed Ms.

Viinamae that she should not simply be signing the Lease Rate Factor Sheets and returning them to MFP but rather that she should be forwarding them to Finance for analysis and (perhaps) signature. Ms. Viinamae did this, apparently on one occasion (**022475**) but then reverted to her old practice for the Schedule A governing the period January 1, 2001 to March 31, 2001 (**022825**) and April 1, 2001 to June 30, 2001 (**030836**). Ms. Viinamae continued to act independently and without keeping her new Executive Director, James Ridge, informed of what she was doing or why.

In effective bureaucratic organization, managers are to be held accountable for their actions or omissions. There is an obligation on managers to be curious, to read and understand a document before signing it and where one does not understand the document or its implications it is incumbent on that manager to consult with one's superior on ones concerns, issues or problems. Ms. Viinamae has denied all knowledge of leasing and yet without referring the issue of the lease rate factors to Mr. Power, Mr. Andrew or anyone, she demonstrates no curiosity but rather and simply signed the documents and returned them to MFP.

The essence of the issue is who should have instituted a set of guidelines for the appropriate monitoring or management of the Lease Rate Factors. Clearly, until informed otherwise (and even thereafter), Ms. Viinamae was of the opinion that she was or held the appropriate signing authority. As such, the duty of drafting guidelines for the approval of Lease Rate

Factors would fall to her or one of her reports. It is submitted by Mr. Andrew that the appropriate signing authority for the Lease Rate Factors was in the Finance Department, likely in Treasury & Financial Services (Mr. Rabadi's replacement would review, perform the analysis and recommend acceptance or rejection and Mr. Brittain would sign the approval). The signing authority is obligated to draft the guidelines governing Lease Rate Factor review, analysis and approval protocols. Normally, the manager who drafts such guidelines should also be the one who confirms the appropriateness of the Lease Rate Factors with his/her superior manager.

31. Mr. Andrew Signed the Lease Rate Factors for the 1997 Councillors Computer Lease

The actual circumstances surrounding the 1997 Councillors Computer Lease (Master Lease 784) are reasonably well set out in Mr. Andrew's testimony but as well in the affidavit of Dave Beattie dated March 27 2003 (paragraphs 26-37).

Mr. Andrew understood that the successful bidder in that particular competition, MFP, was to be the vendor of record for the Councillors Computer Lease. What this meant was that for the next three years, if a councillor or councillor staff member required further, additional or a new kind of equipment, these items would be placed on lease for a term of three years. What this did was accommodate the ongoing IT hardware and software needs of the Councillors and their staff. Additional equipment was placed on the lease on a quarterly basis and each quarter, in advance, the City was presented with a Schedule A containing

Lease Rate Factors. Mr. Andrew understood how the process worked. He knew that substantial upward variances in the Lease Rate Factors would mean that the price per $1,000 for leasing would increase substantially as well. Mr. Andrew knew that if that price increase occurred he could ask why or make his own enquiries in that regard. He also knew that there were options at all times open to the City, i.e., to put zero equipment onto the Lease, to simply purchase or lease through another source, or to hold an RFP or RFQ. Mr. Andrew reviewed the Lease Rate Factors upon receipt and compared them with prior quarterly lease rates. He did not perform a full-blown analysis however he satisfied himself that the prices had not increased substantially and that the leasing of further equipment that quarter made good financial sense. Mr. Andrew thus made good, reasonable and informed decisions regarding quarterly lease rates throughout the three year term of Master Lease 784.

All that said, in the circumstances, Mr. Andrew or Ms. Rodrigues should have referred the Lease Rate Factor issue to the Finance Department (Ms. Liczyk), discussed with her the appropriate person to assign the assessment of Lease Rate Factors to and as well, determine or have her or her appointee determine who should be responsible for drafting a set of processing guidelines for Lease Rate Factors. If these steps had been taken by Ms. Rodrigues or Mr. Andrew for the Master Lease 784 then the same issues (no guidelines, failure to understand the meaning of the Lease Rate Factors and no designated point person in Finance to whom these should be directed) would not have arisen after October 1, 1999.

32. "Vendor of Record" does not mean sole source provider. Only MFP's bid provided the City with a leasing option less expensive than the City could obtain by way of a purchasing option, according to the financial analysis performed by Nadir Rabadi. Thus, only MFP qualified as a leasing supplier to the City. Had other prospective suppliers qualified at a price below the City's purchase option price, then the City could have put its quarterly IT equipment needs out to two or more qualified suppliers (vendors of record) and selected the best price on a quarterly basis. As Mr. Andrew stated in his testimony, if the City did not accept or like the quarterly prices proposed by way of Lease Rate Factors by MFP they had several options, i.e., purchase nothing during that quarter; put the City's needs out to tender either for the short or longer term or purchase small quantities of equipment from other sources. At any time, if it did not like the MFP price (Lease Rate Factors), the City retained the right to terminate the contract. In paragraph 5 of John Rollock's affidavit, he describes a "vendor of record" at the Province as "a designation that is bestowed on certain vendors of goods and services to the Province. One is selected as a vendor of record after a competition. Thereafter, a Ministry may acquire goods or services through the vendor of record without conducting their own competition. There is no obligation upon a Ministry to use a vendor of record but if they do not they must select an alternative supplier through a competitive process".

Nadir Rabadi knew how the arrangement would work between the City and the supplier(s) selected. He was well aware that there would be Lease Rate Factors submitted quarterly and one of his handwritten notes indicated that this was the same in each vendor submission (**018124**), (**012290**). He further knew that this would impact on his analysis and so he requested of the Year 2000 Program (Ms. Viinamae and Mr. Power) the expected value of purchases pursuant to the program by September 1, 1999. Mr. Power provided an estimate of $43 million (**012257**), (**012586**). Mr. Rabadi was well aware that this amount of $43 million did not include purchases after September 1, 1999 and that it was only an estimate (**031464**). He further knew that there would be substantial additional acquisitions after September 1, 1999 (**01275**), (**014222**). All of that said, Mr. Rabadi left the Treasury and Financial Services Division and thus much of this knowledge left with him. There is no evidence that he prepared transfer memos or that he was debriefed on the program by Mr. Altman or Mr. Brittain. Mr. Rabadi's note to Ms. Liczyk and Mr. Brittain of July 12, 1999, argued, for the first time, that a 5 year lease of all IT equipment would be substantially less expensive annually than would a 3 year lease (**012751**). In that e-mail, he raises several important questions: 1) how much more will be leased; 2) how will the incremental costs created thereby be dealt with; and 3) can council allow us (the City) to lease more on the same terms if MFP is agreeable. He further raises the post-warranty costs to maintain IT equipment between year 3 and 5 and that a 3 year lease should be entered into at the end of which a further cost benefit should be performed to assess the benefit of lease extensions for some or all of the IT equipment.

In the summary of his interview with KPMG on September 25, 2001, Mr. Power clearly states that he had worked closely with Financial Services (Mr. Rabadi) and with PMMS (Dave Beattie) (**012081**).

What the report to Policy and Finance Committee dated July 20, 1999 recommended was that the City of Toronto enter into a leasing contract with MFP for leasing computer equipment and related software for 3 years. The "Jakobek" amendment placed an onus on the CFO and Treasurer to coordinate the life span of the equipment on lease with the term of the lease (**012279**). Council approved the above. Nowhere in that Confidential Report did it either say or not say that the relationship was or could be a vendor of record relationship. Prior relationships with several of the pre-amalgamation Cities and with the Toronto Police had been vendor of record leases and these were the norm at the Province according to Brendan Power, Mr. Andrew, John Rollock and Rob Wilkinson.

The issue of sole source vendors or vendors of record are or should have been within the realm of the expertise of PMMS. Reference in the documentation is repeatedly made to the fact that the drafting of the RFQ and the drafting of the Report to Policy and Finance Committee recommending that MFP be the successful leasing vendor for three years was the handiwork of a team comprised of representatives from IT, Treasury and Financial Services and PMMS or Purchasing. One of the concerns Mr. Andrew has in reviewing what "went wrong" has to do with PMMS's narrow perception of their role in such a project and as well the limited amount of input or specialized advise or information provided by Purchasing to the team. Had PMMS contributed fully and reasonably, it is likely such matters as "vendor of record" status for the leasing vendor as was understood by IT to be the situation sought would have been heard, understood and addressed if indeed it were a concern, by PMMS staff. Mr.

Andrew, in his position as Executive Director, Information & Technology, was not the project manager/team coordinator for the various inter-disciplinary teams. It is neither possible nor reasonable that such a role fall to the IT representative, Mr. Power, as the host department appointee to the team. This is not how the classical model of bureaucratic team work on special, multi-disciplinary projects works. The team collects with each specialist making their full contribution in their area of expertise and upon completion, returning to their divisions to brief their superiors and move on to the next project. A "team leader" would generally be selected from the area making the greatest contribution at that particular point in time. The role of team leader would reflect the expertise required to bear on the issue before the team at that moment. In this case, the team leader would likely be Mr. Rabadi or Mr. Beattie.

33. Mr. Andrew was not kept nearly as informed by Ms. Viinamae as Commission Counsel believes he should have been with respect to the amounts or values of IT hardware and software placed on lease. Mr. Andrew was well acquainted with SAP and how it operates. Mr. Andrew believed that if or when the existing authorities were exceeded, a "warning bell" would go off in the SAP system and a representative of Finance (Al Shultz's division) would be in contact with Ms. Viinamae regarding any excess expenditure. When no such communication occurred, Mr. Andrew could draw only two possible conclusions: (1) the authorities had not been exceeded or (2) someone in Accounting Services had manually overridden the system thereby permitting an excessive expenditure. Mr.

Andrew had no idea that the SAP system contained wholly inadequate and grossly incorrect information.

Mr. Andrew was not responsible for the leasing of IT equipment or the Year 2000 program as has been discussed previously (except for administrative purposes) and in his role as an adviser to the Year 2000 Steering Committee. Ms. Viinamae maintained complete and accurate records of IT equipment placed on lease and she used that information in her discussions, negotiations, meetings and communications with Finance (Mr. Shultz at Accounting Services, Mr. Brittain at Treasury and Financial Services, particularly at year ends when budgetary submissions were to be prepared and discussed). When Ms. Liczyk had issues regarding the Year 2000 program budget she met with Ms. Viinamae or had Mr. Brittain meet with her. Mr. Colley from Accounting Services met not with Mr. Andrew but with Ms. Viinamae. Few of the e-mails regarding the Year 2000 budget and issues or concerns raised by it from either Finance or Ms. Viinamae were directed or copied to Mr. Andrew. The reason for that, Mr. Andrew would submit is that all other senior departmental managers knew that Ms. Viinamae and not Mr. Andrew headed the Year 2000 program and that that program's budget was not within the budget of the IT Division.

Mr. Andrew did communicate with Ms. Viinamae and was aware that the amount on lease with MFP exceeded $43 million. That said, it was always his understanding that the amount to be leased would over time substantially exceed $43 million and that the appropriate submissions to Committees and Council had been made. In support of that, Mr. Andrew referred to two points in the Report to

Council which was approved on July 28, 1999 (**018151 at 018152**): "An amount of approximately $43 million being the cost of the equipment relating to the proposed lease …" and (**018151 at 018153**) new leasing proposals were contemplated at Recommendation No. 4 of the Report.

34. The issue raised in this question is effectively whether officers and managers in the IT Division should have sufficient knowledge and information to understand and appreciate the interrelationships between IT and the Finance Department or whether it is up to the Executive Director to monitor the activities of such staff and micromanage them on the complexities of these interrelationships at least as they relate to the leasing program.

I refer again to the fundamental concepts of classical bureaucratic organization and in particular bottom up consultation on issues, concerns and problems with the superior manager as well as the concept of appropriate levels of management or direction at particular organizational levels.

It is not for Mr. Andrew to provide "supervision" to his subordinate managers or to those reporting to them lower down in the organization. Rather, it is incumbent on him to manage his direct reports who hold positions as Directors under "general direction or direction". Neither is Mr. Andrew to direct the reports of his Directors. Rather, he is to provide advice and information to his direct reports on such matters from time to time or when consulted or requested by the subordinate manager. He must rely on his managers to reasonably and appropriately manage their direct reports. If they come to him with management-related issues, problems or concerns, he will provide advice, guidance or even direction on the matter and in the longer term he will consider training or development options to strengthen their management skills.

The leasing program accountabilities were designed by Ms. Viinamae and her PMO/CMO staff in November and December 1999. Ms. Viinamae and her CMO staff (Ms. Bulko, Mr. Power, Ms. Marks) designed program implementation guidelines, procedures and protocols and met with the appropriate representatives of Finance (including PMMS) to review these and ensure that they complied with policies, practices and procedures and were acceptable to Finance and Purchasing. (**029387 – 029396**), (**014265**), (**013069**), (**028387**), (**pages 407-421 in the Len Brittain chronological (white) book**), (**036620 – 036628**), (**036629**), **(016093 – 016096**), etc..

The issue here is whether or not the consultations were sufficient and whether or not the course agreed to complied with City financial and purchasing guidelines, policies, procedures or practices. If these were not complied with and it is most likely that they were not complied with, the question arises as to why and who bears responsibility or accountability for such non-compliance.

It is noted that none of the communication referred to above included by hard copy or e-mail that copies were sent to Mr. Andrew. The computer equipment leasing program was an initiative, managed from the IT perspective by Ms. Viinamae. Mr. Andrew knew that Ms. Viinamae wished to be the next Executive Director of IT and further knew that to position herself for such a position she had to be seen as a proactive and capable IT program manager. Ms. Viinamae was hardworking and diligent; one could say driven. When Mr. Andrew and Ms. Viinamae did communicate, Ms. Viinamae referred few, if any, issues, concerns or problems to Mr. Andrew. Much of the time, Ms. Viinamae informed Mr. Andrew that all was well. Accordingly, Mr. Andrew let Ms. Viinamae manage her program. She sought little or no direction from Mr. Andrew and he trusted her expertise. He believed that Ms. Viinamae would refer issues, problems or concerns to him if they arose. That said, mostly she glossed over issues, concerns and problems, providing little or no information to Mr. Andrew. When or if an issue arose or was presented to Mr. Andrew either through a senior manager at Finance or PMMS or Ms. Viinamae, he would work with Ms. Viinamae or the parties to develop or implement a solution. That said, he let his managers manage the activities of their divisions and managed them under "direction" or "general direction".

Finance and IT would both likely have benefited from the drafting and implementation of clear written policies, procedures, guidelines and protocols for interdepartmental projects or activities. These would not have been drafted by Mr. Andrew nor would they have been approved by him (approval would have been at the Commissioner/CFO level). That said, bureaucratic organization benefits from the existence of clear written guidelines and there were no such (or any) guidelines in existence at the time.

35. **Councillors' Computer Lease, 2000 (838-10)**

Mr. Andrew did not simply state to Jim Hart or to anyone that there was no need to prepare and direct a Report to the Administration Committee seeking approval for the Councillors' computers to be put on Equipment Schedule 838-10 late in the year 2000.

Mr. Andrew's recollection of events is substantially more complete than was Mr. Hart's. Mr. Andrew's recollection is consistent with the contents of Novina Wong's e-mail to Al Shultz dated September 19, 2000.

There were two meetings between Mr. Flemming, the City Clerk, Novina Wong and Mr. Andrew with Councillor Berardinetti in his capacity as Chair of the Administration Committee. Both meetings were held in the Clerk's boardroom and Ms. Wong was aware of all developments and conclusions at all times.

The first meeting, in August 2000, was to inform Councillor Berardinetti in his capacity as Chair of the Administration Committee of the status of the Councillors' computers and to recommend their replacement. Novina Wong encouraged the direct involvement of Councillor Berardinetti as he was well positioned to run political interference for "the project". The net result of that meeting was that Councillor Berardinetti endorsed the proposals but requested a written Business Case. That business case, dated October 16, 2000, was prepared by the Clerk's IT officer with input from the CMO and was provided to Councillor Berardinetti and reviewed with him at the second meeting (**029776**). At that second meeting, Novina Wong and Mr. Andrew were in attendance with Councillor Berardinetti and the four options (**029782**) were reviewed and considered. Councillor Berardinetti in his official capacity (Chair Administration Committee) selected option No. 4 – to enter into a new three year lease with new equipment. Councillor Berardinetti's concerns were that the old computers be returned to MFP in a timely manner, that the new equipment be leased and installed and that the entire replacement be completed between the date of the election and the start of Council's new term.

As Mr. Hart encountered problems from Finance in September 2000 (**015532**) he communicated with Mr. Andrew who in turn established a means by which to resolve the issue (**013786**). He confirmed to all that Councillor Berardinetti had been approached and advised of the status and proposed a meeting with Ms. Liczyk. Both Mr. Shultz and Ms. Wong were kept informed.

In her e-mail to Al Shultz dated September 19, 2000, copied to Len Brittain, Jim Hart and Mr. Andrew, Ms. Wong informed all that in renewing the Councillors' computers, she had relied upon the IT leasing program approved on July 28, 1999 by Council, that for that reason they had made no submission (Report) to the Administration Committee but to ensure that all bases were covered, they had consulted with and received the approval of Councillor Berardinetti. Determining when a Report to the Administrative Committee is to be made is a function of the Finance Department and the City Clerk. Both were involved actively in the process and all requisite senior managers in the Finance Department were kept in the loop with respect to how the approvals process had proceeded. None of the city's most senior finance managers including the CFO considered the route taken to be inappropriate. No concerns were ever expressed to Mr. Andrew by anyone thereafter. In the circumstances, Mr. Andrew was of the opinion that a report to Administration Committee was not necessary. Others including Councillor Berardinetti, Ms. Liczyk, Ms. Wong, Mr. Shultz and Mr. Brittain were of a like mind (or failed to turn their mind to the issue).

If such a Report to the Administrative Committee were obligated, then written guidelines, policies or procedures governing such protocols should have been developed for use by Finance, the Clerk and others.

36. Prior to 1999, Mr. Andrew had met with Oracle on several occasions to discuss the possibility of entering into Oracle Enterprise Licenses ("E licenses"). On each of those occasions, the cost was simply excessive and thus the City continued to purchase lesser and less expensive Oracle licenses knowing or at least believing that in time the City would likely have to move to a longer term plan involving E licenses. There are several references to these meetings and communications (**005466**), (**005623**), (**005636**).

Mr. Andrew apparently attended the Year 2000 Steering Committee Meeting of December 30, 1999. From the minutes of that meeting (**000340**), there was no discussion of Oracle Enterprise licenses. Ms. Liczyk testified that without the attendance of Councillor O'Brien no business of substance would have been transacted. At the meeting of January 6, 2000 (**010902**), the minutes of the Steering Committee of December 30, 1999 were approved with the added point: "that the Steering Committee approved the Leasing of the Oracle Enterprise Licenses for 5 years at a cost of $11 million.

Mr. Andrew had no recollection of that matter having been approved and neither did Ms. Liczyk. If Ms. Liczyk indeed approved these E licenses, then another of her protocols (no substantive business to be approved at the year 2000 Steering Committee meeting without Councillor O'Brien in attendance) has been breached.

Both Mr. Andrew and Ms. Liczyk were clear that approvals were granted by the Year 2000 Steering Committee only upon submission, review, debate and approval of a written business case. Neither Mr. Andrew nor Ms. Liczyk could recall variance from this Rule with respect to the Oracle E licenses.

Ms. Viinamae had Ms. Liczyk sign the Master Software License and Services Agreement on December 31, 1999 (**040503**). As well, she obtained the signatures of Mr. Pagano and CAO, Michael Garrett on December 30 or 31. Mr. Garrett's office was at City Hall while Ms. Viinamae's and Mr. Andrew's offices were at Metro Hall. Mr. Andrew worked on the 31st of December but not in the downtown area (he worked at the Don Mills Computer Centre). He was positive he did not attend at City Hall with Ms. Viinamae to obtain Mr. Garrett's signature for the Year 2000 Delegated Authority Form (**016151 at 152**) on December 30, 1999 and Mr. Andrew's parking records from the City confirm that he did not park at City Hall on December 30, 1999.

In her testimony, Ms. Viinamae referred to a Report dated February 4, 1998 prepared by or for Ms. Rodrigues for Corporate Services Committee recommending that the City enter into a contract for E licenses with Oracle

(040456). That appears to be the sole Business Case ever prepared for Oracle E licenses.

There are two Year 2000 Steering Committee minutes, October 7, 1999 and December 9, 1999 at which substantial developments in the area of E licenses are discussed.

On October 7, 1999, the question is raised as to what is being done corporate-wide regarding Oracle licenses. The response is that these are being looked at and will be part of the capital budget in 2002. Various licenses were being considered (**015210**).

Minutes of the Steering Committee meeting of October 2, 1999 raise a number of even more preliminary questions regarding Oracle license use (**052016**).

On December 9, 1999 under the subject "Financial Projection", it states "Lana and Wanda will discuss this issue and Wanda will provide a template to complete, showing original budget with actuals, in scope, for Critical 1's and extended scope".

Beneath that, in considering Year 2000 Pressures on Operations, the third point listed was Oracle Enterprise License Agreement (**000298**).

In a letter to Ms. Viinamae dated December 17, 1999 (**016021**), Larry Griffith of Oracle refers to a meeting the previous week. Various e-mails flow back and forth between the City and Oracle between December 10 and 20, 1999 (**016181**), (**011258**), (**016182**), (**016183**).

From the documentation presented and from the statements given to KPMG by Mr. Griffiths of Oracle to KPMG, on November 9, 2001 (**011241**) he negotiated the E license over November and December 1999 with Ms. Viinamae and Stephen Wong. Ms. Viinamae apparently had the authorization of the Year 2000 Steering Committee to enter into such negotiations with Oracle. As well, by December 9, 1999, she was consulting with Ms. Liczyk regarding post-purchase budgetary issues. Approvals for the purpose of E licenses from Oracle which were then placed on lease with MFP were obtained from Michael Garrett and Wanda Liczyk, both of whom considered that they had authority to enter into the E-License Agreement with Oracle. The City's Purchasing Agent, Lou Pagano, also signed the Year 2000 Delegated Approval Form confirming that the purchase complied with Purchasing guidelines, policies and procedures. The only one not signing that document was Mr. Andrew. All that said, the approvals and signatures were obtained on representations made by Ms. Viinamae. These included that only Oracle could provide these licenses.

It was no more up to Mr. Andrew in his capacity as either a technical (IT) adviser to the Year 2000 Steering Committee or as Executive Director, Information & Technology to ensure that a Business Case was presented by Ms. Viinamae on behalf of the Year 2000 Program to the Year 2000 Steering Committee than it was Ms. Liczyk's, Councillor O'Brien's, Mr. Garrett's or Mr. Pagano's. There should have been a Business Case prepared and presented by Ms. Viinamae and for some unknown reason approvals were granted without such a Business Case having been prepared, circulated or approved.

For the record, it is Mr. Andrew's information that about 10,000 E licenses are in use at the City and he is of the opinion that the acquisition was reasonable, appropriate, timely and cost effective. Mr. Andrew is further of the opinion that any delay in reaching the figure of 10,000 E licenses being in use at the City was due to the selection of a non-IT professional to run the IT Division in 2001.

37. Was Mr. Andrew's relationship with Councillor Jakobek Inappropriate?

Mr. Andrew viewed himself as directly responsible for the continued employment of over 300 IT staff at the City of Toronto. Mr. Andrew was well aware from his first meeting with Councillor Jakobek in his capacity as Budget Chief that Councillor Jakobek had no understanding of and was virtually dismissive of IT and the benefits it could provide the City. Mr. Andrew's budget at IT was cut annually by Councillor Jakobek at the Budget Committee hearings and Mr. Andrew quickly learned that he had to demonstrate to Councillor Jakobek in a kinder and gentler way the benefits of IT and IT expenditures. Mr. Andrew would meet and chat with Councillor Jakobek at the City coffee shop. Both arrived early for work. Discussions were general but IT was discussed and the plus side of IT was marketed to Councillor Jakobek. Councillor Jakobek almost prided himself on his computer illiteracy. That said, in September 1999, Mr. Andrew took Councillor Jakobek to an acquaintance's store where Councillor Jakobek purchased clone computer systems for his children. Mr. Andrew attended Councillor Jakobek's home at a later date to teach the Jakobek children how to burn a CD.

Mr. Andrew went for lunch or dinner with Councillor Jakobek on three occasions, mostly just around the time he left the City in the second half of 2000.

At Councillor Jakobek's request, on May 17, 1999, Mr. Andrew e-mailed him a copy of the "latest" draft RFQ on computer leasing. Although Councillor Jakobek denied having requested this document, having received it, having read it or having printed it off and even having the ability to personally operate the computer sufficiently well to print an attachment, the fact is that Mr. Andrew did, at his request, e-mail the document to Councillor Jakobek. Mr. Andrew considered this unique and odd. He did not consider it inappropriate and in the bureaucratic organization structure it was not inappropriate. Anything less could be viewed as insubordination. It was not of such a nature that Mr. Andrew considered reporting it to Commissioner Fernandes.

Mr. Andrew played golf with Councillor Jakobek, Jim McDaniels, Ms. Liczyk and Mr. Domi on September 2, 1999 at Councillor Jakobek's request and invitation. Mr. Andrew golfed with Ms. Liczyk and after having one glass of wine at Councillor Jakobek's home, they all left. Mr. Andrew called Ms. Liczyk and the two of them chatted about the entire day and "what that was all about".

There is the issue of having provided gratuitous assistance to the East York General Hospital after Councillor Jakobek left the City to take a senior management position there. The fact is, Mr. Andrew was well aware at that point that he would not be renewing his employment contract at the City. At Councillor Jakobek's request, with an eye to perhaps obtaining an IT project after he left the

City, Mr. Andrew helped Councillor Jakobek out. Mr. Andrew did not consider such assistance and advice as in any way conflicting with his obligations to the City.

There is, with the greatest respect, nothing inappropriate in Mr. Andrew's relationship with Councillor Jakobek. Mr. Andrew achieved his objective in that he did his utmost to protect the jobs of IT professionals at the City. As well, he ever so gently opened Councillor Jakobek's eyes and mind to the promise and capacity of IT solutions at the City.

38. Mr. Andrew did not permit MFP staff access to City or City IT personnel. The fact is that the City had failed or neglected to design or implement written guidelines or policies on vendor relationships or contact with Vendors or prospective service providers except in certain situations, i.e., in Purchasing. Even in such situations or areas of the organization, guidelines or directives were either not in writing or very rudimentary in nature.

The fact is that at Metro Mr. Andrew and other IT professionals worked closely and cooperatively with IT supplier representatives. On amalgamation, the Metro/City of Toronto relationship with vendors continued as before. The IT perception was that City personnel would benefit from the exchange of ideas, solutions and technologies available from IT suppliers and their representatives. Such exchanges were viewed as synergetic and educational; suppliers were viewed as partners rather than as members of the opposition.

There is nothing intrinsically wrong with this working model, particularly where one side does not abuse the privilege of the relationship and the openness it offers. The City would have benefited from written guidelines governing the frequency and nature of appropriate/inappropriate interrelationships.

According to Mr. Andrew who went to a Sun Microsystems golf tournament with Michael Garrett, Mr. Garrett's sole question to Mr. Andrew prior to heading for the game related only to whether or not the City was in a tender situation with Sun (the answer being that they were not).

Ms. Liczyk set out her test for determining whether or not a particular event or attendance was appropriate. Her test perhaps set a somewhat higher standard than did Mr. Garrett's test but the fact is that it was then and is today incumbent on senior City management to have a clear, concise written policy on conflict of interest or supplier relations. Such policies must be circulated, read and understood by all in the particular department or division, etc. and each should in writing confirm their agreement to comply with the policy. Such a written standard the City did not have.

The policy in effect was that each employee was governed by the policies and guidelines of their home City or Metro. Such a policy is unclear and only leads to confusion and a lack of consistency.

It is not incumbent on Mr. Andrew to set a policy on conflict of interest and to micromanage it throughout Corporate IT. In Corporate IT the interrelationship between City employee and supplier representative was encouraged as beneficial.

That policy had not previously been abused by a corporate IT supplier. That said, written policies on conflict of interest throughout the City government should have been in writing and in effect.

The application of where the bar is to be set, i.e., what the standard to govern relations with suppliers is and what constitutes possible conflict of interest must be set top down. Top down means from the highest levels, i.e., the CAO and his/her Commissioners.

The fact is that no such clear or defined policies were written, circulated, implemented, discussed or even considered between January 1, 1998 and late October of 2000. The message was not communicated to Directors or Executive Directors. Rather, what the Directors or Executive Directors had to do to obtain insight into such policies and prevailing interpretations as to what is or is not an acceptable relationship, activity or incident is to ask those in more senior positions or simply to model or emulate the behaviour of those people. Mr. Andrew did this with Ms. Liczyk, Mr. Garrett, Joe Halstead and even Commissioner Anderton.

Combined with the above, the fact is that Mr. Andrew was the point person with IT suppliers and prospective suppliers. He was required in his job description to be available to all and to be a ready source of good, standard information. That is, in Mr. Andrew's opinion, a reasonable and proper role for the Executive Director to play with prospective suppliers.

Mr. Andrew considered in looking back at the relationship that the relationship that Mr. Domi specifically and MFP generally had developed with him and with corporate IT had been excessive, that in their all-out press to obtain City business they had pushed the envelope. Had proper clear written conflict of interest guidelines been in place which clearly set the bar at an appropriate level, Mr. Andrew and IT generally would have been more and better equipped to establish, appreciate and comply with that (appropriate) standard. Even with the conflict of interest guidelines in his employment contract, the height or setting of the bar was unclear and the examples provided by more senior executives did not compare even close to favourably with the standard (bar setting) now proposed by Commission and City Council. Mostly, Mr. Andrew treated MFP as an arms length vendor.

39. Mr. Andrew admitted that in looking back at the relationship developed by Mr. Domi with him that the wining and dining had been excessive. Mr. Andrew was disappointed when he reviewed the totality of contacts and realized that the appearance was inappropriate. Mr. Andrew did not favour MFP nor did he act in a manner that was inappropriate with respect to the RFQ, its analysis or the Report to Policy and Finance or their Report to Council. He did not provide inappropriate advice or information to Mr. Domi, Ms. Payne, Mr. Lyons or Councillor Jakobek regarding the City's RFQ or the award of the contract.

Mr. Andrew explained to Mr. Domi that he was interested in the Commissioner's position but that he did not want to throw in his hat if the result of the competition was already pre-determined. Mr. Domi volunteered that Mr. Godfrey might know and set up the breakfast meeting for November 4, 1999 (**025875**). Presumably Mr. Godfrey asked Mr. Domi the nature and purpose of the meeting and presumably Mr. Domi explained to him what Mr. Andrew was interested in. That said, Mr. Godfrey attended the meeting without having made any enquiries, without apparently any knowledge or information on the competition and provided Mr. Andrew with absolutely no information.

Mr. Andrew entered the competition only to be informed that there was a pre-determined or pre-approved candidate and further to learn that his application was late and could not be accepted. Mr. Andrew received no substantive benefits from the breakfast with Messrs. Godfrey and Domi. Mr. Godfrey's solicitors' written responses to the questions posed by Mr. Andrew's solicitors clearly demonstrate that.

Perhaps it was inappropriate to attend a breakfast meeting with Mr. Godfrey and Mr. Domi. That said, the City should have had clear guidelines setting out the nature, scope and extent of relations with supplier representatives and third parties. There were no such guidelines in place at the material time.

40. The conflict of interest issue has been thoroughly discussed above at point 38. Whether the issue is golf games, lunches, breakfasts, dinners, meetings with the likes of Paul Godfrey, expensive pens, hockey games or trips at the expense of suppliers or prospective suppliers, it is critical that the City have clear and comprehensive written guidelines drafted, approved and circulated to all levels of employees at the City (perhaps in the form of an employee handbook). Such

written guidelines did not exist at the City at the material time. The guidelines in Mr. Andrew's employment contract were not clear, were not comprehensive and thus had to be interpreted by Mr. Andrew through the filter of what behaviour he observed from senior City executives and Councillors around him. Those examples where one looked at Councillors, Commissioners or The Chief Administrative Officer were not inconsistent with the behaviour of Mr. Andrew. When Mr. Andrew spoke with Ms. Liczyk about such issues or when Mr. Garrett questioned him on relations with a particular golf tournament host, questions posed or responses received provided him comfort that his behaviour with suppliers was reasonable and appropriate.

41. **Did Mr. Andrew Place Himself in a Position of Conflict or Perceived Conflict of Interest?**

The substantive issue here is perception of conflict of interest rather than de facto conflict of interest.

Without clear and comprehensive written guidelines on conflict of interest, it is virtually impossible to determine what is appropriate behaviour and what is not.

At Metro, the definition of "conflict of interest" is stilted, limited. It is defined as a situation in which private interests or personal considerations may affect your judgment in acting in the best interests of Metro. The focus is "did an event affect your judgment?"

Mr. Andrew did not consider that his judgment had been impaired by the actions of MFP or Mr. Domi. Rather, when the sum of all the contacts, treats, golf and hockey games, etc., were added up before him, Mr. Andrew readily agreed that the perception of a conflict of interest was clear and disturbed him. That said, he does not agree that his private interests affected (or may have affected) his judgment.

The remainder of the definition of conflict of interest at Metro only served to strengthen Mr. Andrew's resolve that his actions fell within the definition of conflict of interest (**037273**).

S.15 of Mr. Andrew's Employment Agreement with the City of Toronto is an Entire Agreement (or four corners clause). Thus, a literal construction of that term clearly supports Mr. Andrew's belief that only the Conflict of Interest Clause (s.10) of that Employment Agreement (**077301 at 305**) would be binding on him.

That definition is generic and as unclear as the definition set out for pre-amalgamation employees at Metro. S.10.1 speaks to recognizing and avoiding circumstances that may give rise to (or give the appearance of giving rise to) conflict of interest situations.

S.10.2 speaks to Mr. Andrew not engaging in outside activity or work without his supervisor's permission whether or not that activity or work is for compensation. Without question, that definition, although it does introduce the concept of perception of conflict, it does not paint a clear, comprehensive picture as to what is or is not appropriate or what behaviour does or does not create a perception of a conflict of interest. There are no examples given of what would constitute a conflict of interest or perceived conflict or interest. The Agreement would benefit from examples.

The City has to do a much better job in defining and capturing the spirit of what constitutes a conflict of interest. That so many senior executives at the City at least at first glance appeared to be off side when it comes to conflict of interest is a clear indicator that either no bar had been set to permit employees to gauge the appropriateness of their behaviour or no one really understood where the bar had been set (the standard was unclear).

42. With respect to Metastorm, Mr. Andrew was already intending to fly to Glasgow at the same time as the proposal came in from Metastorm. At his own expense, Mr. Andrew flew to London in order to view the Metastorm facility and to observe the development and operation of the Metastorm work flow programs. Mr. Andrew benefited in that Metastorm paid for his hotel (one night) and flew him to Glasgow.

Mr. Andrew's plans had been to fly to Glasgow directly rather than via London (same price) and stay with a friend (the hotel offered him no substantive benefit). The burden of that trip (one lost day of holiday and less time with friends in Scotland) was likely greater than the benefit to Mr. Andrew (one free overnight in a hotel). That said, Mr. Andrew did not seek or obtain City approval and thus such action was inappropriate.

Mr. Andrew attended a Storagetek conference at Augusta, Georgia during Masters Week in April with a group of industry peers. He did not obtain the appropriate approvals. That attendance, without the appropriate approval, was inappropriate. For both of these improper, unauthorized attendances, although both involved work-related activities, Mr. Andrew was wrong to attend and apologizes to the City of Toronto, its employees and to the people of Toronto.

43. Mr. Andrew generally attended work from about 7:00 a.m. until well after 5:00 or 6:00 p.m.. Mr. Andrew worked weekday evenings from home, weekends and had evening meetings several nights per week. Mr. Andrew seldom took his full quota of vacation days but when he did, he used these for golf tournaments and his annual trip to Scotland. Mr. Andrew's work week was expected to be 37.5 hours however, he generally worked 50% to 100% more than that minimum number of hours. Mr. Andrew had numerous days of lieu time that he was unable to "cash in" on his departure from the City.

Recordkeeping for lieu hours or vacation days were maintained (although rather loosely) by Susan Zorn, an administrative assistant in Corporate IT for Mr. Andrew. luxuries not afforded to Mr. Andrew. He was extremely busy at all hours of the day and night as well as on weekends. He did not have time or inclination to write down every overtime hour he worked or to seek compensation for same from the City. His job description clearly defined that these were the kind of hours the incumbent in the position of Executive Director, IT could expect at the City of Toronto. An employee is permitted to take lunch under the *Employment Standards Act*. Mr. Andrew attended business lunches however he did not linger as he had too many other duties and responsibilities to attend to at the office.

44. The issue of delegation of authority is raised. It is Mr. Andrew's view that Commission Counsel have misconstrued the appropriate role of an Executive Director vis-à-vis the management of his Directors. There have been no issues raised with respect to the nature or frequency of Mr. Andrew's division management meetings or the content of discussions at those meetings. Rather, the issue here is that he went on vacation (to Scotland) on May 25, 1999 and returned therefrom on June 2, 1999, after the RFQ had hit the street. The knock against Mr. Andrew is that he ought not to have taken holiday at that point as that was a critical point in the drafting of the RFQ an exercise in which he should have played a more active and direct role.

There is simply no merit to these allegations. Prior to leaving on holiday, Mr. Andrew appointed Ms. Viinamae as the Acting Executive Director. Although Ms. Viinamae has stated that she had no knowledge of leasing, such knowledge was not required at that time and in the circumstances. Ms. Viinamae was briefed by Mr. Andrew and Mr. Andrew also briefed Mr. Power. Mr. Power expressed to Mr. Andrew that he was on top of the RFQ drafting project from the IT perspective. Mr. Andrew knew Mr. Power's background and had confidence in his knowledge and skill. Equally, he had confidence in Ms. Viinamae's knowledge and skill as a senior manager. Mr. Andrew did not consider the RFQ to be a difficult assignment. Mr. Andrew knew the approximate status of the RFQ and was satisfied with its status and progress. Mr. Andrew was satisfied that if an issue, problem or concern arose that the matter would be resolved or the actual placing of the tender on the street would have been delayed until his return.

Upon his return, Mr. Andrew was debriefed by Ms. Viinamae, by Mr. Power and others (he spoke with Nadir Rabadi on June 2, 1999) and all seemed to be working well.

What Mr. Andrew actually did was provide the degree or level of leadership one would expect of an Executive Director in a bureaucratic organization. As well, rather than doing all the tasks or micromanaging their performance, Mr. Andrew delegated authority well and appropriately to his managers.

45&46 Generally, Mr. Andrew did employ good judgment and common sense with respect to real or perceived conflict of interest issues both for himself and for his staff.

Mr. Andrew believed that the City's IT staff benefited from contact with IT industry representatives. At the material time, IT was a rapidly changing area and no amount of reading or working with other members of staff or consultants could keep one up to date and adequately abreast of industry developments or applications. Mr. Andrew testified to the importance of having staff at the City attend trade fairs, meetings with suppliers, suppliers' conferences and even golf days because of the opportunities these presented to develop knowledge of products, applications and solutions. Conferences, golf days, parties or other social activities not only presented an opportunity to meet with industry representatives (sales representatives) but as well represented opportunities to meet and chat with technical or IT staff, other clients or customers, consultants, etc..

In the days when the City had little or no training budget and resources were far too busy to develop or run in-house training courses, solutions for staff training and development lay elsewhere. Managers like Mr. Andrew looked outside the box for training and development opportunities and one of the best was to develop a cooperative and synergetic working relationship with IT suppliers or prospective suppliers.

Mr. Andrew has responded to many of the issues raised that touch on his being entertained by suppliers and in particular by MFP. Mr. Andrew will not reargue either the points he has raised elsewhere or his thoughts and conclusions regarding his overall perception of MFP's relationship with him in 1999 (and to a lesser degree in 2000).

Regarding many of the incidents raised in this Inquiry and more particularly raised in Mr. Domi's expense reports and invoices, Mr. Andrew responds as follows:

(a) Generally, with respect to Mr. Domi's allegations that he wined and dined Mr. Andrew frequently, Mr. Andrew states that, except as set out in his affidavit and his cross-examination, they did not occur.

(b) Mr. Andrew looked to superior officers for direction, guidance and leadership with respect to supplier-related activities, hockey games, lunches, etc.. Those superior officers with whom he spoke and those superior officers he observed in such situations all demonstrated that such activities were reasonable and appropriate in the circumstances. On no occasion was the issue of the propriety of such contact or activities with suppliers or prospective suppliers to the City ever raised with Mr. Andrew. Not by Councillors, not by the Chief Administrative Officer for the City, not by four Commissioner level managers and not by the other senior City Managers whom he met and socialized with at these activities.

(c) Mr. Andrew was telephoned by Irene Payne in about February or March 1999, informed that she wished to replace Rob Ashbourne on the City of Toronto account and requested that he write MFP and request that Mr. Ashbourne by replaced. Mr. Andrew refused on the grounds that such involvement in MFP business by the City was inappropriate.

(d) Mr. Andrew knew that Michael Garrett had requested that his senior managers communicate with the Public (including private industry) that the new City of Toronto, post-amalgamation, was alive and well and open for business. Mr. Andrew was further aware that this philosophy applied to him.

Mr. Andrew was repeatedly approached by the Mayor's office with respect to IT contacts whom they or he on their behalf could approach to sponsor activities, the Mayor's golf tournament, etc.. Mr. Andrew rightly viewed such approaches and initiatives as endorsements of his having developed and maintained professional relations with the IT industry.

(e) Mr. Andrew confirms that he met with Mr. Domi and Karim Kassam on April 29, 1999. Paragraph 42 of his affidavit goes into details of that meeting. Mr. Andrew believed that the approach, at least on the part of Mr. Kassam, was inappropriate and he informed Mr. Kassam and Mr. Domi of his opinion in that regard at that meeting. At no time was Mr. Andrew's judgment compromised.

(f) Mr. Andrew states that the MFP internal document (**027616**) wherein the writer indicates that "a strong relationship had been developed between Mr. Domi and MFP on one hand and Mr. Andrew and the IT Division on the other" is not true. Mr. Andrew testified that such a statement is mere puffery "a sales pitch, a gross overstatement of the nature and extent of the relationship as it existed".

(g) The Cartier Pen – Although Mr. Domi is of the opinion that the pen was given to Mr. Andrew in 1999, Mr. Andrew is satisfied it was not. The invoice does not relate to a pen purchased by Mr. Domi and given by him to Mr. Andrew. The reason for Mr. Andrew's certainty was provided in his testimony.

A gift of such value ($800.00) is inappropriate. Mr. Andrew telephoned Mr. Domi as soon as he opened the gift and explained to him that it was unacceptable and that (Mr. Domi) would have to pick it up from Mr. Andrew the next time Mr. Domi was at the City. This occurred.

(h) The meeting with Mr. Domi and Mr. Wilkinson on August 3, 1999 was entirely appropriate. Mr. Andrew had not before the meeting and did not at the meeting inform MFP that they had been the successful candidate in the leasing RFQ. This was not a meeting for anything but getting down to the business at hand. Ms. Bulko was invited because of her up-to-date information on the desktop rollout program. Mr. Wilkinson had charts and graphs which appears to be fairly typical of Mr. Wilkinson. Mr. Andrew was asked questions and provided responses however, once issues of a financial nature were raised, Mr. Andrew requested that such matters be referred to the Finance Department. Documentation confirms that Messrs. Domi and Wilkinson followed up with Finance thereafter (**36589 – 36592**), (**013063**), (**026815 – 026820**).

(i) The job description for the "Project Executive, Year 2000 Project" (**031541**) though poorly drafted (as are most of the job descriptions made available to counsel in this Inquiry), sets out two tasks where the Executive (Year 2000 Director, i.e., Ms. Viinamae) is directly obligated to interact or work closely with vendors or suppliers to the City of Toronto. These include point 5, i.e., ensure that suppliers of equipment and services that may be affected by Year 2000 have identified the risk and taken appropriate corrective measures and point 7, i.e., liaises as necessary with vendors, other levels of government, external experts, etc. to ensure that all implications of Year 2000 are fully known and acted upon.

Of more assistance in understanding the role expected of the Year 2000 Director in that position is the actual mission statement (Major Responsibilities) which requires that the position holder (Ms. Viinamae) plan, organize and manage the program to prepare the City for the Year

2000 and that that be done by developing and maintaining cooperative work relations with external organizations. Obviously vendors to the City would be among the most important of those external organizations. Also noteworthy is Key Qualification No. 5 (**031542**) requiring that the Year 2000 Program Director have excellent interpersonal skills in order to communicate across the corporation as well as with vendors and the public.

Mr. Andrew did not fail to provide leadership to his staff or to the Year 2000 Director, Ms. Viinamae, with respect to issues such as conflict of interest or being entertained. He interpreted for them the poorly drafted and completely unclear City guidelines and received his cue from those superior managers around him. Positions in IT required, by definition, a substantial degree of interface or interrelationship with vendors and the IT industry in general and Mr. Andrew accommodated this believing it appropriate. The Chief Administrative Officer wanted the City's successes trumpeted from the hilltops and Mr. Andrew worked to get the message out.

47 to 49 The issue raised in these three questions relates to the MFP testimonial and whether or not such a testimonial or endorsement was a) done without approval and b) appropriate in all the circumstances. These matters are dealt with at paragraphs 198 – 201 both inclusive of Mr. Andrew's affidavit and Mr. Andrew adopts those factual submissions as accurate. These matters are also dealt with at paragraph 149 of Ms. Viinamae's affidavit. Except for the rather aggressive

blaming or finger pointing at others and in particular at Mr. Andrew, Mr. Andrew accepts that he likely informed Ms. Viinamae of MFP's request for a photograph and a testimonial and likely informed her that the request had been for her, his and Ms. Liczyk's photos and testimonials with respect to the Year 2000 Program. Mr. Andrew did not require or demand that Ms. Viinamae participate and neither did she question Mr. Andrew as to the propriety of such cooperation. Please remember that it was Mr. Andrew's experience that cooperation and open professional relations between the City and vendors to the City were encouraged by the Mayor and by the Chief Administrative Officer.

When approached by MFP for the photographs and the testimonials Mr. Andrew questioned MFP regarding their use in order to refer the entire issue to Ms. Liczyk. Mr. Andrew was informed that the photograph and testimonial would likely be placed in the government section of the MFP annual report. At no time was their mention by MFP of this article gaining wide circulation through use of the internet to publish the MFP annual report.

In her affidavit at page 278, Ms. Liczyk cannot recall Mr. Andrew's telephone conversation regarding the nature of the request from MFP and whether or not in all the circumstances it was appropriate for them to participate. According to Mr. Andrew, Ms. Liczyk informed Mr. Andrew that such participation was reasonable and appropriate and had been done at North York previously. That may not be her recollection however that is Mr. Andrew's recollection. That said, it is clear that Ms. Liczyk had no issue with the request and it does appear to be consistent with Mr. Garrett's efforts to get the message out that the City was open for business.

It was with this in mind that Mr. Andrew spoke with Ms. Viinamae and responded to MFP that the requested photographs and endorsement for the 2000 annual report could be done (**029127**).

By e-mail on May 31, 2000, Janis Cowie of MFP stated that Mr. Domi had informed her that Ms. Liczyk had agreed (on his request) to help them with a customer testimonial for MFP's annual report (**067874**). It is acknowledged that Mr. Andrew then agreed to be interviewed and that they, MFP, wished to obtain input from Ms. Viinamae as well. This approach was repeated on June 5, 2000 by Ms. Cowie (**067875**) and even Ms. Liczyk's assistant, Giuli Ceccone, on June 5, 2000, e-mailed Ms. Liczyk requesting that she provide the MFP appointed interviewer some time to meet with her regarding the testimonial (**067873**). Photos apparently were taken on June 13, 2000 (for Ms. Viinamae), June 16, 2000 (Mr. Andrew) and June 21, 2000 (Ms. Liczyk) (**013290**), (**029095**). By letter dated June 28, 2000 to Mr. Andrew, Janis Cowie (MFP) (**029094**) enclosed a draft of the text for the testimonial, requested that he review same to ensure it was accurate and e-mail it back to her as revised and approved by July 6, 2000. Again, MFP confirmed that the article would be used exclusively for MFP's annual report. Mr. Andrew did not review the testimonial and did not provide MFP with an approval either orally or in writing. Mr. Andrew was not particularly committed to being involved in this activity. The resulting article (**029096 – 029097**) contains numerous substantive and factual errors.

Ms. Anderton had joined the City of Toronto on or about February 14, 2000. She had had no involvement in the Year 2000 Program and had had no involvement with MFP in the matters surrounding the IT equipment lease. The Steering Committee had provided general direction on that program and Ms. Liczyk was the highest ranked superior officer on that Committee. Mr. Andrew appropriately considered the propriety of the request and referred it to the appropriate senior authority, Ms. Liczyk. He discussed the request with her and received her approval. Ms. Liczyk clearly knew that Ms. Viinamae's input and photograph had been requested by MFP and raised no issue with Mr. Andrew regarding her (Ms. Viinamae's) or his (Mr. Andrew's) participation.

Mr. Andrew neither instructed nor directed Ms. Viinamae to participate in the MFP testimonial. Rather, following his discussion with Ms. Liczyk he had no concerns regarding Ms. Viinamae's participation. Ms. Viinamae, after all, had managed the Year 2000 Project and had delivered the project on time and on budget (as he then believed). For Mr. Andrew, Ms. Viinamae deserved the credit for the program's results and the testimonial was as much to her skill as it was to MFP's contribution.

It should be noted that Mr. Andrew's job description (**074612**), (**77299**) required that he "build relationships with external contacts and represent the City to industry, federations and other jurisdictions on matters related to Information and Technology". Rather than focussing on whether or not participation in a testimonial and a photograph for the MFP annual report comply with conflict of interest guidelines set out in Mr. Andrew's employment contract, the issue related to such "conflict of interest" should and indeed must first look at the nature and propriety of such participation in the context of the duties of the position description. There are at least three "specific accountabilities" in Mr. Andrew's job description that focus on external, (i.e., supplier) relationships and partnerships (8^{th}, 10^{th} and 11^{th} on left side). These require that Mr. Andrew build relationships and credibility with … external stakeholders; that he ensure adequacy and effectiveness of IT equipment and that he research, evaluate and select the appropriate IT equipment to achieve the City's objectives. Finally, there is "the duty to build relationships with external contacts and industry representatives serving the City". The duties in Mr. Andrew's job description are not particular to Mr. Andrew only. Rather, they are to be interpreted broadly across the IT Division and read into at least the majority of IT Director positions and elsewhere (External Partners and Contracts). The obligation on such positions (Mr. Andrew's, Ms. Viinamae's, Mr. Power's, Mr. Franey's, etc., is to serve as the contact with industry, IT suppliers to the City of Toronto and those who would like to serve in that position. There are benefits to the City in such contact and in the development of such relationships.

It is for those reasons, reasons Mr. Andrew knew, understood and applied across IT that the job description for the Executive Director, IT position, the Year 2000 Director position (in IT for administrative purposes only) and other positions included such duties and responsibilities. The use of testimonials and photographs by suppliers to Cities, Municipalities, Regions and Provinces across Ontario and Canada is widespread. City of Toronto representatives were not the only public servant/bureaucrats whose photographs and testimonials were included in MFP's annual report (and website). This may not make it right necessarily. Rather, it would be reasonable for the City of Toronto if such testimonials are not acceptable, or if they are approved but require either particular approvals or that specific protocols be followed, that such protocols, procedures or approvals be well and clearly set out in a conflict of interest (practice) handbook. Good bureaucratic organization runs on clear and accurate written policies, procedures, guidelines and protocols. Good bureaucratic organization leaves little to chance or interpretation.

That Mr. Andrew participated in a testimonial on behalf of MFP and permitted his photograph to be taken to accompany that testimonial does not breach the conflict of interest guidelines to which Mr. Andrew was subject in 1999 or mid 2000. As noted previously, s.15 of the Employment Agreement is an "Entire Agreement" clause (**77301 – 77309**). Thus, the conflict guidelines from Metro which governed Mr. Andrew's behaviour pre-amalgamation and pre-employment contract execution were superseded. Even if they were not superseded the conflict guideline at s.10 of the Employment Agreement are arguably broader than were the guidelines at Metro. Neither was clear or sufficiently comprehensive.

S.10.2 of the Conflict of Interest Term in Mr. Andrew's Employment Agreement refers to s.4.1 of the Agreement (an exclusive service clause) and deals with outside or competing employment or activity.

S.10.1 is the only material guideline responding to actual or perceived conflict of interest. It is two sentences in length. To paraphrase that section of the Employment Agreement, it a) places responsibility on the employee to recognize and avoid situations that may give rise to actual or perceived conflict of interest situations and b) it then confirms that actual or perceived conflict of interest cannot be restricted to situations of monetary gain.

Point a) makes the individual responsible for issues of conflict of interest and establishes a disturbingly unclear and highly subjective standard of care. Point b) adds little further definition but generally states that monetary gain is not the only issue for determining whether or not an actual or perceived conflict of interest exists.

There is no analysis provided that might assist City employees to comprehend the conflict issue or determine what is, may be or is not an actual or perceived conflict.

In the circumstances, Mr. Andrew looked to superior officers at the City for guidance and direction. He generally acted in a manner which he perceived to be consistent with their lead. This was particularly so with respect to the MFP testimonials and photographs.