

## SUBMISSIONS ON BEHALF OF THOMAS R. JAKOBEK

Mr. Jakobek has spent most of his working life as a politician who served the City of Toronto most admirably in a variety of capacities. During his time in politics he worked unceasingly and tirelessly to protect any expenditure of public funds and ensure taxpayers got top value for every dollar. He maintained a zero tax increase for nine years while protecting and improving social services.

**Mr. Jakobek's involvement with the RFQ that is the subject matter of this Inquiry and the subsequent leases and the subsequent changes made by city staff to those leases was absolutely nil.**

Your Inquiry received absolutely no evidence or suggestion that he had anything to do with the tendering process, the selection of the successful bidder, the creation of the subsequent documentation or anything else.

The so-called "flexibility" amendment that was moved by Mr. Jakobek was perfectly in keeping with his well-documented sentiment that money should not be wasted on new computer equipment when the old equipment was still useful. **The outrage over Ms. Liczyk's and Mr. Andrew's unauthorized automatic replacement of councilors' computers in January 1998 was the major reason Mr. Jakobek and most other city councilors were concerned about the "automatic" replacement of computers every three years.** This was not some new, surprising sentiment on his part but exactly what he and other members of the Finance Committee had consistently espoused and which the CFO and Director of IT promoted. Further, his sentiments were perfectly sensible and reasonable as shown by the unanimous support of his motion. He was merely one of eleven members of the committee; and was not even the Chair at this meeting. Other councilors beyond the committee members were also in attendance at the meeting. **Mr. Jakobek's amendment on behalf of the committee was, for all we know, drafted by the CFO and/or the clerk present, seconded by another councilor, and it was**

**unanimously approved.** No staff objection or question was forthcoming from the Clerk or any assistants present, the Legal Department, the Audit Department or the Finance Department. Mr. Jakobek testified he consulted with Ms. Liczyk on his motion. She in turn conferred with Mr. Brittain and they were satisfied with the wording. The Legal Department, the Audit Department, the Clerk and Mr. Jakobek's chief antagonist Michael Garrett the C.E.O. all had no quarrel and took no issue with it. There was absolutely nothing sinister about this amendment or its wording and most undeniably Mr. Jakobek had nothing to do with staff's subsequent interpretation of it or their conduct in relation to the equipment leases.

The 'flexibility' amendment before the Policy and Finance Committee was a perfectly proper motion in keeping with Mr. Jakobek's historically-demonstrated philosophy of maximizing the utility of every taxpayer dollar. It simply moved that the Chief Financial Officer and Treasurer ensure that the terms and conditions of the lease be flexible enough to ensure that the lifespan of the computer equipment is extended beyond three years. **It was also seconded by another member of the Committee and passed unanimously. It was never questioned by any body! If staff was not clear regarding the amendment Wanda :Liczyk and her staff or Jim Andrew and his staff could and would have had countless opportunities to raise any questions or issues.** To suggest anything nefarious about the reason for Mr. Jakobek making the motion or to attribute responsibility for the motion to Mr. Jakobek alone is preposterous. **Astonishingly, the Inquiry received no evidence from a single other member of the Committee regarding their support or understanding of the motion.** The Inquiry is also now aware of Olivia Chow's subsequent motion in the Spring of 2000 expressly dealing with the exact same issue of extending leases for periods greater than three year. **Ms. Chow's motion specifically requested a report from Ms. Liczyk and Mr. Andrew "on the monies that could be saved if the leasing contracts could be extended beyond the three (3) years"**. This shows two important things: First, it shows that longer leases as a possible money-saving measure was not some sinister suggestion, but as stated above, a perfectly reasonable area of inquiry. It confirms Mr. Jakobek and members of the committee were quite right to believe in a more-than-three-years possible lifetime.

(It should be noted that to the same eminently sensible effect is the evidence of Mr. Baldasoon (taken 02.12.11 at pp. 43ff.) as follows: “Q: [t]here's a direct relationship between user need and useful life? A: Absolutely in my opinion. **And further that Mr. Jakobek “would be fully aware that you could extend the lives of the desktop [computers] based on what software you're interested in loading into it. So, he would have known that the old City of Toronto had their computers for over five (5) years ....”** )

**This brings us to the second and most telling fact. Ms. Chow’s motion raises the significant question why the staff in Ms. Liczyk’s office who entered into the five-year leases did not speak up at the time of this motion by Ms. Chow and explain that the matter was already dealt with; that the leases already extended beyond three years? Why did they remain silent if they were acting bona fide? What does their silence say about responsibility for the leases in issue?**

**Mr. Jakobek had absolutely no involvement or responsibility regarding the staff’s subsequent interpretation of the Committee’s resolution and the staff’s subsequent conduct regarding the leases subsequently entered in to.**

The resolution passed was the Committee’s work, not Mr. Jakobek’s alone. Any difficulties or concerns about the leases should focus on the subsequent events and conduct and decisions of other persons. Mr. Jakobek’s amendment and Ms. Chow’s motion were nothing more or less than an inconsequential aspect of the entire history of the matter insofar as anything worthy of this Inquiry’s consideration is concerned. Whatever went wrong, and whoever was responsible necessitates an examination of persons and evidence and matters that have nothing to do with Mr. Jakobek or the amendment to which Inquiry counsel have attached his name.

Whatever the issues of concern to this Inquiry regarding the leases and the staff conduct and actions regarding them, the amendment by Mr. Jakobek as well as the motion of Ms.

Chow are nothing more than an absolutely inconsequential part of the history of the matter and in no real way at all related to those legitimate issues of concern. The Inquiry's investigation proved Mr. Jakobek had nothing to do with the tender process or the leases or any subsequent decisions regarding the leases. It is most unfair to suggest any sort of responsibility whatsoever on Mr. Jakobek's part simply because he moved this perfectly reasonable and sensible amendment, which the rest of the members seconded and approved and about whose wording not a single question or concern was raised by anyone.

It is also important to note that many of the leases were extended long after Mr. Jakobek had retired from his position as chair of the budget committee in April 2000 and from politics completely in November 2000. We should also note that the Jakobek (and Chow motion) dealt only with possible lease extensions and not lease re-writes, interest rate increases, penalties, or additional equipment leases. In other words the amendment and the motion were very much focused on only one issue: extending the life of the equipment to save money. Although there was no evidence that Mr. Jakobek had any input or any effect on the increased lease costs or had anything to do with them Inquiry staff made unsubstantiated allegations of malfeasance without any evidence to justify the allegations. This was most unfair.

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**As he testified quite categorically, Mr. Jakobek never communicated through Jeff Lyons to Rob Simone and/or Scott Marentette, then of Dell Financial Services, any request or comment whatsoever regarding payment of a sum of money.**

Mr. Jakobek had and has no knowledge of or responsibility for whatever - if anything - Mr. Lyons may have said that has resulted in Mr. Jakobek's name being dragged into the matter. The evidence is unclear what was said and what was meant by whatever might have been said. **There is absolutely no evidence whatsoever connecting that event involving Mr. Lyons with Mr. Jakobek. Such a grave allegation should be based upon evidence whose completeness and solidity is commensurate with that gravity;**

**such evidence is completely absent here.** Evidence on the one and only meeting with Mr. Jakobek was clear: Mr. Jakobek acted properly and professionally.

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**Mr. Jakobek never in May 1999 or any other time requested a draft of the RFQ for leasing of computer hardware and software from Jim Andrew.**

As Mr. Jakobek testified, and as both his former staff testified, they never requested it or received it or even ever saw it. Mr. Jakobek's evidence regarding their telephone calls and two meals together is more credible and accurate than Mr. Andrew's newly recovered eleventh hour "recollections." Mr. Andrew admitted that he had previously-forgotten this alleged telephone call and conversation with Mr. Jakobek. His recovered memory and snippets of alleged conversation are too unreliable and dangerous material upon which to found any conclusions about what was said. Mr. Jakobek's clear recollection is the only sound basis for any conclusions and Mr. Jakobek's recollection should be accepted.

Similarly completely unreliable is Mr. Andrew's reconstruction that "Tom must have asked for it or I wouldn't have sent the e-mail". Mr. Andrew was absolutely clear that he had absolutely no memory of the e-mail. In fact, until he was shown the e-mail he did not even remember it. He was equally absolutely clear that even after being shown the e-mail he still has absolutely no memory of what actually took place. All he can do is reconstruct what seems to him now to be plausible. That is no solid foundation for any conclusion. It is simply unfair and unsound to uncritically accept Mr. Andrew's opinion of what must have happened and adopt it as accurate. **(One might also wonder about the plausibility of Mr. Andrew sending Mr. Jakobek an e-mail when he knew and agreed he knew Mr. Jakobek could not turn on a computer.)**

Mr. Jakobek's dealings with Jim Andrew regarding advice where to purchase a computer on behalf of his mother and father-in-law and Mr. Andrew dropping by on his way home to demonstrate "how to burn CD's" are absolutely trivial and inconsequential matters.

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**Mr. Jakobek did not receive from Ms. Liczyk the draft vehicle leasing RFQ found in Mr. Domi's file with Mr. Britton's writing on it.**

It bears absolutely no indication it was transmitted to Mr. Jakobek as would be expected in the ordinary course. **Further, claiming to have given it to Mr. Jakobek provides Ms. Liczyk with a convenient excuse for a most awkward fact: that her document (a document proved to have been given to her) was found in Mr. Domi's file.** There is not a shred of supporting documentation such as a memo or letter or witness to support her claim that she gave this document to Mr. Jakobek, a singularly unusual event even on her own evidence. It is hardly surprising that Ms. Liczyk seeks to deflect from herself responsibility for a confidential document with identifiable handwriting on it linking it to her found in Mr. Domi's files. **Claiming to have given it to Mr. Jakobek is about the one and only claim she can make that carries the slightest possibility of successfully fooling anybody.** There is no other claim one can think of or another person she could implicate that would not be instantly rebuffed by a witness who has not been the subject of the attacks on credibility that Mr. Jakobek has endured. Her claim should be completely rejected. **Ms. Liczyk was the one responsible for that document being placed in Mr. Domi's hands. Her evidence about Mr. Jakobek can only be characterized as absolutely false.**

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**Mr. Jakobek never had any "relationship" with Mr. Dash Domi in any sense of that word. Contrary to Inquiry counsel's suggestions implicit and otherwise, Mr. Jakobek never concealed or minimized the true nature of his or any relationship with Dash Domi because in fact, as the evidence demonstrates, there was no real relationship of any consequence to minimize. This Inquiry started off on wrong foot with Inquiry counsel Mr. Manes asking the witness Mel Lastman (on 02.12.02): "Did you know Mr. Jakobek had been frequently entertained by Mr. Domi?" There was no legitimate basis for that question. It was the first example of the unfair**

questions about and to Mr. Jakobek and his family that have subsequently been put at this Inquiry. **The evidence at the inquiry clearly indicates Mr. Jakobek was not “frequently entertained” by Mr. Domi or anybody else.**

**It was very soon clear that Mr. Domi’s expense vouchers contained much attribution that was false and exaggerated. As far as Mr. Jakobek is concerned, his actual involvement with Mr. Domi was demonstrably insignificant.** There was a short breakfast meeting on February 23, 1999 at Hemispheres restaurant, right behind City Hall, which included Ms. Payne in addition to Mr. Domi and Mr. Jakobek, and the total bill for which was \$56.92. Mr. Jakobek did not even remain the entire time but left early to attend to City business. Ms. Payne’s evidence about the meeting was accurate and appropriate.

Some eight months later on November 29, 1999 there is a lunch at the Chestnut Tree Restaurant, also immediately behind City Hall, for a total bill of \$62.79. Again another party Bob Wright was present for this short, insignificant lunch. Mr. Wright’s recollection and evidence is clear accurate and appropriate. In between there are two occasions April 24<sup>th</sup> and 29<sup>th</sup> when Mr. Jakobek saw Mr. Domi, as well as many others, at hockey games at the Air Canada Centre. Mr. Jakobek went to the games with other persons, not Mr. Domi. He went on his own tickets, not Mr. Domi’s. He sat in his own seats. He ate with other persons, not Mr. Domi. Mr. Jakobek accompanied by others dropped by the MFP box, and other corporate boxes on the same floor, but he was there for a short time only. There is nothing regarding these occasions of any significance for anyone other than Mr. Domi’s employer, to whom it should demonstrate that Mr. Domi will attribute an expense voucher to anyone whom he happens to briefly see or even think about! Mr. Domi’s secretary’s evidence supports that fact.

There are only three other areas of interaction between Mr. Domi and Mr. Jakobek. The first was just about as perfunctory as the breakfast and lunch referred to, namely, the nine holes of golf played on September 4<sup>th</sup>, 1999. Mr. Domi’s friends Wanda Liczyk and Jim Andrew were present. Mr. Jakobek played the round in the company of his friend James

McDaniel, whose membership at the Hunt Club was utilized to arrange the game. Mr. Jakobek did not even share the golf cart with Mr. Domi. **This game took place because Mr. Jakobek did not wish to appear rude for his constantly turning down invitations from Mr. Domi and Mr. Andrew.** It was followed by a perfunctory single drink in Mr. Jakobek's nearby backyard. This only happened because Mr. Domi suggested a post-game drink and they could not do this at the golf club because Mr. McDaniel was leaving. In less than a half hour at Mr. Jakobek's backyard everyone was on their way out. **It should also be noted that it was in fact Mr. Jakobek who bore the expense for this definitely not extravagant occasion.** This is the evidence that is supposed to establish some close relationship Mr. Jakobek with Mr. Domi? This is the evidence of Mr. Jakobek being "frequently entertained" by Mr. Domi?

**Unlike city staff and other politicians who look to be entertained for free, Tom Jakobek's record stands on its own. Not once in 20 years did Tom Jakobek ever submit an expense claim for a breakfast, lunch, dinner or a convention to the City. He always paid his own way. The reality is Mr. Jakobek was wealthy enough to not want or need anyone to entertain him.**

The other two matters are the Philadelphia trip and the phone calls between the parties. Regarding the former, **Mr. Jakobek was unaware of MFP's sponsorship of the Philadelphia hockey game trip. Mr. Jakobek did not knowingly accept this benefit from MFP or Mr. Domi because he believed, as the evidence showed that the trip to Philadelphia was the responsibility of his friend Harold Perry.** He had gone on similar trips before with Mr. Perry and there was nothing exceptional or extraordinary about such a trip for Mr. Perry or Mr. Jakobek. The trip took 4 1/2 hours and cost about \$1,200.00 per person. This is hardly an inordinate amount for anyone with their own seats at Air Canada Centre. It was an event of no great significance to Mr. Jakobek. As the phone records show, he did not even sit with Mr. Domi.

**This was not a corporate plane with MFP written on it. The others who attended were all friends or people Mr. Jakobek had known for 15 or 20 years. They were**



**Mr. Perry, Mr. Perry's son, and Mr. Perry's two friends Jim Ginou and Vincent Negro, both of whom Mr. Jakobek had worked with in politics. Nothing in the circumstances signaled the matter as being initiated or paid for by Mr. Domi or his employer.**

It is true Mr. Jakobek denied to reporters that he had gone to the hockey game in Philadelphia. A "lie of convenience" is easiest to tell about matters that are viewed as insignificant, as this trip was by Mr. Jakobek as far as the actual trip was concerned.. What became significant at the time he spoke to the press was not the trip but the unpleasant and mistrustful media reports being generated about MFP and anyone connected in any dealings with them. That a person would tell what they viewed as an insignificant lie to try to avoid being dragged into something with which they justifiably felt they had no real connection, especially something being portrayed as nefarious and sinister as the MFP business dealings were, is perfectly understandable. **Not acceptable but understandable. Mr. Jakobek denied his presence on the Philadelphia trip because it seemed an easy answer to the public embarrassment and fear of being dragged into something that was of no concern to him. He spent 20 years working to become mayor and this one issue threatened to take that away, exactly as has happened.**

**Mr. Jakobek has paid a heavy price for his denial to the media, but objectively and rationally viewed all of that business has little if anything to do with the true subject matter of interest to this Inquiry.**

Nor is it fair to attribute too much responsibility to Mr. Jakobek's statements to the press as far as the work of this Inquiry is concerned and any additional effort and expense allegedly required as a result. Even if Mr. Jakobek had said from the start that he had gone on the trip, the matter would have been fully investigated in any event. He would have said, as he does say, that his going was Mr. Perry's responsibility, and his understanding of the trip was that it was Mr. Perry's doing, and that he had had very little to do with Mr. Domi on the trip, and they had not even sat together, as proved by the

phone records. It is obvious Inquiry counsel would not have accepted this innocuous and trivial portrayal of the trip, but would have sought to make something more out of it as far as Mr. Jakobek and Mr. Domi are concerned. If Inquiry counsel, knowing what they know about the true state of affairs regarding Mr. Domi's expense vouchers, can characterize the situation as Mr. Jakobek being "frequently entertained" by Mr. Domi, can there be any doubt that they would not have easily and readily accepted the insignificance of the trip and its innocuous details, but would have insisted on fully investigating the matter in any event? Mr. Jakobek's denial added little if anything to the effort and expense expended by the Inquiry regarding the Philadelphia trip; it added only to its significance in the media. Nothing in the evidence before this Inquiry contradicts that obvious conclusion. Mr. Jakobek did not sit with Mr. Domi or have very much to do with him at all on the trip. Mr. Jakobek attended at the invitation of his friend Mr. Perry and had no knowledge of Domi and MFP's involvement in paying for the trip. The trip was inconsequential regarding any of the matters in which the Inquiry is interested. Those facts which undisputed would have driven an investigation in any event to see if they could be contradicted or confirmed. They stand uncontradicted.

Nor can it be argued that Mr. Jakobek's denial cast Mr. Domi's expenses or vouchers in a false light and thereby occasioned unnecessary investigation. This would have been the case had Mr. Jakobek's denial been the only case of a disputed Domi expense claim. Had Mr. Domi's other vouchers all been scrupulously accurate and had the Inquiry been forced to deal with Mr. Jakobek's denial as the only instance casting doubt on the veracity of Mr. Domi's expense vouchers, then an argument for additional investigatory effort and expense could have been made. But that is not the case at all. Mr. Domi indisputably submitted multiple false expense claims. Thus, Mr. Jakobek's denial about the Philadelphia trip objectively and rationally and dispassionately viewed is nothing but a red herring unrelated to the real issues before this Inquiry. However dramatic and exciting for the media, its exploration at the Inquiry adds little of substance concerning the real issues to be considered.

**The undisputed facts remain: Mr. Jakobek was invited to go by Mr. Perry. He went on other trips with Mr. Perry on private planes. This was not the only such trip. Mr. Jakobek picked up Mr. Perry and his son for the Philadelphia trip. They had a quick dinner in Philadelphia, attended the game, and Mr. Jakobek did not even sit with Mr. Domi during the game.** It is simply incorrect to suggest that Mr. Jakobek “knowingly” caused the Inquiry to incur unnecessary time and expense to investigate the Philadelphia trip. For reasons stated, it is very much contended that the Inquiry would have done very little if anything different had Mr. Jakobek stated he was on the flight, but was unaware it was a Domi/MFP trip and he had very little if anything to do with Mr. Domi on the trip. It would still have been fully investigated so see if that trivial and inconsequential nature of the event could be contradicted (which it has not). Further, any suggestion of knowingly causing any additional effort and expense is simply an unsupported and unreasonable allegation. There is no evidence to prove such before this Inquiry, much less any evidence how Mr. Jakobek could know such an unproved matter.

That leaves the matter of Mr. Domi’s telephone calls. **The significance of the telephone records of Mr. Domi’s calls to Mr. Jakobek (200-some odd calls out of 40,000 calls) has been blown completely out of proportion by Commission counsel. They publicly referenced approximately 235 “telephone contacts” between Mr. Domi and Mr. Jakobek. They did nothing to make equally clear this was over a 3 and ½ year period that was involved. This includes less than two dozen return calls from Mr. Jakobek over that same 3 and 1/2 year period.**

It is unfair as well as unreasonable to consider these numbers without a comparative perspective based upon Mr. Domi’s overall telephone use. While a couple of hundred calls over a three year and more period may sound like something significant for an ordinary telephone user, Mr. Domi’s telephone usage was anything but “ordinary.” The facts that provide some perspective are that his total calls were approximately 10,250 calls for the year 2002, 5,050 calls for the year 2001, 11,113 calls for the year 2000 and 13,280 calls for the year 1999, as determined by a counting done on the cell phone records provided by the Inquiry. This totals approximately 39,700 calls, nearly forty

thousand calls he placed! **Mr. Jakobek was certainly not one of the most frequently called persons, ranking well down any list of persons called, and two hundred some-odd calls ceases to have any significance whatsoever amidst a total of nearly forty thousand telephone calls.**

Furthermore, instead of simply counting calls, surely what is more significant is how much time the persons spent in conversation. The reason for this should be obvious. If a caller is trying to reach someone and has three numbers for them, and cannot reach them, they will make three attempts using each number and the tally will show as three calls, whereas in fact it was really one transaction. To the extent that the person called does not wish to take the call, such “overcounting” will become the norm. On the other hand, a friendly recipient who does wish to speak to the caller will only need to be called once.

In that regard, comparisons of the information available regarding Mr. Andrew and Ms. Licyk are instructive. In terms of calls from Mr. Domi as counted individually from the available cell phone records, we totaled outgoing calls to Mr. Andrew as 118, to Ms. Licyk as 185 and Mr. Jakobek as 222. But in terms of minutes spoken Mr. Jakobek totaled only 215 minutes, Mr. Andrew 185 minutes, and Ms. Licyk 398 minutes. And this includes the fact that Mr. Jakobek’s total would be inflated because of the 1 minute minimum. **Most of his calls were actually under 30 seconds meaning his true time was closer to 111 minutes in over 3 1/2 years.**

In other words, Mr. Andrew with about half the number of calls had almost the same number of minutes of conversation. Ms. Licyk with slightly fewer number of calls had almost twice the number of minutes of conversation. **The phone records may show Mr. Domi as an inveterate cell phone user but they show nothing in the way of any relationship between him and Mr. Jakobek. They certainly show that most of Mr. Domi’s calls to Mr. Jakobek were attempts to contact him, unlike the lengthier and some times late night conversations Mr. Domi had with Mr. Andrew and Ms. Licyk.**

**In short, there was absolutely no evidence of Mr. Jakobek having any relationship (much less any “strong” relationship) with MFP or Mr. Domi.** Mr. Jakobek’s relationship with Mr. Domi was simply professional. It consisted of Mr. Domi trying to communicate and be sociable with Mr. Jakobek and Mr. Jakobek being indifferently polite to him. **Mr. Domi did not have any unusual access to Mr Jakobek’s office nor did he spend a lot of time there.** All of these facts were confirmed by real evidence. There was no “green light” for Mr. Domi as counsel have suggested. All of Mr. Jakobek’s former staff have confirmed there was no “green light” for Mr. Domi.

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**Finally, to be clear, Mr. Jakobek never met Mr. Domi in a parking garage or anywhere else to receive any money from him. Mr. Jakobek never ever on or around November 1, 1999 or any other time received funds from Dash Domi and/or MFP, either directly or indirectly, in relation to the City of Toronto leasing transaction or anything else.** As best he could Mr. Jakobek explained where he was on Nov. 1<sup>st</sup>, 1999. That he could not do so with certainty is hardly surprising. But again **phone records and other information at the inquiry indicate and support the probability Tom Jakobek was not even at City Hall as we were led to believe.**

Anyone reading this Inquiry’s terms of reference would surely be astonished to learn how much time was spent inquiring into a trip to Disneyland, the banking practices of Mr. Jakobek and his family, and American Express bill payments. **Without a shred of evidence to connect the events at all, Inquiry counsel decided that Mr. Jakobek’s credit card payment had something to do with Mr. Domi’s receipt of his commission.** Instead of such nefarious suspicions being investigated privately by the police as is the practice in our society to avoid the inevitable unfairness, it was investigated most publicly and most unfairly and not at all dispassionately without any consideration for the Jakobek family.

As the evidence showed, **Mr. Jakobek’s family trip to Disneyworld was the fourth one, the other three taking place long before Dash Domi or MFP ever had any**

**connection or contact with Tom Jakobek. The evidence showed that the fourth trip was planned early that year, before Tom Jakobek ever met Dash Domi and had absolutely nothing to do with this Inquiry. The investigation into the payment of his American Express card in connection with the trip was an unwarranted invasion of this family's privacy.** What relevance does a cheque in 1989 from Mr. Jakobek's grandmother to him have with a computer lease in 1999? In the result it revealed absolutely nothing of any relevance for the Inquiry. **Mr. Jakobek always made it very clear he had no recollection of the American Express deposit consisting of four items. He never ever said otherwise. He surmised and believed the funds came from his father-in-law. He made it clear that was his best surmise. Having forgotten his mother's involvement in the matter, it would be unsurprising that he believed his father-in-law was the source. He made it clear if he could see the documents involved it would refresh his memory. Mr. Jakobek signed consents immediately to get any available documents for those four items.** If this episode proves anything it proves why the justice system - both civil and criminal - demands full disclosure: because people do forget. As a result a person can honestly believe something, only to be contradicted by hidden documents subsequently flourished by the opponent. Thus would the honest but forgetful witness be most unfairly portrayed as dishonest. Inquiry counsel never disclosed to Mr. Jakobek the documents they obtained but kept them hidden for months knowing that Mr. Jakobek was expecting to see whatever documents were obtained from American Express to see whether they would refresh his memory. **Nor did they correct, as soon as they had the documents, the unfair and sinister allegation that the four items represented "four separate payments,"** as if Mr. Jakobek or someone on his behalf had traveled the city making payments at four different places to avoid the Money Laundering regulations which Inquiry counsel referenced publicly before the Inquiry without a shred of evidence to warrant their reference or a shred of evidence to justify wafting that innuendo towards the press gallery.

**The evidence proved that Mr. Jakobek never had control of or influenced, for an improper purpose, bank accounts in the names of Maria Michie, Ursula Jakobek and/or Tom Z. Jakobek.**

The accountant's "opinion" to that effect based on their examination of the two months of bank records is not "expert evidence" but simply advocacy evidence. How is that accounting "expertise"? What principles apply to "control" of a bank account by a person who is not a signatory and has no legal status in relation to the bank account? How can an opinion of "control" be put forth with absolutely no knowledge of the character and circumstances of the account holder? To the extent that this phraseology is simply meant to summarize that Mr. Tom Jakobek received certain proceeds from the accounts, it is nothing more than a self-evident factual description involving no expertise but couched in misleading language. To the extent that it actually purports to be a conclusion that Mr. Tom Jakobek was secretly behind the scenes directing events in the accounts, how in the world is that an application of accounting expertise!

**The simple fact is that Mr. Jakobek had forgotten the details of what was to him a routine, ordinary event in the family history. Nothing in all this evidence has the slightest thing to do with the subject matter of this Inquiry.** The evidence discloses nothing other than a frugal European family who accumulated their assets, including cash kept at home, exactly as they said. To the extent that there were inconsistencies amongst the witnesses and the fact that Mr. Joe Jakobek's "accounting" of his debt to his brother Tom amateurishly failed to meet professional accounting standards are in fact the hallmarks of credibility. Had the witnesses been fabricating as was so shamefully claimed by cross-examining counsel, there would have been no discrepancies. Had the account of the debt to Mr. Jakobek been a fabrication, nothing would have been simpler than for Joe Jakobek to have attended with neatly printed ledger sheets! The note on scrap paper is exactly the kind of thing that happens in the real world but would never happen in a fabrication. As was once said about the difference between reality and fiction, fiction has to stick to what is probable.

**The incontrovertible fact is that the Jakobek family's homesteads, and funds, transfers and money dealings all pre-date Mr. Domi's receiving or taking out his commission. They have nothing to do with the subject-matter of this Inquiry.**

**This Inquiry is respectfully urged to accept Mr. Jakobek's unreserved apology and regret for denying publicly that he was on the flight to Philadelphia. But in all other respects this Inquiry is urged in the strongest terms to restore to him his well-deserved reputation for being a dedicated public servant to the citizens of the City of Toronto and to make clear that Mr. Jakobek had absolutely nothing to do with any errors, matters for criticism, or malfeasance by staff if any, that may be found in the matters into which this Inquiry is looking.**

All of which is respectfully submitted,

December 5<sup>th</sup>, 2004

Alan D. Gold

Counsel on behalf of Mr. Jakobek