

**IN THE MATTER OF THE TORONTO EXTERNAL CONTRACTS INQUIRY:
BEACON AND REMARKABLE**

SUBMISSIONS OF WANDA LICZYK

Introduction and Perspective

1. The City of Toronto has a fully functioning efficient tax system. No one has suggested otherwise. There has been no evidence that the actual cost of TMACS was excessive or unwarranted. In fact, any evidence about waste and squandered money related to other failed tax systems like the former Toronto's Banner system which appears to have been an utter financial disaster and the curiously ineffective and unproductive five (5) years of development of the Tax Manager 2000 system.

2. Three people essentially built TMACS for and on behalf of the City of Toronto. These same three individuals also built a water taxation system for and on behalf of the City of Toronto. Again, there has been no question that the City of Toronto has not been provided with excellent, efficient tax and water billing systems or that the City of Toronto did not receive good value for its money with the development of those systems.

3. This phase of the Inquiry was never about whether the City of Toronto got fleeced by its consultants, Beacon and Remarkable. This phase of the inquiry was always about publicly humiliating Wanda Liczyk and attacking her character. There is a certain blood sport associated with most public inquiries, and this one is no different.

4. In 1998 Ms Liczyk found herself front and center in the Toronto Star as a rising star of municipal public administration. Ms Liczyk was a high profile, well paid young woman. Ms Liczyk was also closely associated with Mayor Lastman and the North York guard. She has also made a few political enemies herself along the way. No longer an employee of the City of Toronto when this inquiry was called, she made an excellent target.

5. Ms Liczyk had a brief relationship with a North York consultant in 1989 when she was twenty-eight (28) years old. If she were a man, this would not make much of a story. However, as a woman and a woman in authority, it titillates and gives cause for great sport. Unlike a man, a woman is apparently fettered by her emotions, whatever they might be. She is no longer capable of making objective, rational decisions in the best interest of her employer.

6. Barely any notice is taken of the friendships which were forged with Mr. Saunders by others in North York. Their objectivity is not questioned. Not so with Ms Liczyk because she had relations with Saunders 15 years ago and somehow that makes her emotionally incapable of performing her job. This theory is arcane, provincial, patriarchal and should be offensive to all women.

7. The issue of the Saunders relationship formed the backdrop for many witnesses' recollections of what they believed may have happened almost 10 years ago. It is like a light bulb went off in their heads, with some encouragement: Oh, that's why Toronto switched tax systems to TMACS. Giuliana Carbone's epiphany at paragraph 74 of her affidavit, in which she realizes that she may have unwittingly become Ms Liczyk's pawn, was truly inspired by some higher being. It is pure fiction.

8. What is the alternative? This is simply an inquiry about two tax systems and an administrative decision by a group of people who believed one was better than the other. Hardly enough to keep the media's attention.

9. The entire issue of how and why TMACS was selected as the City of Toronto's tax billing system was raised with City Auditor and Chief Administrative Officer in 1999, three years before Toronto City Council deemed it necessary to conduct a public inquiry into the issue.

In September 1999, NOW magazine, in its not so subtle manner, inquired into the “close working relationship” between Ms Liczyk and Mr. Saunders. A review of the matter was conducted by the City Auditor and he satisfied himself that there was nothing untoward or inappropriate about the City’s selection of TMACS and the City’s water billing system WMACS. However, three years later, it is now seen as appropriate to play the issue out in a public forum.

10. Ultimately, in any undertaking of this magnitude and expense individuals have to be seen to be accountable and publicly censured, otherwise those individuals calling for the public inquiry were unjustified in doing so. This Inquiry for the City of Toronto becomes not so much about the facts in their proper context but more about finding a public justification for calling the Inquiry in the first place. Naturally, when one calls for an expensive public inquiry, one also must insist upon getting entertainment value for one’s money.

11. This is a very dangerous and political game. Ultimately, the real losers are the City of Toronto employees who now have to fear that they also may become politically expedient fodder, and, of course, Ms Liczyk whose character and professional integrity have been severely compromised because she had a brief relationship with a consultant in 1989 when she was twenty-eight (28) years old.

The Development of TMACS

12. The commencement of this story pre-dates any involvement of Wanda Liczyk (“Liczyk”). Liczyk began working with the City of North York in June of 1985. Liczyk commenced her employment in a relatively junior position where she worked as a Budget

Analyst. Liczyk continued to work as a Budget Analyst until 1987, during which period she reported directly to Al Shultz.

13. In 1984, prior to Liczyk's employment, the Finance Department was reviewing all of its technology systems. As a result of this evaluation, it was determined that the existing systems were no longer fulfilling the City's requirements and significant upgrades were necessary.

14. The first major system to be upgraded was the general ledger system. In order to identify what the City required from an upgraded system, particularly from a business standpoint, a consultative process was initiated whereby members of the Finance Department consulted and met with members of other departments. As Liczyk has testified, this 'team approach' was typical of the manner in which the City of North York administration functioned throughout her tenure at the City. The administration was sufficiently small so as to enable its members to meet frequently to discuss relevant issues. The 'team approach' was inherent at the City of North York and was how they operated on a day to day basis. It was not like the mega City bureaucracy. (Liczyk Affidavit, p. 6, para. 22) (Shultz Transcript, p. 248, lines 5-25, p. 249, lines 1-25, p. 250, lines 1-5)

15. The business requirements identified during this consultative process formed the basis for an RFP. The successful proponent of this RFP was American Management Systems (AMS), a company that operated out of Arlington, Virginia.

16. In 1984, the City of North York entered into a written contract with AMS. The terms of this contract were negotiated and finalized prior to Liczyk commencing her employment in North York. There is no evidence that North York City Council did not approve the AMS agreement and all its commercial terms, including fees and expenses.

17. When Liczyk joined the City in June 1985, she became part of the team that was implementing the LGFS system. The City of North York went “live” with LGFS in January 1986.

18. In May 1986, Shultz requested that an experienced Project Manager be sent by AMS to assist in resolving some outstanding programming issues. In response to Shultz’s request, Michael Saunders, a Certified Public Accountant (“CPA”) and a former Finance Director in several large American cities, attended at the City of North York.

19. Upon his arrival at North York in mid-1986, Saunders regularly worked with City staff to successfully resolve the various implementation issues. Shultz and Edwin Ngan, both of whom worked very closely with Saunders over the years, describe Saunders as very hard working, with a terrific track record of success. As a project manager he delivered the results that were expected. (Ngan Transcript, October 27, 2004 p. 204 and 207; Shultz Transcript, November 2, 2004, p. 253)

20. In 1989, Shultz and Liczyk divided the reporting of the various Finance divisions between them. They worked together effectively as a team meeting daily in respect of all matters relating to the operation of the Finance Department. As Shultz has testified before this Inquiry, he and Liczyk worked very closely together and had “reciprocal level[s] of trust for each other’s opinions”. (Shultz Transcript, November 2, 2004 p. 247, lines 9-12, p. 248, lines 5-8, p. 253, lines 14-18) Liczyk and Shultz also met with Robert Davie in their ongoing management of the Finance Department. (Shultz Transcript, November 2, 2004 p. 253, line 3-6)

21. In 1990, Saunders left AMS to form an independent contracting company known as Saunders & Associates. In addition to the work he was doing at other client sites in North

America, Saunders advised Shultz and Liczyk that he could continue to work directly for North York on the procurement module that North York had recently purchased from AMS. Saunders proposed to perform the implementation and modification assignments, which would in the ordinary course have been performed by AMS, at rates that were 20% less than those of AMS. All other terms of the retainer stayed the same. This was a great deal for North York as it got the same services for less money.

22. In 1990, the next financial system considered for upgrade was the tax billing and collection system. As was the process during the initial upgrade of the general ledger system, preliminary business requirements were identified through a consultative process and the City of North York team, consisting of Shultz, Liczyk, Brunning, and Frank Vizzacchero began the search for a system which would address the City's tax billing needs. Brunning consulted with large Canadian and American municipalities for the purpose of determining what tax billing systems were available and which had proven to be functional and successful given the needs of a large municipality.

23. In 1991, David Maxson of AMS attended at the City of North York as part of a team assembled for the purpose of demonstrating the AMS tax system called OASYS (TEC007498). Following Mr. Maxson's demonstration, it was the collective view of the 'tax team' that AMS proposed a very American-based tax solution which was not acceptable for a Canadian city without extensive modification (not unlike the American Banner System which never properly functioned for the former City of Toronto).

24. After determining that there were no tax packages available that would directly meet North York's needs, the 'tax team' went on to consider external partnership arrangements. At

the time, many of the companies which created database and programming tools, like Oracle, had “package” solutions available. While the City of North York entered into extensive discussions and negotiations with a company called Software AG, an agreement could not be reached on the appropriate approach for developing a ‘package’.

25. The team next considered building a new tax billing and collection system using the City’s in-house IT resources. Davie, Shultz, Brunning and Liczyk all recognized however that while the in-house staff, and specifically Vizzacchero, were capable of developing smaller and simpler system designs, they would face significant and potentially insurmountable challenges in handling the size and scope of creating a brand new tax billing system.

26. The team also considered engaging a company to design and write a tax billing system solution for the City. At this time however, there were several reported instances of failure of this type of approach and further instances of this type of contract costing millions of dollars and resulting in unfinished systems which often resulted in litigation. As such, the team discarded this approach. (Liczyk Affidavit, para. 41)

27. In late 1991, Saunders & Associates submitted a proposal to Davie, the then Commissioner of Finance and Treasurer, to provide project management and technical assistance in the development of a “made to measure” North York tax billing system. Saunders & Associates proposed to have David Maxson provide the technical assistance for this tax billing system. The proposal consisted of a phased approach subject to review and approval after each phase.

28. Upon the receipt of the proposal, Davie, Liczyk and Shultz met to review and discuss: 1) the approach that was proposed, that is, the phased, ‘no obligation’ approach; and 2) the use of

Saunders and Maxson. Davie enthusiastically approved both the approach and the use of Saunders and Maxson particularly because of the significant record of success that Saunders had achieved in North York. As a result, Davie approved the proposal as a sole source of procurement in the fall of 1991.

29. That decision was Davie's call as the most senior person in the Finance Department. Funds were available in the Council approved capital budget for the project and there is no evidence to suggest that further City Council approval was required to develop a computer system in house. The only thing that was required from City Council was budget approval for the required operating or capital funds. (Liczyk Affidavit, p. 13, para. 45)

30. Saunders was the project manager and Maxson was the systems analyst. Edwin Ngan was the programmer. During this time, Saunders and Maxson continued to charge rates which were 20% less than those charged by AMS. Liczyk did not, nor was she responsible for negotiating rates for any of the consultants.

31. In 1992, Saunders, Maxson and Ngan began developing the tax system for the City of North York, which system was known as the Tax Management and Collection System ("TMACS"). Saunders as Project Manager had overall responsibility for delivering the milestones outlined in the proposals by working with both IT and business unit users. Regardless of whether he was an independent contractor, "contracted employee" or actual employee, in law, Saunders was responsible for the Project and was assigned resources within North York which he could direct to complete the Project.

32. Brunning led the business unit team and worked closely with Saunders and his team during the development phase to ensure that business process redesign in her division was

incorporated into the new tax system. Brunning testified that she got along with Saunders and that they “had a very good relationship and developed a great product”. (Brunning Transcript, November 3, 2004, p. 102)

33. Internal staff from the City of North York IT Division also became involved in the project, such as the database administrator and staff in operations. If the project required resources, such as programmers outside the core team of Saunders, Maxson and Ngan, these resources were to be made available to them, as required. As the project manager, Saunders had responsibility to execute the project plan containing milestones, timelines and resources including direction over the City of North York staff that were assigned to work on the tax system project.

34. In 1993, the first version of TMACS was successfully installed and functioning in the former City of North York. (TECI07498) There is no suggestion in any of the evidence that anyone in the North York City Council had any criticisms or concerns about the cost, timing, process, efficiency or efficacy of the TMACS system.

35. From 1994 to 1996, Saunders & Associates proposed additional modules be developed such as collections and appeal processing. Proposals were developed by Saunders & Associates following discussions with Brunning and others regarding business needs. Brunning, Liczyk and Shultz, as an operational team, continued to discuss the types of projects that would add value to the Finance Department. These projects were budgeted for and undertaken if they represented good business decisions. Again there is absolutely no evidence that the City of North York did not receive good value for its money or that these services were in any manner a boondoggle for Saunders and Maxson.

36. In 1995, the City of North York engaged Coopers & Lybrand to review the operation of the IT division particularly with respect to future hardware platforms and future programming development and database tools. Coopers & Lybrand recommended the adoption of Powerbuilder/Oracle tools to replace Adabas/Natural tools. The recommendation was ultimately approved. Saunders & Associates (then operating as Beacon Software) were requested to rewrite several small applications as pilot projects using the new platform. These pilots were successful. (Liczyk Affidavit, para. 62)

37. In 1996, the Province announced that in 1998 it would be updating the entire Provincial assessment base under a system called Current Value Assessment (CVA). Also in 1996, Beacon Software made a proposal to undertake a pilot of the new technologies with TMACS to improve the strength of the programming platform. This proposal was discussed by Shultz, Liczyk and Brunning and it was agreed that it made sense. (Liczyk Affidavit, para. 63) Funds were approved in the North York City Council capital budget and it went ahead.

38. In 1997, a subsequent proposal incorporated modifications to TMACS necessary for supplementary and grant billing to be completed and system ready for the January 1998 interim billing and to allow for the potential implementation of CVA. Funds were approved for the implementation of this project in the North York City Council operating budget. After consulting with Brunning, Liczyk approved this proposal. (Liczyk Affidavit, para. 64)

39. As is evident from the foregoing review of the technology systems upgrades undertaken at the former City of North York between 1984 and 1997, the process was an evolving one.

40. TMACS evolved out of the original AMS agreement. Liczyk was merely one member of a team that oversaw the system upgrade process and the eventual development of TMACS.

While Liczyk was a critical member of that team she did not act unilaterally in decisions regarding the ultimate development of TMACS. In fact, as Shultz and Brunning have testified, Shultz, Brunning, Ngan, Saunders and the other members of the team “worked together on the TMACS project” and the decisions made regarding the necessity and validity of business cases and while working as a team, “freely communicated ideas about the development of [the] project.” (Shultz Transcript, November 2, 2004, p. 250, lines 19-23) (Brunning Transcript, November 3, 2004, p. 78 - 82)

41. Liczyk’s evidence, which it is submitted ought to be believed, is that she at all times acted in the best interest of the City of North York (and subsequently the City of Toronto) and her involvement with any decision involving the development of TMACS was motivated solely by a desire to advance the interests of the City.

The Selection Process for Tax Manager 2000 was Flawed

42. In December 1996, the amalgamation of the seven municipalities (Etobicoke, North York, Scarborough, Toronto, York, the Borough of East York, and the Municipality of Metropolitan Toronto) was announced by the Province of Ontario. This news was not welcomed by the residents of North York or the staff and elected officials of the City.

43. North York had, up until this time, enjoyed the reputation of being an extremely well run municipality that provided high quality services with low tax rates. The concern shared among many was that amalgamation would put a quick end to the benefits historically enjoyed by the residents of North York. (TECO07498 and COTI40578).

44. In January and February 1997, North York City Council launched a referendum campaign in attempt to set aside the proposed amalgamation. As a result of this campaign, North York City Council gave instructions to its staff not to participate in any amalgamation activities with the other municipalities. (Liczyk Affidavit, para. 66) (Sutherland Transcript, October 20, 2004, p. 27-29)

45. In February 1997, the City of Scarborough's IT Director, Graham Kemp, invited the IT directors of the other municipalities to a review of tax billing systems. Pursuant to the direction of its City Council, North York was not permitted to participate in this review. (Liczyk Affidavit, para. 67)

46. Scarborough had been working on its own tax system since 1993 and had accumulated copious volumes of documentation regarding how to develop a tax system. Scarborough and Mississauga had been working together on the project and were quite confident in the strides they had made, without actually having a functioning tax system. In early 1997, Hamilton backed out of the project which left Scarborough in difficulty over the continued funding of the project and in need of other partners.

47. Without any involvement of North York, both Etobicoke and Toronto negotiated their participation into the Tax Manager 2000 project by April/May 1997. (Barrett Transcript, October 28, 2004 p. 296-297) The three largest municipalities, other than North York, had signed on to become part of the Tax Manager project before any real evaluation of the North York system could take place. By the beginning of June, 1997 both Toronto and Etobicoke City Councils had approved the project and funds were committed by the gang of three. The decision by those municipalities to proceed with Tax Manager 2000 was, *de facto*, a decision about the tax system

for the future amalgamated Toronto because it was recognized that Tax Manager would only be ready for the 1998 final billing in the new amalgamated City of Toronto.

48. The decision was ultimately made by these municipalities that TMACS was not an appropriate system for the amalgamated City of Toronto notwithstanding the limited analysis of TMACS and the complete absence of input from North York.

49. At the 'kick-off' meeting of the Chief Administrative Officers and the Treasurers, with the Financial Advisory Board (FAB) on May 15, 1997, various issues were discussed. The issue of progress on implementing new systems, and in particular the tax system, was discussed at this meeting. Liczyk expressed her concerns in respect of the actions taken by the former Etobicoke and Toronto in 'signing on' to the Scarborough/Mississauga development project for Tax Manager 2000. (Liczyk Affidavit, para. 75)

50. In May 1997, Shultz and Liczyk spoke with Brenda Glover, the lead Treasurer of the tax project and asked that North York be allowed to participate in a tax system selection process. In response to that request, Glover agreed to authorize an evaluation of the two tax systems, Tax Manager 2000 and TMACS. (Glover Affidavit, para. 14) The evaluation was to be conducted by a team of tax directors and a technical IT team. The expected completion date of the assessment was June 1997. (TEC013565) In addition, the Treasurers decided to retain Deloitte & Touche to assist in making a recommendation if the assessment team was unable to reach consensus in respect of the most suitable system. (TEC000583)

51. In the midst of completing the Deloitte & Touche evaluation of the two systems, Liczyk was advised by Shultz that both the former City Councils of Etobicoke and Toronto were in

possession of staff reports recommending a commitment to the Tax Manager 2000 development project. (Liczyk Affidavit, para. 77)

52. In sharing her opinion of the selection process with Liczyk, Brunning advised that in her view, the fairest way to conduct the review of the tax systems was to develop new City business requirements through a consultative process involving all six municipalities. Upon Brunning's return from one of the Tax User meetings, she advised Liczyk that Deloitte & Touche had also suggested that the evaluators start anew and devise common business requirements for the City of Toronto. The evaluation committee did not adopt this suggestion because it did not conform to what they had already done for Tax Manager and the direction they were taking. (Liczyk Affidavit, para. 78) (Brunning Affidavit, para. 40)

53. At the end of the evaluation process a vote was conducted. Calvin Barrett, the user from Metro, voted in the selection process notwithstanding the fact that he had not viewed the demonstration of the tax systems. Without his vote, it would have been a 3 – 3 vote from the Tax User group. Brunning was concerned about the integrity of this vote and communicated her concerns to the Treasurers on July 8, 1997. (TEC013573) (Brunning Affidavit, para. 46) The users from York and East York, the only municipalities without any ties to either system, voted in favour of TMACS. Brunning and Shultz were of the view that that their vote signalled that, in a fair and objective evaluation process, TMACS would have been a good choice for the City of Toronto, which of course was their personal opinion as well. (Shultz Affidavit, para. 24, 25)

54. Liczyk did not improperly interfere in the June 1997 evaluation of the Tax Manager 2000 and TMACS systems. At all times, Liczyk was an advocate for an open and thorough evaluation process. It was Liczyk's responsibility to make sure that, based on the systems selection and

implementation experience that she brought to the group, that a legitimate recommendation resulted from a proper process.

55. Through the period of the rushed Deloitte process, Brunning requested that Liczyk review the business user requirements list that she had put together which, while based on what TMACS was providing in functionality, was also an attempt to consider what the new Mega city requirements would be. The document was provided to the business user group for use in evaluating Tax Manager and TMACS. North York systems documentation was also provided to the technical group. (Brunning Transcript, November 3, 2004, p. 193) (DeSousa Transcript, October 27, 2004, p. 246)

56. Liczyk did not instruct any of Shultz, Brunning or Vizzacchero on how to vote at their respective team meetings. Each of the individuals brought different perspectives on the evaluation process based on their expertise. There was no coercion on the part of Liczyk to get these staff to vote for TMACS over Tax Manager. The staff voted as they wished.

57. Shultz attended the Treasurer's meeting following the evaluation process. As Shultz has testified, although he voiced his reasons for supporting TMACS as the choice for the new City at this meeting, it appeared to him that his opinion was not seriously considered by the other Treasurers. The vote was 6 to 1 in favour of Tax Manager 2000.

58. Deloitte & Touche refused to provide a recommendation to the Treasurers without further funding, which the treasurers collectively were not prepared to do.

59. On July 15, 1997, the Treasurers team presented their recommendation to select the Tax Manager 2000 system to Paul Sutherland, a member of the Transition Team, noting that one

former municipality dissented, that being the City of North York. (TEC013001, TEC007498, TEC002394, TEC002270) Liczyk was in attendance at this meeting. Following Glover's briefing in respect of the Treasurer's recommendation, Liczyk advised Sutherland and the Treasurers in attendance that, notwithstanding the selection decision, North York intended to complete the development of TMACS. Liczyk advised that the decision to do so was based on North York's view that Tax Manager 2000 contained an unacceptable level of risk to the new City of Toronto because there was no functioning system in place and the project team had no past history with this type of system development (despite the specific assurances by those involved that Tax Manager would be functional by the end of December 1997 which of course it was not). At that time, Sutherland had requested and had been provided with specific assurances by the other treasurers that Tax Manager would be ready in six months. (Sutherland Transcript, October 20, 2004 p. 66)

60. The North York position on continuing the next development of TMACS was further founded on the view that certain functionality was necessary for North York to undertake its supplementary and 1998 interim billing which it was required to do. (Liczyk Affidavit, para. 87)

61. On July 16, 1997, Shultz, Brunning, Vizzacchero and Liczyk prepared a "draft" memo setting out North York's dissenting opinion, addressed to "CAO's, Treasurers, M. Gee, P. Sutherland, L. Griffen" (TEC000133). The memo documented the fact that Shultz, Brunning, Vizzacchero and Liczyk were of the view that the decision to select Tax Manager 2000 bore an unacceptable level of risk to the new City. The memo was never sent to the intended recipients as the authors of the memo ultimately decided that the decision had been made and the memo would not, in and of itself, convince the recipients to reconsider TMACS. The memo was

ultimately converted to a “memo to file”. (Liczyk Affidavit, para. 89) (Brunning Affidavit, para. 47)

62. In the memorandum to file, the authors confirmed their belief that a proper selection process had not been followed. The authors’ opinion was that there should have been a key document listing common business requirements for the New City, similar to that which had been prepared for the general ledger system. The process of identifying business requirements should have been undertaken in order to identify a common set of business processes for all municipalities. This was never done because the process was already co-opted by the Tax Manager group and the decision had already been made before a proper and complete analysis could be performed.

63. The operation of the Transition Team in May 1997 is also a significant contributing factor to the sequence of events surrounding the tax system selection process. Staff of each of the former municipalities were well versed in the normal practices and procedures that were followed by their respective Councils when following an approval process. Clear lines existed for what was ‘administrative’ and could be handled by staff and that which required ‘political’ approval by Councils. From the outset of the existence of the Transition Team, its’ rules of operation for municipal staff were not clear. It was in fact at all times unclear if and how the Transition Team made decisions and how any such decisions coordinated with the operation of municipal councils and their staff.

64. The Transition Team met in private and presented no minutes from their meetings. Many witnesses at this inquiry, when asked about the validity and enforceability of the decisions made by a single member of the Transition Team, were unclear. This was due in large part to the fact

that the 'decisions' made by the Transition Team, that is, the hiring of the first five staff, and their report to Toronto City Council in January 1998 were merely recommendations that required specific approval from Council.

65. The issue concerning the Treasurers' recommendation for Tax Manager 2000 to a single member of the Transition Team, Paul Sutherland, is a glaring example of the confusion in relation to the decision making process and authority of the Transition Team. In his evidence, Sutherland candidly admits that there was "confusion with respect to lines of authority during the period between FAB, the Transition Team and ongoing operational structures of the individual municipalities". (Sutherland Transcript, October 20, 2004, p. 98, lines 12-16)

66. Sutherland testified that Transition Team members exercised their discretion in situations where a more formal decision making process was required. (Sutherland Transcript, October 20, 2004, p. 88-89) It is not at all clear how this discretion was authorized.

67. Confusion in respect of the decision making ability of the Transition Team is evident from the evidence of a number of witnesses: Shultz was of the view that there were mixed messages being sent (Shultz Transcript, November 2, 2004, p. 105, lines 11-22); Brunning said, "I don't know what authority the Transition Team had, whether it was binding or not...I don't know whether system choices needed to be confirmed or not and whether that was the final decision." (Brunning Transcript, November 3, p. 236, line 1-7)

68. No other 'administrative' system of any other City department was brought forward by staff for Transition Team approval. (Sutherland Transcript, October 20, 2004, pgs. 105, 106) The recommendation of the Treasurers was not embodied in any report to City Council. No report was tabled at any meeting of the Transition Team. No minutes exist from any meeting. In

his evidence, Sutherland could not “remember a formal motion at the main team level”. (Sutherland Transcript, October 20, 2004, p. 68, line 17-18) There is no evidence that the Transition Team actually voted upon, formally or informally, and accepted the Treasurers’ recommendation. The only evidence is that Sutherland endorsed the decision. What weight or authority that has is unknown.

69. The *City of Toronto Act*, 1997 permitted projects that were funded and approved by the former municipal councils in their normal budget to continue. Complicating the ‘legitimacy’ of the Transition Team decision making process, was the conflict with the continued legitimate operation of the seven municipal councils. Tax Manager 2000 had been approved by the Councils of the former Scarborough, Toronto and Etobicoke in 1997. TMACS had been approved for funding by the Council of the former City of North York. Staff, when faced with the conflicting decision making, rightly continued to operate with their municipal councils approvals which were made in a public forum under the clear direction of their respective Councils.

70. As amalgamation began, each city department and division brought six or seven of their operating systems – systems that had either been developed internally or purchased externally. The operating ‘norm’ at the City was that if a department wished to select one of these already ‘owned’ systems, it simply implemented it without requesting or requiring City Council approval, subject to budget approval for any funding requirements. The selection of Tax Manager 2000 or TMACS squarely fit into this norm and did not require City Council approval. Carbone testified that it did not seem unusual to not report on specific system selections. She further stated: “like so, going into this in 1998, I wouldn’t have automatically assumed which system would have to go to Council...because that wasn’t the environment and how it would

have operated in North York....we developed a lot of systems...not necessarily saying it was going to be this system versus that system”.

71. At most, the evidence is that Sutherland endorsed the Treasurers’ decision to proceed with Tax Manager 2000. That endorsement had no real binding authority because it was not a direction of the Transition Team, nor was it approved by new City of Toronto Council. Notwithstanding, the Treasurers proceeded with the development of Tax Manager 2000 because that is what they had resolved to do. North York also continued with the development of TMACS as it was entitled to do. When Liczyk was appointed as the CFO and Treasurer she continued with the development of both Tax Manager and TMACS. There is no evidence that as of January 1, 1998 the selection of any ongoing administrative or finance system was a decision that only City Council could make or that the Treasurer was somehow bound in her future decisions regarding which systems would ultimately be utilized by the City of Toronto.

The Back-Up System

72. On January 22, 1998, DeSousa, after attending at the TMACS demonstration in North York, recommended to Liczyk that the amalgamated City of Toronto proceed with both the Tax Manager 2000 system and TMACS to allow for a choice to be made between the two systems after they had been fully developed, tested, and implemented. (TECO10882) Liczyk agreed with this recommendation and the development and implementation of Tax Manager 2000 continued as did the development of TMACS.

73. As Brunning has testified with respect to the development of both programs, “I do not know who made the decision to continue with the development of TMACS. In my opinion, it was the right decision. North York was far along in the development of TMACS, and I did not

believe that TXM2000 would be completed on time. Continuing with TMACS was a security measure as TMACS would be a backup system in the event that TXM2000 was not ready in time. The City of Toronto needed to have the tax system completed in time to issue the 1998 final bills.” (Brunning Affidavit, para. 52)

74. Sutherland also confirmed in his evidence that Liczyk had authority to continue with the completion of the TMACS project and further confirmed that he did not have any problem with Liczyk’s decision to maintain a backup system as: “It was too important an issue to play around with frankly.” (Sutherland Transcript, October 20, 2004, p. 107, lines 16-25, p. 108, lines 1-6)

75. Carbone also admits that in the context of the uncertainty of completing Tax Manager 2000, Toronto “needed a backup” and that it was “very reasonable” to have TMACS as a backup to mitigate risk. (Carbone Transcript, November 4, 2004, p. 226 and 294)

76. Carbone further attested to this when she said. “[Wanda Liczyk] was trying to protect the City, if we hadn’t... if she hadn’t made the decision early on to keep TMACS as a backup, I don’t know what we would have done, there would have been no options...so...in a lot of ways, she protected the City. (Carbone Transcript, November 5, 2004 p. 68)

77. If the development of TMACS had not continued to ensure a fully functional backup system the outcome for the City of Toronto may have been devastating. It was Liczyk’s responsibility to ensure that there was a functioning tax system. It is all well and good for Audrey Birt or Bob Ripley to speculate that Toronto could simply have delayed its tax bills and the provincial Conservatives would have bailed Toronto out, but with respect, neither Birt nor Ripley is in any position to assist with opinions on the financial implications for Toronto of

failing to put out its tax bills. The best evidence of the importance of this issue came from Liczyk as the CFO and Treasurer of Toronto.

Problems with TAX MANAGER 2000 and the Switch to TMACS

78. The theory that the “writing was on the wall for Tax Manager 2000” because of Liczyk’s, and others’, preference for TMACS is historical revisionism advocated by the City of Toronto.

79. Upon being appointed Chief Financial Officer and Treasurer for the City of Toronto in November 1997, Liczyk could have made the immediate switch to TMACS. It was well within her authority to do so. There was no need for subterfuge. She could simply have directed that another evaluation of both systems be conducted in November or December 1997. She did not.

80. As Liczyk has testified, she did not make the immediate switch to TMACS for several reasons. A decision had been made by the former Treasurers, staff from three of the largest former municipalities were committed to Tax Manager 2000 and she assessed that the level of stress on the organization would not withstand a change at that point. (Liczyk Affidavit, para. 112)

81. Notwithstanding these observations however, Liczyk continued to be concerned about the completion schedule for Tax Manager 2000 and whether it would properly function as the generator of the City’s primary source of revenue. (Liczyk Affidavit, para. 112)

82. No one can seriously dispute that there were problems with the development of the Tax Manager 2000 project and that what was originally promised was not delivered. The ever increasing frustration expressed by Carbone, about the delays and lack of progress of Tax Manager 2000 throughout the summer and fall of 1998 was real.

83. There is no question that DeSousa, the interim project lead, expressly stated in January, 1998 that both TMACS and Tax Manager should continue to be developed and the best system selected after they had both been completed.

84. There is also no question that Bob Ripley expressly stated in October 1998 that the City of Toronto should switch its tax system to TMACS, which was a better system.

85. Not one of these people was strong enough to defend what they had expressly stated at the time. Instead, they essentially state: “Wanda made me do it”, despite all documented evidence to the contrary.

86. There is no doubt from the evidence that Liczyk, Brunning and Shultz honestly believed in and advocated for TMACS as the preferred tax system for Toronto. However, following the decision of the Treasurers to continue with the development of Tax Manager 2000 as a tax solution for the City of Toronto, Liczyk accepted the decision, notwithstanding that she believed it was the wrong decision. Following that decision, Liczyk did what she could in order to advance the project.

Project Leads

87. Liczyk assigned project leads to the Tax Manager 2000 project who would facilitate its success. Estelle Lo, as the former Treasurer from Scarborough, was the leading champion of Tax Manager. Liczyk appointed Lo immediately after a vacancy was created by the appointment of Brenda Glover as the HR Executive Director in early November 1997. There is no evidence that Liczyk interfered at all with how Lo was managing the project.

88. In April, 1998 when Estelle Lo quit her job as the interim lead on the tax project, Liczyk replaced Lo with Ed DeSousa who was a known advocate and promoter of Tax Manager 2000. DeSousa agreed that it made sense to select someone like him who was a supporter of the project to shepherd or champion the project. (DeSousa Transcript, October 26, 2004, p.249) There is no evidence to question DeSousa's competence or ability to lead the Tax Manager 2000 project to completion. There is no suggestion that DeSousa was not a reasonable choice or the right person to have acted as the interim lead.

89. On January 18, 1998 Liczyk e-mailed DeSousa and expressed her concerns about the state of the project. DeSousa agreed in his evidence that Liczyk had legitimate concerns. (DeSousa Transcript, October 26, 2004, p.252, line 6)

90. One of Liczyk's major concerns was the lack of a senior sponsor for the project and that Estelle Lo had not even seen what was done on the project until December 12, 1997 when Liczyk required that she attend at Mississauga to view the project. Liczyk asked DeSousa whether he was prepared to take a hands on approach to get the project completed. DeSousa agreed to do so.

91. On January 22, 1998 DeSousa forwarded a memorandum to Liczyk in which he specifically advised Liczyk: "I believe the risks are greater to pick one of the two systems at this time." DeSousa recommended to Liczyk that the City of Toronto go with both systems for the first phase and then to properly select a final solution for the City of Toronto. Only at that time, would they be able to compare like systems because they would have both been fully developed, tested and implemented. DeSousa agreed in his evidence that he honestly believed that this

recommendation was the best solution for the City of Toronto. (DeSousa Transcript, October 26, 2004, p. 256)

92. In March 1998, Liczyk was made aware of the Core Team decision to implement Tax Manager in six instances rather than as one consolidated system (it was not clear who actually made the decision within the “Core Team”, since there are no minutes or record of the decision). There has been testimony from various witnesses who did not think that the single instance ‘was a big deal’. What is clear is that those witnesses were not the CFO. What is not clear from the evidence is why, with the initial addition of Toronto and Etobicoke, the scope and size of the Tax Manager database (to accommodate almost 450,000 tax accounts) was not immediately worked into the design specifications and programming, which Carbone testified was ultimately a problem for the functionality of the Toronto system. It was extremely short sighted of either the Core Team or the Tax Manager Steering Committee to not have insisted that the single instance be designed and incorporated into Tax Manager at the outset. The single instance of one data base was of course not a priority for Mississauga.

93. Liczyk asked DeSousa to investigate and report back to her on this issue. DeSousa reported back that while it was preferable to advance the system as one instance, he could not recommend that it proceed at that point because it could not be accommodated in the project schedule since it required major programming changes and could set the project back in terms of delivery. (TECO10882) Liczyk accepted DeSousa’s recommendation because she wanted the programming finished by the end of March 1998.

94. Contrary to the revisionism that occurred during this hearing, Liczyk was telling the senior interim project leads that she wanted the Tax Manager project completed so that the City

could issue its tax bills on time. She also, as stated above, wanted a back-up plan in place in the event that the project team failed to deliver a tax billing system because the City of Toronto would have no means of issuing its tax bills. That was Liczyk's responsibility. There is no reason to question the legitimacy or reasonableness of Liczyk's directions.

95. By April 1998 it had become clear that the original development schedule for Tax Manager 2000 was not being met. (Brunning Affidavit, para. 59)

96. Carbone was appointed to the position of Director of Revenue Services, in April 1998 by a selection team. She is by all accounts bright and extremely competent and the City of Toronto has never suggested that she was the wrong person for the position. Liczyk briefed Carbone shortly after her start date, and again expressed her concerns about the missed milestones to date and the status of the two tax systems. (Carbone Transcript, November 4, 2004, p. 304) Carbone testified that Liczyk requested that she "...assess the situation." and that "She had concerns that we weren't going to be able to get the bill out, and her priority was to get the bill out". (Carbone Transcript, November 4, 2004, p.304) Carbone further stated: "Well, I did decide to have a demonstration, that was my way of...assessing the situation...I had to become familiar with the systems in order to assess the situation, so I could make a recommendation" (Carbone Transcript, November 4, 2004, p. 306-307) Carbone clearly testified that: "I felt the responsibility for the decision was on my shoulders...I was just trying to do my due diligence for the City" (Carbone Transcript, November 5, 2004, p. 65) Carbone asked for input from several tax staff including DeSousa. (DeSousa Transcript, October 26, 2004, p.217- 218)

97. As Shultz testified about Carbone, "I think she was very uncomfortable with the lack of progress in Tax Manager 2000, and I think she -- she felt some desire to stay with Tax Manager

2000, because it was the selected system, but the longer she got involved, the more uncomfortable she got with where it was at.” Carbone confirmed her thoughts directly with Shultz. (Shultz Transcript, November 2, 2004, p. 261, lines 3-10)

98. By May 1998, concerns regarding the scheduled completion of Tax Manager 2000 and its suitability for the City of Toronto were increasing. In particular, Carbone was concerned about Tax Manager’s ability to satisfy the business requirements of the newly amalgamated city. To facilitate moving to one database by yearend, Carbone advised that she wanted to use the TMACS system as the base platform for the new City at the end of August 1998 and incorporate the best features of both TMACS and Tax Manager 2000 into one integrated system. Carbone subsequently documented these concerns and recommendations on May 26, 1998. (TEC013069)

99. Carbone further states that she did not feel any pressure from Liczyk in making her recommendations of May 26, 1998. Those recommendations focused on ensuring that the City of Toronto ultimately owned its own system so that enhancements and modifications could be prioritized by the City of Toronto.

100. As of May 26, 1998 TMACS was recommended as the ultimate platform for the City and that they would incorporate into TMACS the best features of Tax Manager 2000. Carbone agreed that it wasn’t a question of ‘if’ TMACS would be used, but rather a question of ‘when’. (Carbone Transcript, November 5, 2004, p. 240)

101. Carbone recommended that Tax Manager 2000 continue to be used until after the 1998 main billing was completed because of a concern about the timing of issuing the 1998 tax bills. Liczyk accepted Carbone’s recommendations, which subsequently became the basis of the

decisions leading up to Carbone's determination of the 'when' to convert to a TMACS platform in October 1998.

102. TMACS, at this time, with Carbone's knowledge, was still being completed as a backup solution and as the eventual platform for the City's tax system after the issuance of the 1998 Toronto tax bills.

103. In a May 20, 1998 memorandum from Saunders to Carbone, Saunders suggests to Carbone that she allow TMACS to not just act as a backup system but to actually be used for the final billing in North York. (Carbone Transcript, November 4, 2004, p. 342) This was a rational suggestion given that during this period, Carbone was faced with continued slippage on the Tax Manager delivery from May to mid June 1998. (Carbone Transcript, November 4, 2004, p. 335-337) (Carbone Affidavit, para. 36-38) There remained a great deal of uncertainty about what would actually be delivered and when. However, Carbone continued with her original plan and North York continued to work toward a June conversion to Tax Manager. There was no pressure on her to do otherwise.

104. In mid June 1998, the Tax Manager software was delivered but as Carbone states in her affidavit, "the Tax Manager 2000 CD provided just enough functionality to put out the 1998 final bills". (Carbone Transcript, November 4, 2004, p. 199) As the time approached for conversion of North York to Tax Manager, Carbone continued to want to convert all six former municipalities to Tax Manager and then do the switch to TMACS after final billing. However, given that Carbone ultimately wanted to use TMACS as Toronto's tax system platform and that a conversion of the North York system to Tax Manager would cause North York's historical data in processing appeals to be lost, Liczyk raised with Carbone the problem of appeals processing if

North York was converted to Tax Manager and then back to TMACS. Carbone accepted Liczyk's point: "it wasn't as if her reason was unfounded...there were problems with Tax Manager 2000.....so I changed my mind based on our discussion" (Carbone Transcript, November 5, 2004, p. 21) Brunning in her testimony also agreed that it would not make sense for North York to convert to Tax Manager if conversion back to TMACS was going to occur. (Brunning Transcript, November 4, 2004, p. 153,155)

105. Throughout the summer of 1998, issues of delay continued with Tax Manager. The promised balance of Phase 1 at the end of August 1998 did not occur.

106. By the end of August 1998, the appeals module was also still not completed (and not planned to be completed until at least the end of 1998) putting the City in an untenable situation with respect to appeals processing. This was very significant to the City of Toronto because as at July 1, 1998, there were almost 28,000 outstanding appeals which had already been decided and required processing in the Revenue Division. Citizens were demanding that they be able to use their refunds to offset the higher taxes they owed because of the implementation of current value assessment. City of Toronto Councillors were very concerned about the number of outstanding appeals and that appeals were not being processed. Instructions had been given to Ms Liczyk's department to proceed as expeditiously as possible to clear up the backlog.

107. Carbone briefed Liczyk on the status of events including giving her a list of deficiencies on the Tax Manager software to date. (Carbone Affidavit, para. 59)

108. At this time, some of the auditors, such as Ben Smid, were also concerned that there had not been any testing of Tax Manager 2000 from start to finish. (TEC004527)

109. In anticipation of the eventual conversion, Beacon and Remarkable were requested by Liczyk in August 1998 to outline the cost and their ability to convert the five instances of Tax Manager to TMACS. Work outlined in the proposal included preparatory work that was required in September 1998. Carbone was aware that Beacon and Remarkable were doing this preparatory work based on a September 22, 1998 email, copied to Bob Ripley. (Carbone Transcript, November 5, 2004, p. 58)

110. Carbone did not make the decision to actually start the final conversion steps to TMACS and announce that the City of Toronto was pulling out of the Tax Manager project until October, 1998 despite having advised the Tax Manager Steering Committee that she would advise them of the City of Toronto's position with respect to the project before the end of September, 1998. Carbone states that: "... I felt she was leaving me to analyze the situation and decide what was best to do...we didn't convert (to TMACS) until I made the decision...she respected that I needed the time... and she allowed me to... discuss the issues with Bob and make the decision in October". (Carbone Transcript, November 5, 2004, p. 45)

111. In early October 1998, Carbone attended at a Tax Manager 2000 Steering Committee meeting and was advised that there was very little progress reported from the end of August 1998 on the outstanding Phase 1 items and that completion of Phase 1 functions would not be ready until the very end of 1998 at the earliest. She was also advised that accommodating the single database for the City of Toronto was not scheduled until sometime in 1999. (TEC017262)

112. On October 7, 1998, Carbone made the decision "when" to convert after assessing the various events that had occurred in the last month as well as a projection of what the possible future outcomes could be. The Carbone Affidavit, para 54-58, 63, 65 ,67, 72 outlines the issues

and the process she followed in arriving at her recommendations including discussions with Bob Ripley. Carbone requested that Ripley document his verbal comments to her in a memo. (Ripley Transcript, October 21, 2004, p. 173)

113. Ripley drafted a memo to Carbone in which he recommended converting the entire City of Toronto from Tax Manager 2000 to TMACS. In this memorandum, Ripley conveyed his frustration at the lack of full functionality and the urgent system development issues concerning customer service and efficiencies required for staffing reductions. He further confirmed that the City of Toronto's urgent system development issues were not high on the list of priorities of the Tax Manager 2000 project team and that it could take another two years of development on Tax Manager 2000 to provide the City with the efficiencies required by amalgamation. (TECI13094)

114. Ripley testified that his memo of October 7, 1998 was absolutely accurate, comprehensive in its analysis and descriptions and honest. (Ripley Transcript, October 25, 2004, p. 80) Ripley had outlined that it would take 2 more years of development on Tax Manager to get it right and that 'we'll face a catastrophe'. (Ripley Transcript, October 25, 2004, p. 142) However, in his sworn affidavit, Ripley states: "Contrary to what I wrote in the October 7, 1998 memo, I did not believe that TXM was 'a poor second choice' to TMACS". The duplicative nature of this evidence is appalling. There was no mixed message to Carbone at the time. However, Ripley now comes forward and testifies that he intentionally mislead his manager and the City of Toronto. It is submitted firstly that Ripley did in fact believe what he stated in October, 1998 and that he is recasting his evidence now to assist in his criticism of Liczyk. Alternatively, Ripley intentionally mislead Carbone at the time. Either way, Ripley's evidence is tainted and cannot be believed. What we are left with is what the memo of October 7, 1998 actually states. Based upon this memorandum and the above sequence of events, a decision was

made by Carbone to execute the switch from Tax Manager to TMACS in October, 1998, before Mississauga delivered Phase I.

Marketing

115. Liczyk consistently maintained that she did not want the marketing or partnering with other municipalities to interfere with the completion of Tax Manager 2000 for the City of Toronto. This was her priority.

116. To properly put the issue of the marketing of the Tax Manager into perspective, it is necessary to consider the status of the development of Tax Manager in early 1998.

117. On January 13, 1998, a demonstration of the Tax Manager software was done for all the former tax directors. Roxanne Marblestein, former tax manager in East York, attended this demonstration and identified a list of deficiencies. (Ripley Transcript, October 25, 2004, p.66) On January 20, 1998, Liczyk requested each of the former tax directors or senior staff involved on the project to provide her with their views of the system and whether they were satisfied with the progress and commitment to the project. Only Ripley, on the core Tax Manager team, responded with a positive outlook and commitment to Tax Manager and a willingness to take responsibility for the project. (Ripley Transcript, October 25, 2004, p. 66-70)

118. Ripley agreed that there was nothing unusual or unreasonable about Liczyk requesting them to take responsibility for the project. However, if something did go wrong and the tax program was not delivered or did not work, Liczyk would be the first in line to be accountable and take accountability.

119. During this period, the completion date for Tax Manager 2000 had already been pushed back from its original date in December 1997 to March 27, 1998. (Ripley Transcript, October 25, 2004, p. 54, 72) There were notable deficiencies in the programming and an apparent unwillingness of the majority of the project leads to step forward and confirm that the project was on track.

120. Liczyk got involved in the marketing issue at the request of Bill Adams, the chair of the Tax Manager Steering committee following the unexpected report of Deborah Barrett in January 1998 recommending the addition of three municipalities to the Tax Manager group. No one in a position of authority on the Toronto side of the partnership believed that the addition of further partners was in Toronto's interest at that time.

121. Bill Adams, the Chair of the Tax Manager Steering Committee emailed Barrett on January 19, 1998, and stated, "with the number of disruptions and distractions we experienced during the analysis stage, I am somewhat reluctant about involving any other parties at this stage". (DeSousa Transcript, October 27, 2004, p. 25) Adams further stated, "we need to have an agreement on the underlying principles and operations. I do not think sufficient thought has been given to how enhancements, releases and day to day maintenance will be handled, funded, staffed or where the work will be done". (Desousa Transcript, October 27, 2004, p. 26)

122. Estelle Lo, as the Treasurer Sponsor, on February 3, 1998 stated, "...I do not recommend accepting additional partners at this time". (Desousa Transcript, October 27, 2004, p. 27)

123. Adams confirmed to Liczyk in an email that the Tax Manager Steering Committee had not approved the addition of any new partners or any software sales arrangements. (Desousa Transcript, October 27, 2004, p. 27)

124. DeSousa also agreed that the addition of new parties would cause increased risk to the Tax Manager project. He testified, “we felt from the City of Toronto, we didn’t need this unknown factor coming in...it represented some risk in the system fully developed for our needs...”. (DeSousa Transcript, October 27, 2004, p. 120) And further testified, “we were more risk averse...at the time, the City of Toronto being almost in panic mode to get the system developed, felt that it was something that didn’t need to happen at that point in time.” (DeSousa Transcript, October 27, 2004, p. 147) He also testified that Liczyk “wanted to make sure that this was a City of Toronto/Mississauga system and there was nothing else that was going to jeopardize the system” (DeSousa Transcript, October 27, 2004, p. 146)

125. DeSousa ultimately agreed that people, including Barrett, were acting without authority by entering into agreements with other municipalities and that it may have jeopardized the project. (Desousa Transcript, October 27, 2004, p.38) Barrett and others were acting unilaterally, without authority and in direct contravention of the direction of the City of Toronto.

126. On February 3, 1998, Liczyk confirmed in writing that she did not want the marketing of Tax Manager 2000 or anything else to interfere or jeopardize with the completion of the project for March 31, 1998, the expected completion date. DeSousa agreed in his evidence that he had discussions with Liczyk where she indicated the same to him.

127. This evidence is consistent with Liczyk’s direction to Saunders in relation to marketing TMACS with Brampton when it came to her attention. It was Liczyk’s evidence that she did not want any marketing or licensing arrangement with the City of Brampton interfering with the work that she wanted accomplished on TMACS in the City of North York in 1997. Ms Liczyk wanted her priorities addressed first and that included completing both Tax Manager 2000 and

TMACS on schedule. No further marketing activities were undertaken by Saunders. Liczyk had no other discussions or involvement with any arrangement with Brampton and had not seen any agreement.

128. DeSousa agrees that contrary to what he may have thought Liczyk wanted in the past, as of February, 1998, she clearly indicated that she wanted a completed Tax Manager 2000 project. (DeSousa Transcript, October 27, 2004, p. 30) DeSousa testified that: “Ms Liczyk felt that it was in her best interest to try to save the Tax Manager system, even though the North York system was still being developed, she felt it was still important to save the system in Mississauga” (Desousa Transcript, October 27, 2004, p. 36)

129. Mississauga unilaterally released the Tax Manager software to the Brampton, Richmond Hill and Markham. (Desousa Transcript, October 27, 2004, p. 43) Desousa agreed that the City of Mississauga went out and concluded the deal without the City of Toronto”. (DeSousa Transcript, October 27, 2004, p. 44) Further, DeSousa was not aware of anyone at the City of Toronto providing their written consent to the agreements or the release of the software to third parties pursuant to paragraph 8 of the Toronto/Mississauga agreement, (TECO1111), “ Neither party shall have the right to unilaterally sell, lease, license, assign or give all or any part of the system, without the written consent of the other party”. (DeSousa Transcript, October 27, 2004, p. 45)

Staffing

130. There has been some suggestion that staff were inappropriately or unexpectedly reassigned from the Mississauga Tax Manager 2000 project team back to the City of Toronto during the summer of 1998. There is no evidence that Liczyk directed any staff from the Tax

Manager 2000 project, directly or indirectly, to return to Toronto. Nor is there any evidence that Liczyk failed to respond to a request that further staff from the City of Toronto attend at Mississauga to advance the interests of the Tax Manager 2000 project.

131. The evidence is consistent that those individuals reassigned from Mississauga to Toronto were reassigned after March 31, 1998 when the Tax Manager project was expected to be completed, and for the purpose of commencing the conversion process in the City of Toronto. DeSousa and others acknowledge in their evidence that there was a shortage of IT personnel at the City of Toronto. There were also no fewer than 10 to 12 programmers and retained consultants continuing work in Mississauga on the development of Tax Manager 2000 throughout the entire development period of Tax Manager. (Ripley Transcript, October 25, 2004, p. 218)

132. Those individuals responsible for assigning staff to various projects in the City of Toronto and to Tax Manager 2000 presumably believed that those resources were best allocated in May/June, 1998 to start the conversion process in the City of Toronto. If those individuals were not assigned to those conversion duties it would have been impossible for the actual conversion to occur in July, 1998 and to issue the 1998 tax bills. This decision does not lie at the feet of Liczyk nor can it be said that this decision was inappropriate in the circumstances given the resourcing available at the City of Toronto.

133. Furthermore, Bob Ripley was not pulled off the Tax Manager project by Liczyk, but rather, by Carbone, in June 1998 which was well over two months after the expected completion date for Tax Manager based on the requirements of the July 1997 evaluation. His departure was planned to occur at the time that the conversions to Tax Manager were occurring. (Ripley

Transcript, October 25, 2004, p. 94) Ripley testified that Carbone told him “to stop going to Mississauga” at about the end of June 1998 to take up his duties in a new job and to work on the conversions (Ripley Transcript, October 25, 2004, p. 220, 221). Ripley further stated that he did advise Carbone that it would negatively affect the project but that Carbone advised him that she needed him more on the conversions. (Ripley Transcript, October 25, 2004, p. 222) Carbone however testified that “no one raised the resources with me until ..we started to convert and Bob had to come back...the whole plan was based on the premise that we’ve developed the system and those same resources would have come back to help implement the system”. (Carbone Transcript, November 5, 2004, p. 48)

134. At no time did Carbone, or anyone, ever request further resources from Liczyk for Tax Manager 2000 nor did Carbone ever advise Liczyk that there was an impact on the project completion because of a lack of resources.

135. North York did not provide resources to the Tax Manager project team in the software development stage. Neither did York, East York or Etobicoke. However, there was never any commitment made by North York to provide any resources to the project team until the point in time that the software development was complete.

136. Furthermore, the project timelines and milestones which the Tax Manager project team had committed to during the tax system selection process in 1997 and thereafter, were based on their resources without any participation from North York. The project team already existed and the plan was in place without North York.

137. There was no evidence that there was an actual lack of resources in Mississauga, including staff and consultants. There was a project plan, an entire team of employees and

consultants and proposed schedules sufficient to meet the deadlines for properly testing and issuing tax bills in the City of Toronto in 1998 prior to any one suggesting that North York allocate resources to the project.

138. The deadlines, as set out in the Carbone affidavit, came and went because of the deficiencies of the Tax Manager project team, not because North York failed to send Cameron Currie, or anyone else, to Mississauga. North York was represented where it was required to be represented. Al Shultz confirmed that North York did what was necessary to ensure that its business needs were met on the business users side. (Shultz Transcript, November 2, 2004, p. 13) Margo Brunning attended at the Tax Manager Steering Committee meetings and the Train the Trainer sessions. Brunning was also actively involved in the conversion process up to and throughout the month of June 1998, while North York was still planning to convert to Tax Manager.

139. There was some criticism that Cameron Currie was the only individual in North York working on conversion. It was the actual evidence that each of the other municipalities only had one person working on the conversion process with the exception of Etobicoke, which may have had two people. (Ripley Transcript, October 25, 2004, p.57) North York was ready, willing and able to follow through with the conversion to Tax Manager if that had been Carbone's instruction.

Stopped Payments

140. The issue of the stopped payments to the City of Mississauga through this inquiry was the stuff of legend. Ed DeSousa, Audrey Birt, Bob Ripley and Giuliana Carbone all cite that the failure to pay Tax Manager project invoices seriously compromised the project. The actual

payment history is very clear. Invoices from the City of Mississauga received in 1997 and through to April 1998 were all paid. The next invoice received from the City of Mississauga was dated August 26, 1998 and was received by the City of Toronto accounts payable department on September 1, 1998. No payments were stopped between the commencement of Carbone's tenure as the Director of Revenue and the end of August 1998 because there was nothing to stop payment on. Those misinformed, as noted above, pointed to the non payment of invoices as a reason why the Tax Manager project was not delivering on its promised milestones. This is wrong and another excuse.

141. The August 26, 1998 invoice was not paid for a number of reasons not the least of which was non delivery of a completed phase 1 on August 31, 1998 and the continued non delivery into early October 1998.

142. The non payment of the last invoice was also appropriate because of the breach of the partnership agreement that arose from the unilateral release of the Tax Manager software to three additional municipalities without the express written consent of the City of Toronto.

143. In summary, none of the above actions could in any way be interpreted as harmful to the development of the Tax Manager system at the time. In fact, Liczyk's actions clearly demonstrate a commitment to work with the Tax Manager project team to finish and deliver a fully functional tax billing system, until May 26, 1998 when Carbone recommended that Toronto issue its 1998 bills using Tax Manager and then move to a home grown version of TMACS which it could control and use exclusively to satisfy its own priorities.

144. The model which was originally developed to facilitate a tax system for two equally sized smaller municipalities, being Mississauga and Scarborough, was not appropriate or sustainable

for Mississauga and the new mega city. These municipalities had different priorities and interests. Ultimately it became clear that if Toronto was to have a tax system on a unified database with an appeals process module and other requirements specific to the Mega city, it would have to control its own process. The interests and priorities of the City of Toronto were not acknowledged or reflected in the Mississauga action plan which was controlled by Mississauga.

145. It is respectfully submitted that there is no evidence that Liczyk by commission or omission, caused in any way the Tax Manager project to miss its deadlines or commitments, as promised, and ultimately lead to the conclusion by Carbone that it had to be replaced.

Termination of the Toronto/Mississauga Partnership

146. The actual final decision to terminate Toronto's involvement in the Tax Manager 2000 project was made in early October, 1998. On October 14, 1998, the City of Mississauga advised the City of Toronto that it would be cutting off all support to Toronto on the Tax Manager 2000 project.

147. Following receipt of this correspondence, there is no doubt that Liczyk had discussions with David O'Brien, the City Manager of Mississauga, with respect to the amicable dissolution of the project team. O'Brien does not deny that these discussions took place and that an agreement was reached at that time. It is also absolutely clear from the evidence that the legal department was retained to provide advice and direction regarding the termination of the agreement, the terms and conditions of which were set out in a draft letter from Liczyk to Bill Munden of Mississauga dated December 17, 1998 (TECO13121).

148. Mary Ellen Bench confirms in her affidavit sworn in support of this Inquiry that she was one of the lawyers supporting the Finance Department and was provided with information and “some documentation” from Giuliana Carbone regarding the termination of the agreement. It is not at all clear what documentation was provided to the legal services division or what steps the legal services division took to satisfy its obligations. Presumably, the legal services division of the City of Toronto are not simply scribes and had an obligation to protect the City of Toronto’s legal interests.

149. Bench seems somewhat critical of Liczyk about only using legal services when “absolutely necessary” and generally provided only “minimal background information”. She then goes on further to describe how she and two other lawyers in her practise group worked on finance issues and took regular direction from Giuliana Carbone and others in the Finance Department regarding finance issues. Presumably, it is not incumbent upon the CFO of the City with 800 staff and seven Directors to provide personal directions to the legal services division and, that she may properly delegate that responsibility to her Directors.

150. In her affidavit, Bench also swears that the draft February 9, 1999 letter (TECO13123) would not have been sufficient to terminate the joint project. This letter bears Bench’s initials however she denies any involvement in drafting the letter.

151. It does not appear as if the legal services division took any further action or followed up in any manner with respect to the termination of the partnership. Finally, on March 21, 2001 the City of Mississauga drafted a letter, not substantially different from the February 9, 1999 draft letter prepared by the City of Toronto, in which the City of Mississauga purported to terminate and resolve all outstanding issues with respect to the end of the Tax Manager project

(TECO50558). This letter was certainly sufficient for the City of Mississauga's purposes and was approved by their City Council.

152. Brian Loretto in his e-mail to Liczyk on October 29, 1998 (Doc. Volume VI, Tab 23) is not as certain as Bench with respect to whether Council approval was necessary to terminate the agreement as it would be dependent upon "original council authorizations for this agreement". Neither the City of Toronto Council nor the Transition Team ever formally approved of the City of Scarborough's 1994 agreement with Mississauga, as amended. Given that there were no formal Council authorizations with respect to the project in the first place, it is conceivable that the legal department and specifically Bench advised Liczyk that it was not necessary to have Council formally approve the termination of a project, which it had never formally approved. While Bench does not recall this conversation, nor does she have any incentive to remember this, there is certainly no evidence that Bench or any other representative of the legal division directed Liczyk or any of her staff to report the termination of the agreement to Council. Presumably, the legal services division in satisfying its obligations to City Council would have, if it had believed it necessary, provided guidance, instruction or direction to the Finance Department and specifically Liczyk, with respect to what Bench suggests to be proper procedure to terminate the partnership. This did not happen.

153. The agreement with the City of Mississauga was terminated without any political or legal difficulties with the City of Mississauga. The agreement was also terminated without any payment by the City of Toronto, which Liczyk negotiated and apparently Mississauga accepted as reasonable, given the incomplete and untimely project delivery, the breach of the agreement by Mississauga by selling the software to other municipalities without Toronto's approval and

the lack of commonality in respect of the future priorities and interests between the municipalities.

Administration of the Beacon and Remarkable Agreements

154. The origin of the agreements with Saunders and Maxson was the agreement that the City of North York had with AMS. Both Saunders and Maxson were consultants with AMS. The terms and conditions upon which the AMS consultants worked at the City of North York including the hourly rate, travel reimbursement, meal and other expenses were negotiated and agreed to by North York prior to Liczyk's employment at North York. Receipts for expenses were never required unless the expenses appeared to be unusual. There was no evidence that the terms of this agreement were not commercially reasonable, nor was there evidence that it was uncommon for receipts to only be requested upon demand. In fact, it is submitted that it is more common not to insist that service contractors provide copies of all of their receipts or alternatively that an amount simply be charged for disbursements as a percentage fees, as done by KPMG in their agreement with the City of Scarborough.

155. In 1990 Saunders started working directly for the City of North York, pursuant to what is typically referred to as a personal services contract. In this case, the City of North York saved twenty (20%) percent of the cost of the consulting services by purchasing the services directly from Saunders.

156. Saunders was not the only long term IT consultant in the City of North York who had a personal services contract. North York had a history of regularly using IT consultants over an extended period of time to supplement its own full-time staff. These consultants were used on project work, as required, and without any obligation to continue to retain their services if there

was no specific work for the consultant. The line between an independent personal service contractor or “consultant” and an employee is more often than not blurred and these consultants were considered to be “contract employees” and part of the complement of available human resources at North York. (Shultz Transcript, November 2, 2004, p. 51)

157. There is no evidence that it was North York’s practice to enter into written agreements with these consultants or contract employees. Edwin Ngan confirmed in his evidence that it was more probable than not that he also did not have a written agreement until he came back to North York just prior to amalgamation. At that time he wished to have a written agreement and he negotiated one with Shultz. Shultz’s evidence was that following up with a written agreement for Saunders and Maxson was not a priority for him given the huge demands on his time in 1997. (Shultz Transcript, November 2, 2004, p. 84)

158. This methodology or practice of retaining IT consultants was not created by Liczyk nor was she directly responsible for the system which predated her employment. Further, there is no evidence that North York’s auditors ever expressed any concern with that practice or that it breached any reasonable standard of governance, at that time.

159. In the course of their engagement, Saunders and Maxson who were working alongside North York employees, presented project proposals and those proposals were reviewed and considered by the North York staff, including, from time to time, Davie, Liczyk, Shultz and Brunning. Decisions were made with respect to what work was necessary and required. (Brunning Transcript, November 3, 2004, p. 77-79. 95-96) The proposals were project itineraries or schedules. That is, they dictated the work that the City of North York wanted accomplished during a specific period of time with an estimate of how long that work should

take and hence its cost. There was a long-standing practise at North York from at least 1990 of using the proposals as project guidelines. They were no more than that. The proposals, even when committed to writing, were not the agreements by which the consultants were retained. The actual agreements pursuant to which the consultants were retained were the verbal agreements entered into when they started, which contained all of the essential terms and conditions of their retainers including the rates they were paid and practices for reimbursement of travel and other expenses. The work proposals were not contractual commitments or “purchase orders” to purchase any specific services. The services were provided on an as needed basis and could be stopped at any time pursuant to the original terms of engagement, which flowed out of the AMS agreement.

160. The internal control over the expenditures for these services (contract employees) was like any other human resource expenditures, and was built into the budget process. The budgeting process created an annual review of expenditures for staff complements, consultants, projects and all expenditures. Brunning testified that in North York, “... when consultants or contract technical people were brought in, it didn’t go through to Council either. It would have been something that was part of the current budget, within the Department and within that particular section” (Brunning Transcript, November 3, 2004 p.74) Shultz stated: “I think the processes we used at the time, if we were developing it in-house, I don’t think we would have gone (to tender). (Shultz Transcript, November 2, 2004, p. 50) There was no evidence that this practise and procedure in North York was not accepted, approved and endorsed by the North York City Council.

161. In the City of Toronto, the practise of using proposals for Saunders and Maxson continued until formal written agreements could be created. Saunders’ and Maxson’s contracts

fell under the Information and Technology Division and ultimately it was the I & T Division that negotiated and formalized those written agreements under the Y2K program, not Liczyk. In the interim, the status quo continued in relation to all of the terms and conditions of Saunders' and Maxson's engagement with the City of Toronto. The proposals or schedules of project work continued to go to Liczyk until the process could be properly documented and formalized pursuant to the new procedures of the City of Toronto, which Liczyk asked Carbone to do and Carbone asked Andrew to do. While in hindsight it might appear that this procedure was lacking in formality, it must also be considered in the context or light of post amalgamation Toronto in 1998 where staff were directed to continue to use their former procedures until new more consistent procedures could be formalized. Staff were also directed to get the job of amalgamation done without permitting major catastrophes like not having a tax system in place to generate revenue for the City.

162. It should be noted that there continued to be schedules for specific assignments, after Saunders entered into a formal written agreement with the City of Toronto, effective January 3, 1999, when Carbone was the direct contact (TECO53115). These schedules continued to look like the old "proposals" except that Saunders negotiated an increase to his hourly rate. This new arranged rate was not discussed or negotiated with Liczyk.

163. Saunders and Maxson were not the only two individuals with longstanding consulting retainers who transferred to the City of Toronto during 1998. (TECO02436) Saunders and Maxson were not sequestered to perform secret projects. Saunders and Maxson were as they always had been, directed to perform project work. In 1998 that project work involved finalizing the development of TMACS. This project, obviously was not a secret to anyone. The projects and the need for the work continued to be discussed. While the form of the written proposals was

not reviewed by staff, they never had been in the past nor was there any need or requirement to do so. However, the specific phases of the projects were always discussed amongst staff, including Carbone and Brunning as they always had been. The ultimate decision to switch to TMACS was also discussed with Garrett, who apparently had no concerns at the time about this decision being made by the administration and not Council.

Invoices

164. The Beacon and Remarkable billing practices were patterned on and also flowed from the AMS practices. Invoices separated billed hours from expenses with expenses broken down into categories so as to facilitate a reasonableness review. In addition, Beacon attached to their invoices a schedule of hours worked by day and the nature of the work that was a done. Liczyk requested that this level of transparency continue in the new City of Toronto. (Carbone Transcript, November 5, 2004, p. 195)

165. The former City of North York and the City of Toronto did not have any policies that required vendors to attach receipts to justify their expenses on their invoices. There was no evidence presented to suggest that such policies existed or should have existed as a reasonable standard. In fact, Liczyk, in requiring that Saunders and Maxson categorize their expenses between hotel, airfare, meals and miscellaneous, was requiring them to adhere to a higher standard than existed at either the former City of North York and the City of Toronto.

166. The nature of the expenses which were deemed 'reasonable' with respect to Saunders and Maxson included airfare, hotel and meals and miscellaneous costs like transportation (cabs). These kind of expenses were outlined in the AMS contract and were reimbursed for work done by their consultants in the 1980's in North York. Since both Saunders and Maxson were former

AMS consultants, these kind of expenses continued to be reimbursed. From 1992 to 1997, Liczyk reviewed invoices and the attached schedule of detailed hours, and the reasonableness of the expenses. There is no evidence that any invoice which was reviewed and approved by Liczyk was not entirely accurate and legitimate.

167. Further, the invoices received by Saunders and Maxson in the City of Toronto were not reviewed by Liczyk. Shultz testified that when Carbone assumed the role of Director of Revenue, that the responsibility for the review and approval of the invoices was transferred to her shortly after her appointment. (Shultz Transcript, November 2, p. 189, 190) Carbone was directed to discuss with Shultz what was expected from her in relation to reviewing the invoices. (Carbone Affidavit, para. 97)

168. Carbone also had discussions with Andrew regarding the contracts for Beacon and Remarkable for 1999 forward and questioned Andrew with respect to the expenses that could be reimbursed on their invoices. Carbone testified that Andrew suggested that Beacon and Remarkable increase their hourly rate and dispense with showing the actual expenses. (Carbone Transcript, November 5, 2004, p. 97) Carbone testified that Andrew then “discussed it with Wanda and Wanda preferred to show the expenses” (Carbone Transcript, November 5, 2004, p. 150) so that they would be transparent and could be reviewed.

169. The invoices were processed in the ordinary course and reviewed by the individuals receiving the invoices and departments responsible for paying the invoices. If there were inappropriate expenses on any of the invoices, it was incumbent upon those individuals reviewing the invoices (and not just in form as some might allege) to comply with their

obligations to their employer, the City of Toronto, and to question the invoices. There is no evidence that any person was ever directed by Liczyk to do otherwise.

170. Liczyk did not advise or instruct Saunders and Maxson to form two separate companies for billing or invoicing purposes. Through to the end of 1998, Saunders and Maxson effectively operated as two separate entities. There were historically always separate proposals and invoices for each of Saunders and Maxson that were received and approved for payment.

171. In 1999, Saunders and Maxson's work focused on completing TMACS for Y2K readiness and the water billing system. The total cost for these projects was approved by the Y2K Steering Committee (Liczyk was not present) and the work was awarded to them under the authority of Council's Y2K program. Carbone further agreed that the work was eventually done by Beacon and Remarkable to develop WMACS was directly related to Y2K and legitimately fell within the Y2K budget. (Carbone Transcript, November 5, 2004, p. 166) "Water was definitely Y2K" (Carbone Transcript, November 5, 2004, p. 172) Garrett, Carbone, Brunning, and Viinanmae signed off the awarding of the individual contracts for Saunders and Maxson. Liczyk had no involvement in negotiating, sourcing, funding or approving these contracts.

Conclusion

172. Liczyk was the CFO for the City of Toronto during a period of unprecedented extreme change. Staff, like Liczyk, of the largest unplanned amalgamation experiment hit the ground running despite the lack of clear lines of authority and decision making processes in 1997 and through to 1998 while the new City of Toronto Council was still forming its new operating norms for itself and staff.

173. Liczyk knew that her portfolio of responsibility would have immense implications on the successful operation of the new City, and, despite almost overwhelming external and internal changes and crisis after crisis, did accomplish building many of the important foundations that the City needed – a fact that now has been conveniently overlooked or ignored.

174. Liczyk as the CFO of the City of Toronto was doing her job in assessing risks in the short and medium term and protecting the City's interests at a very difficult time. Throughout both these inquiries, Liczyk has willingly stepped up to take responsibility where appropriate and despite the very real consequences to her personal and professional life, and being honest and truthful when many have not. Frankly, the lack of candour by some is not overly surprising when one considers the result of same.

175. There is no doubt that when looking back through a microscope today at events and decisions made 8 years ago that it is easy to say things could have been done better. But, there is also no evidence to suggest that the tax and water billing systems that were the subject of this inquiry represented good value for money to the City and have worked successfully since 1998 without incident.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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