

**IN THE MATTER OF A JUDICIAL INQUIRY INTO CERTAIN TORONTO  
COMPUTER LEASING CONTRACTS PURSUANT TO SECTION 100 OF THE  
*MUNICIPAL ACT***

**SUBMISSIONS OF WANDA LICZYK**

## **WANDA LICZYK - CHIEF FINANCIAL OFFICER AND TREASURER**

1. Wanda Liczyk was, and remains, highly regarded by her professional peers and superiors. Almost universally, Ms Liczyk is known professionally to be an extraordinarily hardworking, conscientious, and ethical person. Equally as wide spread is the view that Ms Liczyk is a young woman who is thoughtful, devoted, and at times demanding. She insisted that not only she, but others working with her, work hard and deliver high quality results. While this may have intimidated some, one would expect no less from a Chief Financial Officer of the City of Toronto. What should also not be overlooked in this Inquiry is that Ms Liczyk and her staff did deliver high quality results on an incredibly high volume of undertakings and projects in the best interests of the City of Toronto.
2. As former Mayor Lastman testified before this Inquiry: "...She worked hard, worked late, and did a good job....She was loyal to the City, to the council." Lastman Transcript December 2, pages 32-34. Mr. Lastman went on to say: "I supported her all the way, she did an excellent job, she performed well, she was strictly professional and did a super job. Lastman Transcript June 2, page 32.
3. A mere cursory review of Ms Liczyk's professional history reveals not only that she was extraordinarily focused and accomplished beyond her years but had also gained the trust and respect of her senior colleagues both political and non-political. Ms Liczyk joined the City of North York in 1985 as a Budget Analyst and two years later was promoted to the position of Project Director wherein she reported directly to the Deputy Treasurer. In 1989, she was again promoted, this time to the position of Deputy Commissioner of Finance and Deputy Treasurer. Very shortly thereafter, in 1991, she was appointed to the

position of Commissioner of Finance and Treasurer. At that time, Ms Liczyk was the youngest Treasurer in Ontario and the first woman to hold such a position. She was 31 years old and was the head of a department of approximately 150 employees. At the age of 35, Ms Liczyk was appointed to the position of City Administrator while retaining her title as Treasurer.

4. On January 1, 1998, upon the creation of the new City of Toronto, Ms Liczyk became the Chief Financial Officer and Treasurer for the City of Toronto. As Treasurer of the newly amalgamated City, Ms Liczyk worked virtually around the clock. Ms Liczyk spent an average of 12 hours a day at City Hall, returned home and continued to work well into the night - 7 days a week. Wanda Liczyk was 38 years old at the time. Ms Liczyk maintained this work pattern until such time as she left the City of Toronto in 2001.
5. Wanda Liczyk was devoted to her job.

## **THE AMALGAMATION**

6. As a great number of witnesses have testified before this Inquiry, the City of Toronto was in a virtual state of chaos during the provincially imposed amalgamation of seven municipal governments. This was largely due to the fact that the Transition Team had operated for only seven months prior to January 1, 1998 and, during that time, had completed very limited effective planning for the merger of seven bureaucracies and had very limited decision making authority. The size and scope of this municipal merger far exceeded most large corporate mergers.

7. In January of 1998, the newly amalgamated City of Toronto began in a state of turmoil which continued into the year 2000. The new City Council began operating with virtually no permanent staff, thousands of staff without any clear direction and the immediate need to approve the 1998 Operating and Capital Budgets, while attempting to function with a \$250 million budget shortfall.
  
8. As the evidence before this Inquiry reveals, the amalgamation process was an extremely complex and difficult undertaking. When combined with the task of amalgamating six or seven sets of people, processes and systems, preparing operating and capital budgets of almost \$7 billion, zero tax increases and dealing with Y2K and CVA, it was an unprecedented period of challenge for the amalgamating municipalities and all of their staff, whatever the level of seniority.
  
9. As Chief Financial Officer and Treasurer of the newly amalgamated City, Ms Liczyk began reporting to Michael Garrett, the Chief Administrative Officer. Upon amalgamation, Mr. Garrett directed Ms Liczyk, as he did all of the Commissioners reporting to him, to act as 'deputy CAO's'. Michael Garrett, as he has testified, was very clear in instructing Ms Liczyk to delegate down and direct and allow those reporting directly to her to "run the business". Given the nature and the volume of change, Ms Liczyk could not reasonably be expected to direct every project undertaken by the Finance Department and was required to assess where best to allocate her time and direct her attention. The level of oversight by Ms Liczyk on any given project was, and was required to be, proportional to the risk of the project. Despite the fact that Ms Liczyk may be viewed by some as a "hands-on" manager, she could not be all things to all

people and, by necessity, she had to trust that appropriately delegated tasks and projects would be accomplished competently.

10. Mr. Garrett was a non-interventionist manager who instructed his Commissioners to “get the job of amalgamation done” and expected that they would with little direct involvement from him. As Mr. Garrett testified, “... my style is I’m not one of these command and control types of managers...” Garret transcript December 5, pages 31-32. It was very much an environment where decisions had to be made effectively and efficiently at the appropriate level of the organization where the requisite competencies could be found.
11. As a result of the very clear message sent by Mr. Garrett in respect of the role that he intended to play in the amalgamation, and that which he intended his Commissioners to play, Ms Liczyk immediately assumed a strategic approach to acting as CFO and Treasurer and did her job, while allowing her Directors to implement the amalgamation and “get the job done”. In so doing, Ms. Liczyk met bi-weekly with her Directors for the purpose of ensuring that her team was up to date in respect of key activities being performed by each Director and Division and reviewing and prioritizing reports that would be scheduled for upcoming Committee meetings. In addition, Ms. Liczyk instructed her Directors to provide her with frequent updates via email, voicemail, personal meetings and written reports.
12. During this time, Ms. Liczyk set high expectations and expected a very high quantity and quality of work, not only of herself but also of her Directors. Ms. Liczyk, and many of

her staff, willingly sacrificed their personal time to “get the job done” and achieve the success that the Finance Department did during the transition and thereafter.

## **COUNCILLORS’ COMPUTERS**

13. Between November 1997 and May 1998, Ms Liczyk focused almost exclusively on preparing the operating and capital budgets for the period January 1 to December 31, 1998. Novina Wong, the City Clerk, was equally focused on ensuring that the operation of Council and its individual members would be ready for the inaugural meeting of the newly amalgamated City of Toronto which was to take place in early January 1998. As part of this process, Michael Garrett granted his approval to Novina Wong to procure computers for the Councillors’ Offices at City Hall. Ms Liczyk was not involved in this decision making process.
14. As part of his role in the procurement of these computers, Jim Andrew prepared a covering memorandum and requisitions for the Councillors’ computers to be signed by Ms Liczyk. On December 20, 1997, Mr. Andrew delivered the documents to Ms Liczyk to sign at her former office in North York.
15. There was no reference whatsoever to MFP in the documents that Jim Andrew presented for Ms Liczyk’s signature. Ms Liczyk testified that she reviewed the covering memorandum and the requisitions prior to signing them and those documents contained no reference to MFP. MFP was chosen as the leasing vendor and the documents were amended to include reference to MFP, as the leasing vendor, sometime after Ms Liczyk signed the documents.

16. Ms Liczyk was unaware of the fact that MFP was the successful proponent of a lease financing proposal for the Councillors' computers until KPMG alerted her to this fact during the October 2001 interviews related to this Inquiry.
17. Ms Liczyk was not involved in, nor was she expected to be involved in, selecting a lease provider for the computers; briefing City Councillors with respect to the computers; or briefing City staff with respect to the computers. Each of these tasks were referred to the people spearheading the project, specifically including Novina Wong and Jim Andrew.

### **MFP**

18. Ms Liczyk was first contacted by Dash Domi of MFP in March of 1999. At this time, Ms Liczyk's assistant advised her that she was receiving numerous phone calls from Mr. Domi who remained persistent in his attempts to reach Ms Liczyk as a result of her failure to return his calls.
19. Ms Liczyk's first contact with Mr. Domi was at a March 1999 Committee meeting. Ms Liczyk was exiting the meeting room when Mr. Domi approached her and introduced himself. Immediately after exchanging introductory pleasantries, Mr. Domi inquired of Ms Liczyk whether or not the City was considering the option of leasing the City's computers. Ms. Liczyk advised that the City was considering a leasing option and that the investigative process was underway - as indeed it was. Ms Liczyk further advised Mr. Domi, that a procurement process was in place at the City and that she was not involved in that process. Ms Liczyk spent no more than five minutes speaking with Mr. Domi before returning to work.

20. Ms Liczyk attended at two events also attended by MFP representatives, a charity dinner and a hockey game, prior to the issuance of the RFQ on May 31, 1999. Ms Liczyk estimates that she spoke with MFP representatives Irene Payne and Dash Domi at these events for approximately 40-45 minutes in total. No one could reasonably suggest that any friendship was forged between Ms Liczyk and any representative of MFP during this period. They were salespeople promoting their product, nothing more, nothing less. There is no evidence that there was anything unusual or inappropriate about these events that were attended by Ms Liczyk and several others from the City, including the Mayor.
21. Further, Ms Liczyk had no discussions or interaction with any representative of MFP between May 31, 1999 and July 25-27, 1999 during what might be considered to be the “blackout period”.
22. There is no evidence to suggest that the sales efforts of MFP in relation to Ms Liczyk had any impact, effect or influence on the RFQ process or the selection of MFP as the successful vendor of leasing services to the City of Toronto.

## **THE RFQ**

23. Prior to the issuance of any RFQ for computer leasing services, leasing was being canvassed as a financing option for the City of Toronto by the Treasury and Financial Services Division (“Finance Division”) under the lead of the Director of Treasury and Financial Services, Len Brittain. Len Brittain was also, during the same period, the lead finance person in relation to the analysis and strategic planning for leasing as a financing vehicle for subway car acquisitions for the City of Toronto. In fact, it was a specific job



responsibility in Len Brittain's job description that he: "develop long-term capital financing policies and strategies and identify and implement innovative capital financing approaches for the annual capital budgets of the City."

24. Len Brittain and his group were looking at the concept of computer lease financing with Jim Andrew and Lana Viinamae as an initiative coming forward from the I&T Division in late 1998 and early 1999. Len Brittain was also directly involved in consideration of leasing the City's SAP software and had received a proposal in relation to same from MFP through Jim Andrew in February 1999. Financing strategies and leasing initiatives fell squarely within Mr. Brittain's role as Director and he was actively engaged in looking at those options.
25. Ms Liczyk was not the initiator nor the sponsor of the concept of leasing for computer equipment. These concepts were brought to her attention by her direct report, Len Brittain, who at material times was the finance lead.
26. The actual initiative to have an RFQ for leasing services came from the I&T Division. The I&T Division is part of the Corporate Services Department which is led by the Commissioner of Corporate Services. The Commissioner is ultimately responsible for the work of her Department.
27. The Finance Division was requested to and did assist in the drafting of the RFQ. However, the Finance Division always viewed the RFQ as an I&T initiative.
28. The drafting and issuance of the RFQ for leasing services was overseen within the Finance Division by Len Brittain. Ms Liczyk did not receive, review or comment upon

the RFQ. This task was delegated by Ms Liczyk to her most senior finance person, Len Brittain. There is no reason to believe or suggest that this delegated authority was misplaced or inappropriate in the circumstances.

29. Mr. Brittain was aware that Brendan Power had been retained as an external third party consultant in order to assist with the creation and issuance of the RFQ. Mr. Brittain had in the past requested external third party consultants to assist the Finance Division in respect of their analysis on projects, in general, and specifically in relation to the leasing project for the City's subway car requirements. Mr. Brittain's evidence was that when the City required specific expertise, third party consultants were available to the City and there was no impediment from Ms Liczyk or others in terms of retaining such expertise.
30. Mr. Brittain considered Mr. Power to be a third party external consultant with expertise in the area and did not consider it necessary to have an additional consultant retained to provide specific advice to the Finance Division.
31. Ms Liczyk was never asked for nor would it have been appropriate for her to conduct a review of Mr. Power's credentials or expertise. Ms Liczyk does not know Mr. Power and was at no time responsible for retaining Mr. Power or directing his activities. Again, this undertaking occurred within the I&T Division. The Finance Division's involvement with Mr. Power was overseen and supervised by Mr. Brittain.
32. No one from the finance staff, or otherwise, ever raised any difficulties, concerns or issues with Ms Liczyk in respect of the preparation or issuance of the RFQ for leasing services. There was no objective reason or organizational requirement that Ms Liczyk

become involved in the preparation of the RFQ for leasing services. Hence, Ms Liczyk was not requested to nor did she become involved with the RFQ preparation or issuance.

33. Further, Ms Liczyk had no involvement in reviewing or evaluating any of the responses to the RFQ which were submitted on June 11, 1999.
34. No RFQ responses were delivered to her personally or to her office. Ms Liczyk did not see any of the RFQ responses nor did she ask to see any of the RFQ responses because she was not involved in the evaluation process.
35. Ms Liczyk was not involved in the evaluation or selection of MFP as the successful vendor.

#### **THE DRAFT JULY 1999 POLICY AND FINANCE COMMITTEE REPORT**

36. Ms Liczyk did not draft the July 1999 report to the Policy and Finance Committee regarding computer leasing. As was the usual procedure, Ms Liczyk's staff were involved in drafting the report. Specifically, Messrs. Rabadi, Altman and Brittain were involved in the drafting and reviewing of the Report, for the Finance Division, prior to it coming to Ms Liczyk's attention on or about June 30, 1999.
37. Ms Liczyk's staff in the Finance Division viewed the Report as being relatively straight forward and low-risk in terms of its monetary impact to the City. Consideration of this financing option was well within Len Brittain's competencies, or ought to have been, and was properly delegated to him for his review and execution. Ms Liczyk had worked

closely with Mr. Brittain in 1998 and had every confidence in his financial acumen and abilities.

38. The Report was one of nineteen Finance Department reports going to the Policy and Finance Committee in July, 1999 and was seen as a one time transaction which was not high-risk, high priority within the context of other projects being worked on in the Finance Division, such as proposed development charges and cross-border subway car leasing.
39. The financial impact of the computer leasing Report was not \$43 million as might be suggested. The financial impact of the Report was the differential in the cost of financing the transaction by lease financing versus the cost to be incurred for the same equipment by virtue of debenture financing. Debenture financing for the assets had been previously approved by City Council, as part of the entire Y2K project, as ten-year debenture financing. The ten-year debenture financing strategy would in fact have been, in total, more expensive to the City of Toronto than a leasing strategy for three or five years because of the longer duration of debenture financing.
40. When Ms Liczyk reviewed the June 30<sup>th</sup> draft of the Policy and Finance Report, the Report confirmed that the leasing transaction was less expensive than debenturing. This analysis was reviewed by Messrs. Rabadi, Altman and Brittain.
41. The first and only substantive review of the draft Policy and Finance Committee Report undertaken by Ms Liczyk was in relation to the June 30<sup>th</sup> draft. As was her practice, Ms Liczyk reviewed the Report from a strategic level to ensure logic, consistency and form. Ms Liczyk's red pen was characteristically all over the Report confirming, clarifying and

requesting more information. As the CFO and one of the signatories to the Report, Ms Liczyk expected that she had the last review of the document and that her comments would be addressed by her staff.

42. Ms Liczyk's revisions to the June 30<sup>th</sup> draft Policy and Finance Committee Report did not alter in any material respect the substance of the Report. Rather, Ms Liczyk asked for additional information to enhance the quality of the Report.

43. Specifically, Ms Liczyk did not delete the reference to the "\$43 million cap" found at recommendation number 1 of the Report nor did Ms Liczyk delete any reference to a 90-day interest rate provision.

44. The June 30<sup>th</sup> draft Report specifically states that the computer equipment and software would have a total cost not exceeding \$43.15 million. This was Ms Liczyk's expectation.

45. There was no mention in the Report that the lease rates for the transactions were tied to a 90 day period. This was not brought to Ms Liczyk's attention. The reference to lease rates remaining at the existing level for "future cycles" on page one of the Report was in reference to an assumption of the model that interest rates would remain constant in relation to any refresh of the assets over 10 years and was deleted because it was an inaccurate assumption. Interest rates could not be expected to remain constant over a ten year period. This reference had nothing to do with the rate that MFP had quoted in its response to the RFQ and which Nadir Rabadi had assumed would be available for the transaction. Ms Liczyk did not delete any reference to a 90 day fixed interest rate in the draft Report because there was no such reference in the Report. Nadir Rabadi admitted that Ms Liczyk had not deleted any such reference. Further, Ms Liczyk was never

advised that the MFP rate quoted was time limited or that it was in jeopardy at any time because the I&T Division could not satisfy the required timelines. As stated above, this was never brought to Ms Liczyk's attention.

46. Lastly, the transaction as originally contemplated did not require a sale and lease back of assets. As stated at page two of the June 30<sup>th</sup> draft Report, the assets already received by the City were to have been re-invoiced by the vendors to the lessor and then leased to the City. That was a statement of fact which the author of this Report, Mr. Rabadi represented as true and with which Messrs. Altman and Brittain presumably assessed and ultimately agreed. Ms Liczyk did not have reason to challenge this statement and did not delete or alter the statement.
47. There is a draft version of the Report dated July 2, 1999 which incorporates Ms Liczyk's changes. For some reason, that version of the Report was dramatically amended by Brendan Power on or about July 5, 1999. Brendan Power provided a copy of the amended report to Lana Viinamae and advised that he had restructured the document. From July 6, 1999 Brendan Power assumed version control over the draft Policy and Finance Committee Report and it essentially became an I&T Division report. It was during this stage that the \$43 million cap was removed from recommendation number 1 and the mechanics of the vendor re-invoicing the lessor disappeared from the Report.
48. Ms Liczyk never received back her version of the amended Report or her red pen version for comparison. The next and only other version of the Report that she reviewed was on July 9<sup>th</sup> when it was faxed to her home. Ms Liczyk read the document and inquired whether her changes had been incorporated. The answer was yes. There were some

minor amendments made to the Report and it was signed off by Jim Andrew. It was never suggested to Ms Liczyk, nor does it appear that the Finance Division knew, that the I&T Division had taken a turn in direction from the stated intention of the original Report.

49. It is apparent from the evidence of the witnesses that the Finance Division continued to believe that there was essentially a \$43 million cap on the quantum of assets to be put under lease pursuant to a Policy and Finance Committee Report. Any assets greater than a 10% variance over the \$43 million cap would need to be reported out to City Council pursuant to recommendation number 4 of the Report. The evidence of the Finance Division witnesses, and reasonably so, was that any such reporting out would have to be generated through the I&T Division which was acquiring the computer assets and monitoring, or ought to have been monitoring, the quantum of assets being placed on lease. The Finance Division then stepped out of the picture.
50. It is not at all clear why Messrs. Rabadi, Altman or Brittain did not view the removal of the \$43 million cap as being significant. There appears to be a lack of due diligence and analysis regarding the removal of the \$43 million cap and what was intended by such removal by the I&T Division. The explanation that the removal of the cap was to allow for a 10% variance of the leased assets is not acceptable. If there was a working policy that such variances were permitted, it would not and should not have affected the stated cap. If the removal of the cap was to provide for a vendor of record, this was never reported to Ms Liczyk.

51. Again, Ms Liczyk did not request the removal of the cap nor was she briefed with respect to why the \$43 million cap was removed specifically from the recommendations. In the ordinary course, Ms Liczyk received reports that were in final form ready to be received by the Policy and Finance Committee, or other committees. Ms Liczyk did not expect nor did she believe that she received a wholesale redraft of the Policy and Finance Committee Report on or about July 9, 1999.
52. When Ms Liczyk reviewed the Report on July 9<sup>th</sup> it continued to reference the \$43 million of computer assets and she still considered the report to contemplate the leasing of \$43 million of assets. No one advised Ms Liczyk that this was not the intention of the I&T Division and that they believed MFP to be a vendor of record.
53. Within the organizational structure of the Finance Division, Ms Liczyk was entitled to rely upon Len Brittain and his direct reports to provide her with a thorough, careful and accurate report and to conduct the necessary due diligence to ensure that the Report accurately stated the intention of its authors. Ms Liczyk could not and should not have been expected to “micro-manage” the analysis of the Report and had no reason to question its authors and whether their intentions were accurately stated in the Report.

#### **JULY 20, 1999 POLICY AND FINANCE COMMITTEE MEETING**

54. The Policy and Finance Committee Report on computer leasing was considered at a Policy and Finance Committee Meeting on July 20, 1999. Councillor Jakobek held the Report to ask questions regarding the life of the assets. Councillor Jakobek (Budget



Chief) also questioned the budget impact of three-year leases for assets which could arguably be used by the City for a longer period.

55. The evidence is fairly consistent that Councillor Jakobek was at no time a supporter of technology and considered most expenditures on same to be wasted. The import of Councillor Jakobek's question was whether the life of the assets could be extended beyond the three years which the I&T Division proposed to use the assets. While there were certain advocates who suggested a three-year refresh of technology as appropriate, in the context of a municipal government, an aggressive three-year refresh program was not universally accepted and, in fact, the useful life of those same assets has continued well beyond three years.
56. There was an absolute paucity of evidence about what transpired at the Policy and Finance Committee Meeting. Other than Councillor Jakobek, no other city councillors who passed the "Flexibility Clause" amendment were called to give evidence about what transpired at that meeting.
57. Ms Liczyk's evidence is that she and Mr. Brittain were advised by Mr. Jakobek at the Policy and Finance Committee Meeting that the "Flexibility Clause" gave staff the flexibility to choose the lease term that best fit the life of the underlying assets. While Mr. Brittain can not recall this discussion, his understanding of the Flexibility Clause was also that it was intended to give staff the discretion to extend the lease terms to match the life of the assets. Mr. Jakobek's evidence regarding this meeting, with respect, is not to be believed.

58. The Flexibility Clause was passed not only by the Policy and Finance Committee but also by City Council. If City Council reviewed the Flexibility Clause and considered it to be ambiguous, which is apparently the position they are now taking, it was incumbent upon City Council, as it would be with any Board of Directors, to have conducted certain minimal levels of due diligence to satisfy themselves prior to voting upon and approving the resolution. It is not satisfactory for City Council to now state that they did not understand what they were voting on in 1999 and criticize the staff's interpretation of the meaning of the so-called "Flexibility Clause".

#### **IMPLEMENTATION OF THE FLEXIBILITY CLAUSE**

59. It is from this point forward that Len Brittain and Don Altman appear to have become afflicted by contagious amnesia with respect to discussions about the implementation of the Flexibility Clause and the meetings they attended amongst themselves, with the I&T Division and with MFP. Both Mr. Brittain and Mr. Altman's evidence in regard to what transpired following the Policy and Finance Committee Meeting is shockingly vague. Both seem to have taken a huge step back from any involvement in discussions regarding considerations of extending the lease terms beyond three years.

60. What we do know is that, despite their lack of recollection, Messrs. Brittain and Altman were involved in discussions on September 21 and September 22, 1999 regarding the financial implications of extending the lease terms beyond three years.

61. We also know from Mr. Altman's evidence that he believes that almost immediately after the Policy and Finance Committee Meeting he was advised, he believes by Mr. Brittain, that some of the leases were to be extended to five years.
62. There were two essential issues to be decided as a result of the passage of the Flexibility Clause. First, what was the useful life of the underlying assets that were to go on lease. Second, what was the financial impact of extending the leases beyond three years to match the term of the lease to the useful life of the asset.
63. One would expect, and it was Ms Liczyk's expectation, that the question in relation to the useful life of the underlying assets would have been determined by the I&T Division. No other group of employees were in a position to make that determination. We know that there was at least one meeting between MFP and Jim Andrew and Kathryn Bulko on August 3, 1999 to discuss the implementation of the Flexibility Clause and extending certain leases to five years. We also know that there were discussions amongst the I&T Division about matching the term of the lease to the life of the assets and about printers and certain software having a useful life of three years while other assets could be extended to five years and that the MFP schedules should have reflected this direction. Bulko Transcript August 12, page 134-136. These decisions were being made by I&T before there was any discussion with the Finance Division regarding the financial implication of extending the lease terms under the Flexibility Clause.
64. Secondly, in respect of the financial implications of extending the term of the leases to the useful life of the assets, that undertaking was delegated to Len Brittain. Mr. Brittain was at the meeting with MFP where they were exploring the extended lease term. He

was left at the meeting and asked by Ms Liczyk to determine if the model sense for the City. He attended a follow-up meeting the next day with Jim Andrew. He was the point person for the leasing transaction for the Finance Division. This delegation is absolutely consistent with Ms Liczyk's past practise in respect of subway car leasing and fleet leasing. These leasing projects were assigned to Mr. Brittain for his review and analysis. There is no reason to believe and the documentation and evidence confirm that the computer leasing strategy fell squarely within Mr. Brittain's bailiwick. Mr. Brittain attended at meetings and was in receipt of e-mails requesting him to follow-up and determine whether or not the change in the strategy made sense. Mr. Brittain's evidence is, with respect, not entirely satisfactory in terms of his actual involvement in those decisions.

65. It is submitted that the decision to go to five-year leases, with some or all of the assets, was a decision that was made by the I&T Department in its discussions with MFP. Mr. Brittain, who was consulted in the process, did not consider the decision to be a high-risk or strategically important decision, given the other highly sensitive and strategic issues in his portfolio. It is submitted that Mr. Brittain acquiesced in the changes to some of the asset lease terms because it intuitively made sense to tie the lease term to the useful life of the assets. This decision was communicated to Ms Liczyk by Mr. Brittain.
66. This inquiry is not or should not be focussing on the assignment of blame. It should, respectfully, be oriented to describing what factually occurred and where decision-making or lack of decision-making changed certain results. In this particular circumstance, it is submitted that the analysis that may have been required, which was not undertaken, fell to the most senior member of the Finance Division.

67. Further, it is submitted that certain decisions made in the context of the leasing transaction must be put into the context of what was occurring at the City of Toronto at the time. At the direction of the CAO, City staff were advised to “get it done”. In hindsight, the rather casual decision, which appeared to be self-apparent in terms of its appropriateness, may not have been thoroughly analysed. However, at certain times in organizations, decisions have to be prioritized and they have to be made. It also may have been the right decision. Despite Mr. Brittain’s lack of candour in relation to his involvement in the decision-making process and analysis, assigning fault or blame is inappropriate.
68. The inherently attractive proposition of extending the lease terms to the useful life of the assets was not an inappropriate decision. Hence, even though the analysis may have been lacklustre, the ultimate result did not prejudice the City of Toronto.

#### **ENTERING INTO A LEASING CONTRACT WITH MFP**

69. Neither Ms Liczyk nor the Finance Division were involved in negotiating the terms and conditions of an agreement with MFP in relation to leasing services. Brendan Power as agent for the I&T Division worked with the I&T Division, MFP and external legal counsel, Faskin Campbell Godfrey, to implement Council’s resolution. Faskin Campbell Godfrey reported to the City Legal Department and the I&T Division and was either improperly instructed or, alternatively, failed to follow instructions or proceed on a prudent basis to review the RFQ, Council’s resolution and the complete contractual agreement with MFP. The direction, instruction and review was not conducted by nor should it have been conducted from the office of the CFO. These tasks were conducted

solely and properly through the I&T Division, the Legal Division and the Commissioner of Corporate Services.

## **SALE LEASEBACK**

70. Reference to what is now being referred to as a sale leaseback transaction was not included in the July report on leasing to the Policy and Finance Committee by Nadir Rabadi. Apparently, Nadir Rabadi believed that the vendors of the equipment could simply reverse the transaction by issuing a credit to the City of Toronto and re-invoicing MFP. This assumption was reviewed by Mr. Altman and Mr. Brittain and presumably was accepted as being satisfactory. Following the award of the computer leasing contract to MFP, Ms Liczyk was advised by Mr. Brittain that the City of Toronto would notionally be required to sell some of the computer assets to MFP in order to put those assets on lease to the City of Toronto. This transaction was not a disposition of assets as contemplated by the City of Toronto by-law regarding the sale or disposal of City assets. The City of Toronto never actually disposed of the assets and the transaction was a sale in form but not substance.
71. Len Brittain as the lead in relation to the lease financing was charged with the responsibility to ensure that the financial aspects of the transaction were performed properly. As the Director of Treasury and Financial Services, this delegation was neither improper nor inappropriate in the circumstances. No City of Toronto employee ever suggested that the “sale leaseback transaction” was improper or that it ought to be reported to City Council as a disposition of assets. The transaction was in no manner kept a secret and it was seen by all City staff as being administrative.

## THE ORACLE ACQUISITION

72. Ms Liczyk and Michael Garrett executed a Y2K approval form for the acquisition of Oracle licenses on December 30, 1999. The Y2K approval form was signed off on the representation from Lana Viinamae that the Y2K Steering Committee had reviewed and approved the business plan for the Oracle licenses. The Y2K Steering Committee had considered and notionally approved of the acquisition of the Oracle licenses. However, no formal steps were taken by the Y2K Steering Committee to actually approve the transaction. The Minutes of the December 30, 1999 Y2K Steering Committee do not indicate that the Oracle licenses were an approved agenda item in relation to that meeting or that the acquisition was approved on that date. No witnesses other than Lana Viinamae have suggested that the Oracle license acquisition was in fact approved on that day by the Y2K Steering Committee. In fact, other witnesses deny that this ever occurred.
73. The fact that a major acquisition would not be reflected in the Minutes of the Y2K Steering Committee on December 30, 1999 are strongly indicative that such an approval was never actually sought or received by the Y2K Steering Committee formally. It is submitted that Lana Viinamae believed that she had received tacit approval for the acquisition and she believed that she was required to finalize the transaction before the close of business on December 31, 1999. It is further submitted that Ms Viinamae communicated to Ms Liczyk that the Y2K Steering Committee had approved the acquisition as she believed, as stated above, that there was a tacit approval of the acquisition.

## **THE CONTRACT MANAGEMENT OFFICE**

74. The negotiation, execution and administration of all leasing arrangements was done by the I&T Division and through the Contract Management Office. In fact, the Contract Management Office was set up by the I&T Division specifically for the purpose of administering the MFP leases. All MFP lease schedules were delivered to the Contract Management Office as hard copies and by e-mail transfer. In the ordinary course of the administration of the contract, the Contract Management Office would review and approve the leasing documents.
75. On two occasions, contracts were forwarded from the Contract Management Office to Ms Liczyk's office for signature. Dash Domi was used by the Contract Management Office as a conduit or courier for the documents. There was evidence that the Contract Management Office was not terribly well organized and for a period of time required the assistance of an MFP staff member to help co-ordinate asset schedules and organize their procedures. Further, there was evidence that contracts were not being processed through the office in a timely manner.
76. It is wholly consistent with the evidence and reasonable to conclude that Mr. Domi was, during one of his many visits to the Contract Management Office, attempting to speed up the processing of the contracts in order to have executed contracts returned to MFP. It is also the evidence that Mr. Domi was requested by the Contract Management Office to act as a courier for the documents and that the CMO was responsible for giving Mr. Domi the authority to transport documents for the Contract Management Office for signature. Ms Liczyk never requested this.



77. Documents that Ms Liczyk was requested to sign from every department including the I&T Division and the Contract Management Office were reviewed and signed-off by the sponsor department. Ms Liczyk was, by virtue of her statutory signing authority, required to sign thousands of documents annually. It is not reasonable nor should it be expected of the CFO of the City of Toronto to conduct due diligence in relation to the execution of each and every contractual obligation entered into by the City of Toronto. Ms Liczyk would be advised by the sponsor department that the documents had been reviewed and they were appropriate for signature.
78. The documents that Ms Liczyk executed in relation to the MFP Lease Agreement, including the July 2000 rewrites, were reviewed and indicated the approval of the Contract Management Office. Those documents were then delivered to Ms Liczyk as CFO and Statutory Signing Officer.
79. The Contract Management Office was at all material times aware that MFP was reorganizing the lease schedules. There was much discussion within the I&T Division and the CMO regarding “reorganizing the leases” into asset types. This was a concept which was initiated by the I&T Division to better manage the assets and ultimately fulfill the direction of the CFO to allocate the asset costs by department for budget purposes. It is submitted that the Contract Management Office did not properly review the rewritten leases to determine what, if any, substantive changes were made to the lease schedules because they did not expect or anticipate any substantive changes. However, such a review was their responsibility as the sponsor department and the group specifically mandated to manage the contracts.

80. When the July 2000 rewritten leases were delivered to Ms Liczyk's office, she properly assumed pursuant to her past practice that: 1) the rewritten leases were fully and satisfactorily reviewed and approved, as indicated, by the sponsoring I&T Division, Contract Management Office; and 2) that the lease rewrite documents were consistent with a simple reorganization of the asset schedules to provide for and facilitate the manner of reporting out the cost of the assets by department as had been requested of MFP.

#### **OPERATING BUDGET OVERSPEND OF LEASE FINANCING**

81. The disconnect between the I&T Division and the Finance Division with respect to the \$43 million cap was disclosed as a result of the 2001 budgeting process. In or about October 2000 as part of the operating and budget process, it was disclosed that the computer leasing budget was projected to be overspent. Ms Liczyk specifically directed her staff to determine the nature of the operating budget pressures. In November 2000 Lana Viinamae advised that her request for the 2001 operating budget for computer leases was \$24 million, an \$8 million increase from the 2000 operating budget. Upon further investigation, it became apparent that the amount of assets on lease had been increased from \$43 million as previously contemplated to at least \$67 million as reported at that time. This variance in the amount of assets on lease was reported by Ms Liczyk to the Budget Advisory Committee and Council by Report dated March 15, 2001. Ms Liczyk was not aware of any additional amounts put under lease by the CMO until her interview with KPMG in the fall of 2001.

## CONFLICT OF INTEREST

82. As indicated, Ms Liczyk was unfamiliar with Dash Domi until he sought her out at a City of Toronto committee meeting in March of 1999. Mr. Domi placed numerous calls to Ms Liczyk's office prior to this brief initial encounter - which calls were not returned.
83. On March 15, 1999, Ms Liczyk, at the invitation of both Jim Andrew and Dash Domi, attended a Tie Domi/Don Cherry dinner. Ms Liczyk agreed to attend this dinner as it was a charity event at which the Mayor was a guest speaker. While at the dinner, Ms Liczyk sat beside the Mayor and Jim Andrew.
84. As the evidence before this Inquiry now reveals, Ms Liczyk was never made aware of the fact that Rob Ashbourne of MFP was meeting with City of Toronto IT and Finance staff in late 1998 and early 1999. Ms Liczyk has never met Rob Ashbourne. As such, any suggestion that Ms Liczyk met with, dined with or engaged in any other activity with Mr. Ashbourne is inaccurate, unsubstantiated and untrue.
85. As the evidence now further reveals:
- Ms Liczyk never attended at Le Fenice restaurant with an employee of MFP;
  - Ms Liczyk never attended at Barootes restaurant with an employee of MFP;
  - Ms Liczyk did not attend a hockey game on March 24, 1999 with Rob Ashbourne or any other employee of MFP;
  - Ms Liczyk did not meet with either Dash Domi or Rob Wilkinson on April 15, 1999;

- Ms Liczyk did not have dinner at the Platinum Club with Dash Domi, Tom Jakobek and Jim Andrew prior to or after a hockey game on April 30, 1999;
- Ms Liczyk had no contact whatsoever with any official of MFP between the release of the RFQ on May 31, 1999 and the July 25-27, 1999, Council approval of the award to MFP;
- Ms Liczyk did not attend any MFP event between the release of the RFQ on May 31, 1999 and the July 25-27, 1999, Council approval of the award to MFP;
- Ms Liczyk did not provide MFP with any notification of their successful bid;
- Ms Liczyk did not give any employee of MFP a copy of the July 1999 Policy & Finance report;
- Dash Domi did call Ms Liczyk's home, her cell phone and her office numbers on a frequent basis, as he did with many others. However, most of the time Mr. Domi was unsuccessful in actually reaching Ms Liczyk;
- Ms Liczyk did not attend nor was Ms Liczyk invited to attend a dinner on July 10, 1999 at Prego della Piazza, notwithstanding the fact that the receipt for same refers to Ms Liczyk. As is now evident, Dash Domi's records are patently incorrect in this regard;
- Ms Liczyk was, through the course of this Inquiry, made aware of other expenses for which Dash Domi claimed reimbursement, with Ms Liczyk's name referenced on the receipts. Only a few of those expenses were legitimate.

86. Reports that Ms Liczyk was wined and dined by MFP are grossly exaggerated.

87. Ms Liczyk did attend at several hockey games at the invitation of MFP over a two year period. However, attendance at business/social events by City of Toronto staff was never forbidden and occurred with regularity at the City. This practice was not discouraged by the CAO or City Councillors and was seen as being of some advantage to the City in its relations with businesses and business leaders. Ms Liczyk did not attend the hockey games alone. There were always other City employees and politicians in attendance.
88. It is fundamental in employment law that that in order to enforce a policy against an employee, the policy must be clearly articulated and consistently enforced. An employer can not encourage or condone a pattern of behaviour and then subsequently criticize the employee for not adhering to a retroactively imposed standard. The City of Toronto is certainly free to define their conflict of interest policies in any manner they deem appropriate for the future. It is not fair or appropriate however to suggest that Ms Liczyk even remotely transgressed the standard set in 1999 and 2000 for senior employees. The two occasions where it is possible that Ms Liczyk was invited to overstep an acceptable threshold were in relation to the Ottawa hockey trip and the invitation to Hawaii. On both occasions, Ms Liczyk's judgment was to do what was right. She politely declined an invitation to participate in the MFP conference in Hawaii because she did not consider it appropriate and she voluntarily paid her own way to Ottawa to attend at a hockey game. Ms Liczyk never put herself in a position where she was beholden or could appear to be beholden to MFP.
89. Ms Liczyk had a business relationship with officials from MFP including Dash Domi. Dash Domi never asked Ms Liczyk either directly or indirectly to ensure that MFP was the recommended vendor for leasing or that MFP receive any preferential treatment as a

vendor to the City. Ms Liczyk never caused, directed or suggested that MFP should receive any preferential or different treatment as a vendor to the City.

90. After MFP had entered into a business relationship with the City of Toronto, Ms Liczyk was on friendly terms with Mr. Domi and she does not deny it. However, the suggestion that this relationship was anything more is patently wrong and offensive. Further, the suggestion that MFP may have benefited as a result of Mr. Domi's affability or "charm" is degrading and sexist.
91. Ms Liczyk was at all times aware that the former City of North York had a conflict of interest policy. Its most salient element was that staff were never to accept any personal benefit or gift which could be construed as a bribe or inducement. Secondly, during the procurement process staff were not to accept any invitations to events or be 'lobbied' by vendors. The North York policy remained applicable until the new City of Toronto policy was adopted. Ms Liczyk was also aware that her employment contract with the new City of Toronto contained a clause relating to conflict situations.
92. At no time did Ms Liczyk violate any conflict of interest policy or her employment contract. At most, it could be argued that in retrospect Ms Liczyk's acceptance of certain invitations to events could give rise to the appearance of a potential conflict. One difficulty with that argument is that one has to judge her conduct based on the standards that existed at the time. Secondly, it is presumptuous and naive to believe that any senior official, let alone Ms Liczyk who was a dedicated professional and career driven, would compromise her own integrity for a handful of hockey tickets and a free meal. While it may be plausible to those who want to believe that all politicians and government

employees are unethical, the explanation is not feasible to people who conduct business. Business/social events are not seen as inducements to do business or bribes. Business promotion exists and it has a proper function. It can and does promote improved communication and relationships which can facilitate more efficient business and government. If the City of Toronto does not want its employees to accept such invitations now, so be it, but that was not the dictate at the time in question.

93. Michael Garrett announced the new City of Toronto conflict of interest policy to the Commissioners at a Senior Management Team meeting in late 2000/early 2001. As Ms Liczyk has testified, she recalls that, in her view, the new policy was 'tougher' than the North York policy. As such, Ms Liczyk advised her direct reports of the new policy and the need to attend the in-house training seminars in respect of the policy and to ensure that their non union staff also received training on the new policy. Ms Liczyk did everything she was expected to do to ensure that she and her staff were familiar with the new conflict of interest policy and adhered to that policy.

### **Golf Engagements**

94. Throughout the duration of her time working for the City of North York and the amalgamated City of Toronto, Ms Liczyk put her professional life ahead of her personal. Ms Liczyk worked a considerable amount of 'overtime' in the course of her employment at the City. Ms Liczyk was never compensated for this overtime nor of course did she ever expect to be compensated. From time to time however, Ms Liczyk's schedule permitted her to schedule time out of the office during the business week. Any time off work that resulted from her absence from the office was made up for on evenings or

weekends. No one ever suggested to Ms Liczyk that she was not doing her job or working hard enough for the City of Toronto - in fact quite the contrary.

## **CONCLUSION**

95. It is respectfully submitted that have there have been a number of suggestions and theories which have been advanced in this Inquiry which have not proven to be true and which have had incredibly damaging effects on people's reputations and careers, Ms Liczyk's included. There is no doubt that a review of the leasing transactions in question, after being put through the microscope of this Inquiry, have revealed that mistakes have been made. One would be hard pressed to believe that in the context of what the City of Toronto went through post amalgamation that mistakes would not be made. It is something completely different however to question the integrity of those who were making every reasonable effort to attempt to make the amalgamated City of Toronto a success.
  
96. After a review of all of the facts, it is apparent that any simplistic conclusion regarding democracies being hijacked or bureaucrats acting through self interest is misplaced and inappropriate. This was, in the final analysis, a complex matrix of events and circumstances which gave rise to certain results. The review of those events has been arduous but should be fruitful in assisting this Commission with a more compressive understanding of what transpired and how the transactions ultimately proceeded. It is hoped that the fullness of the evidence and an appreciation of those individuals who have



honestly and consistently assisted this Commission will afford the Commission the opportunity to rectify some of the misconceptions and damage done to those individuals.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**BLANEY MCMURTRY LLP**

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