

IN THE MATTER OF TORONTO COMPUTER LEASING INQUIRY

BEFORE: THE HONOURABLE JUSTICE DENISE BELLAMY, COMMISSIONER

**HELD AT: East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1**

**SUBMISSIONS TO THE COMMISSIONER
OF THE TORONTO COMPUTER LEASING INQUIRY**

**NADIR RABADI,
SENIOR FINANCIAL ANALYST,
TREASURY AND FINANCIAL SERVICES,
FINANCE DEPARTMENT OF THE CITY OF TORONTO**

August 3, 2004

CASSELS BROCK & BLACKWELL LLP
Barristers & Solicitors
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Paul J. Bates (LSUC# 26619D)
Tel: 416.869.5969
Fax: 416.644.9355

Michael Kealy (LSUC # 47176G)
Tel: 416.869.5488
Fax: 416.642-7153

Solicitors for Nadir Rabadi

**TO: THE HONOURABLE JUSTICE DENISE BELLAMY,
COMMISSIONER**
East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

AND TO: DAINA GROSKAUFMANIS, COUNSEL
Toronto Computer Leasing Inquiry
East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

SUBMISSIONS ON BEHALF OF NADIR RABADI

PART I - INTRODUCTION

1. Nadir Rabadi was the Senior Financial Analyst in the Treasury and Financial Services Division of the Finance Department of the City of Toronto from January 13, 1999 until July 23, 1999.¹ In that time, he was involved with the analytical review of bids for the computer leasing contract that was ultimately awarded to MFP Financial Services Ltd. (“MFP”), in analyzing the responses to the request for quotations in respect of same (“RFQ”), and was involved in drafting a report to the Policy and Finance Committee of Toronto City Council recommending the award of the computer leasing contract (“Contract”) to MFP (“Report”).² All work performed by Mr. Rabadi was subject to supervision by his superiors in the Finance Department of the City of Toronto (“Finance Department”), who found that work to be competently performed. The evidence at this Inquiry has confirmed that Mr. Rabadi performed his duties with care, skill and diligence.

PART II - EVIDENCE OF NADIR RABADI

2. The affidavit of Mr. Rabadi sworn June 23, 2003, as amplified by his oral testimony at this Inquiry, set out the actions and analysis undertaken by him.³

PART III - EVIDENCE OF MR. BRITTAIN

3. Mr. Rabadi’s supervisor, Leonard Brittain, the Director of the Finance Department, stated that Mr. Rabadi was a competent and thorough employee who kept his supervisors informed about his work:

Q. So when you had worked with [Mr. Rabadi] before, and in the short time that you worked with him in the Spring of 1999, what was your observation of Mr. Rabadi, his skill set and his knowledge?

¹ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at paragraphs 2 and 73

² **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at paragraphs 13 to 72

³ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003

- A. He's an extremely thorough, does a lot of digging, if you want. He'll get an issue and -- and just digs in on it. And -- and I mean that in a positive way, in that he'll -- he'll not stop until he's satisfied that -- that he's putting the right information forward. He's very respectful of authority, if you want, and -- and wanting to make sure that everybody is -- is properly advised on things. As a former auditor, he has a very strong audit function, if you want, or audit mentality where you want to make sure everything is -- is correctly calculated, added up, checked, et cetera.⁴

PART IV - REPORTING STRUCTURE WITHIN THE FINANCE DEPARTMENT

4. Mr. Rabadi was the junior member of the Finance Department involved in the steps concerning the Contract. His work was directly supervised by the Manager of Financial Planning of the Finance Department, Mr. Donald Altman, and indirectly supervised by Mr. Brittain. In addition, Mr. Rabadi's work was reviewed and accepted by the Treasurer and Chief Financial Officer of the City of Toronto, Ms. Wanda Liczyk. Ms. Liczyk agreed in her evidence that Mr. Rabadi would be expected to be respectful of the reporting structure and to accept the direction given by his supervisors, Messrs. Altman and Brittain.⁵

PART V – REVIEW OF RESPONSES TO THE REQUEST FOR QUOTATIONS

5. Mr. Rabadi was asked to comment upon a draft RFQ provided to him (through Mr. Brittain) by Mr. Brendan Power, Consultant, Information and Technology Department.⁶ Some, but not all, of Mr. Rabadi's comments were incorporated by Mr. Power into the final RFQ.⁷

6. Mr. Rabadi was also responsible for performing basic financial analysis of the responses

⁴ **Compendium Tab 3** - Transcript of Len Brittain on July 10, 2003, at page 185 line 20 to page 186 line 7

⁵ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 134 line 22 to page 136 line 1, and page 146 line 9 to page 147 line 2

⁶ Mr. Brittain had advised Mr. Rabadi that Mr. Power had the necessary expertise in the leasing of computers. See the Transcript of Nadir Rabadi on June 26, 2003, at page 177 lines 3 to 5, and page 179 lines 7 and 8.

⁷ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at paras. 17 to 23

For example, see the draft RFQ with Mr. Rabadi's handwritten suggestions to Mr. Power, some of which were incorporated into the final RFQ, COT012834 (Tab 7-027).

We note that the Financial Planning Unit had a secondary role in the drafting of the RFQ. See the Transcript of Nadir Rabadi on June 26, 2003 at page 169 lines 3 to 12.

to the RFQ to establish the least-cost proposal to the City of Toronto, under the direction of Messrs. Altman and Brittain. This required determination of the implicit interest rates and other analysis necessary to achieve a satisfactory basis of direct comparison.⁸ The accuracy of Mr. Rabadi's analysis was confirmed by an independent consultant appointed by the within Commission, Mr. Chris Kerr, who, when asked about the model developed by Mr. Rabadi for his analysis, stated that the "analysis was adequate – and the decision that he arrived at was the correct one. There's some minor points that we would have changed in – in his analysis... but even... if we corrected some of those minor items... the result would be the same."⁹

7. In testimony, Ms. Liczyk confirmed that Mr. Rabadi acted in an appropriate manner by looking at the "best price that existed for the ninety (90) day period that was relating to those \$43 million [in purchases] ... and [he] made the judgment that was the basis ... [for] making a recommendation going forward".¹⁰ Mr. Rabadi's testimony confirmed that his analysis of the responses to the RFQ was developed with input from Messrs. Power, Altman and Brittain.¹¹ There was no error or oversight in the financial analysis performed by Mr. Rabadi.

PART VI - THE REPORT

8. Mr. Rabadi's actions in developing the Report, considered in the context of the ongoing supervision of Mr. Rabadi by Messrs. Altman and Brittain, and a review of the Report by Ms. Liczyk, do not deserve criticism.

9. From June 24 until June 30, 1999, Mr. Rabadi sought the input and direction of numerous individuals in drafting the Report, including Mr. Power, Mr. Jim Andrew (the Executive Director of the IT Department for the City of Toronto), Ms. Lana Viinamae (the Director of the Year 2000 Project for the City of Toronto), and Mr. Lou Pagano, Mr. Frank Spizarsky and Mr. Dave Beattie in the Purchasing and Materials Management Division of the City of Toronto. Mr. Rabadi also kept Messrs. Altman and Brittain apprised of the development of the Report

⁸ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003, at paras. 24 to 25

⁹ **Compendium Tab 8** - Transcript of Chris Kerr on September 11, 2003, at page 29 line 23 to page 30 line 7, and page 30 line 23 to page 31 line 9

¹⁰ **Compendium Tab 9** - Transcript of Wanda Liczyk on November 4, 2003, at page 39, lines 15 to 20

¹¹ **Compendium Tab 1**– Affidavit of Nadir Rabadi, sworn June 23, 2003 at paras. 27 to 30

throughout this extensive consultative process.¹²

10. In addition to receiving input from these individuals, Mr. Rabadi ensured the active involvement of Ms. Liczyk in drafting the Report. On June 30, 1999, Mr. Rabadi provided to Ms. Liczyk a draft Report for her review.¹³ Ms. Liczyk made handwritten notes thereon which were incorporated by Mr. Rabadi into a subsequent draft Report and circulated to Ms. Liczyk and others by way of email on July 2, 1999.¹⁴

11. During the period of July 2 until July 8, 1999, revised drafts of the Report were circulated amongst a broad consultative group of City of Toronto employees, which included Mr. Power, Ms. Viinamae, Mr. Pagano, Mr. Spizarsky, Mr. Beattie, Mr. Andrew, Mr. Altman, Mr. Brittain and Ms. Liczyk.¹⁵ All of these individuals, and in particular Ms. Liczyk, were involved in the broad consultative process by which the Report was drafted and finalized.

12. Mr. Rabadi testified that, in his experience, Ms. Liczyk was an “aggressive reviewer” and, depending on the circumstances, would review between four and seven drafts of reports.¹⁶ Accordingly, Ms. Liczyk’s active involvement in the finalization of the Report during the period of June 30 to July 12, 1999 likely involved a similar focussed amount of attention, which is confirmed by the following chronology:

July 2, 1999 Mr. Rabadi sent an email to Ms. Liczyk, Mr. Andrew, Ms. Viinamae, Mr. Power, Mr. Altman, Mr. Beattie and Mr. Pagano in which he referenced the fact that she had completed a “preliminary review”, and that “some of her concerns” had been addressed.¹⁷

July 3, 1999 Mr. Andrew sent an email to Ms. Liczyk, Mr. Rabadi, Mr. Power, Ms. Viinamae, Mr. Altman, Mr. Beattie and Mr.

¹² **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at paras. 31 to 43

¹³ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at para. 44

Compendium Tab 11 – June 30, 1999 draft Report (colour), COT012884

¹⁴ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at para. 46

¹⁵ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003, at paras. 47-61

¹⁶ **Compendium Tab 2** - Transcript of Nadir Rabadi on July 2, 2003, at page 15 line 6 to page 16 line 9

¹⁷ Email from Nadir Rabadi dated July 2, 1999, COT015671 (Tab 15-005), with the attached Report, COT031855
Transcript of Nadir Rabadi on July 2, 2003 at page 123 lines 6 to 21

Pagano in which he described additional changes that he had authorized.¹⁸

- July 4, 1999 Ms. Liczyk sent an email to Mr. Andrew, Mr. Rabadi, Mr. Brittain and Bob Batten, in which she indicated that she had provided comments on the draft Report, and that a subsequent draft would be provided on July 5, 1999. These comments confirm Ms. Liczyk's understanding of and participation in the drafting process of the Report.¹⁹
- July 5, 1999 Mr. Power stated in an email to Ms. Viinamae that Mr. Andrew had advised Ms. Liczyk that she would receive another draft of the Report that evening.²⁰
- July 6, 1999 Mr. Andrew provided two separate drafts of the Report to Mr. Liczyk.²¹
- July 6, 1999 Mr. Spizarsky confirmed that Rita Reynolds of the Access & Privacy office of the City of Toronto had instructed that none of the bidders' financial information should be referenced in the Report.²²
- July 7, 1999 Ms. Viinamae asked Mr. Power in an email to confirm whether Ms. Liczyk had seen and approved the Report, to which Mr. Power replied that Ms. Liczyk had received a copy and intended to re-write the first main paragraph.²³
- July 8, 1999 Mr. Rabadi requested confirmation from Ms. Liczyk as to whether she would be able to finalize the Report that evening.²⁴

13. The Report was completed by Mr. Rabadi, Mr. Andrew and Ms. Liczyk over the period

¹⁸ Email from Jim Andrew dated July 3, 1999, COT014321 (Tab 8-011)

¹⁹ Email from Wanda Liczyk dated July 4, 1999, COT014322 (Tab 8-012)

²⁰ Email from Brendan Power dated July 5, 1999, COT031858 (Tab 8-013a)

²¹ Email from Jim Andrew dated July 6, 1999, COT013805 (Tab 8-020a)

²² Email from Frank Spizarsky dated July 6, 1999, COT012270 (Tab 8-025a)

The certified copy of the Report to the PFC dated January 20, 2000 (COT006001) confirmed that copies of appendices A, B, and C of the Report (which included, *inter alia*, financial information referenced in the Report) were on file in the office of the City Clerk, and that said Appendices were to remain confidential in accordance with the provisions of the *Municipal Act*.

²³ Email from Lana Viinamae dated July 7, 1999, COT014211 (Tab 8-024a)

Email from Jim Andrew dated July 7, 1999, COT014218 (Tab 8-023)

²⁴ Email from Nadir Rabadi dated July 8, 1999, COT059132

of July 9 to 12, 1999. Mr. Rabadi faxed the Report to Ms. Liczyk at her home for her review on July 9, 1999 in order to finalize it for presentation to the Policy and Finance Committee of Toronto City Council (“PFC”). After having reviewed the Report for one-half to one full hour,²⁵ Ms. Liczyk approved the Report and asked Mr. Rabadi to provide her with a final copy for her signature.²⁶

14. On July 11, 1999, Mr. Rabadi noticed a typographical error in the Report and asked Mr. Andrew via email to point it out to Ms. Liczyk.²⁷ On July 12, 1999, Mr. Rabadi directed Ms. Liczyk’s attention to this error in an email.²⁸

15. On July 12, 1999, Mr. Rabadi spoke with Ms. Liczyk about a proposed change to the Report, following which she directed him to correct it.²⁹ Mr. Rabadi then provided the Report incorporating this change to Messrs. Altman, Brittain and Andrew, Ms. Viinamae, and the Clerk of the PFC, Patsy Morris,³⁰ and explained his recent discussions with Ms. Liczyk in an email to his direct supervisors, Messrs. Altman and Brittain.³¹

16. On July 12, 1999, Mr. Rabadi sent an email to Ms. Liczyk, Mr. Andrew, Ms. Viinamae and Mr. Altman in which he indicated that Ms. Liczyk expected questions on, among other things, the cost of further equipment in excess of \$43,150,000.00 and how the costs associated with the purchases would be budgeted.³²

17. Ms. Liczyk has testified that City Councillors who sat on specific committees and who

²⁵ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 192 line 14 to page 193 line 8
Compendium Tab 10 - Transcript of Wanda Liczyk on November 12, 2003, at page 194 lines 1 to 14, at which Ms. Liczyk confirms that, having spent one-half to one hour reviewing the Report on July 9, 1999, she was satisfied to have it “go forward” to the PFC.

²⁶ **Compendium Tab 1** - Affidavit of Nadir Rabadi sworn June 23, 2003, at paras. 65 and 66
 Report dated July 9, 1999, with fax cover sheet from Mr. Rabadi to Ms. Liczyk, with the handwritten notes of Mr. Rabadi taken while talking to Ms. Liczyk, COT12721 (Tab 2-016a)

²⁷ Email from Nadir Rabadi dated July 11, 1999, COT031872 (Tab 8-026a)

²⁸ Email from Nadir Rabadi dated July 12, 2003, COT012751 (Tab 2-016a)

²⁹ Affidavit of Wanda Liczyk, sworn October 25, 2003 at para. 152

³⁰ Email from Nadir Rabadi dated July 12, 1999, COT013056, with attached Report, COT013057 (Tab 3-001a)

³¹ **Compendium Tab 1** - Affidavit of Nadir Rabadi sworn June 23, 2003 at para. 71

Compendium Tab 13 - Email from Nadir Rabadi dated July 14, 2003, COT031877 (Tab 15-013)

³² **Compendium Tab 12** - Email from Nadir Rabadi dated July 12, 1999, COT015673 (Tab 8-027)

took their jobs seriously would read reports “cover to cover”, and that City Councillors on the PFC had a “duty and responsibility” to do so.³³ Mr. Rabadi was entitled to rely upon the reasonable assumption that Ms. Liczyk would expect no less from herself and, having at least reviewed a substantially-completed draft of the Report for one-half to one hour on July 9, 1999, had satisfied any concerns that she may have held with the Report.

PART VII - MR. RABADI REVIEWED THE REPORT WITH HIS SUPERIORS

18. In the course of preparing the Report, Mr. Rabadi ensured that his supervisors were aware of, and accordingly were in a position to address concerns with, the manner in which the Report was drafted and its application as a binding contract between the City of Toronto and MFP.

19. In fact, Ms. Liczyk confirmed that the draft Report dated June 30, 1999 upon which she made handwritten notations was located in the files of Mr. Rabadi’s direct supervisor, Mr. Altman.³⁴

Q: Putting things from Mr. Rabadi's perspective, it would be reasonable for him, to present to Mr. Altman, a copy of the changes that you'd marked, the next revision and accept however Mr. Altman chose to deal with that material?

A: He could.

Q: That would be reasonable?

A: He could do that.

Q: You're agreeing that would be reasonable?

A: Yes.³⁵

20. In these circumstances, Ms. Liczyk agreed that responsibility for the implementation of her requested revisions did not rest with Mr. Rabadi:

³³ **Compendium Tab 9** - Transcript of Wanda Liczyk on November 4, 2003, page 61, lines 3 to 7, 15 to 21

³⁴ **Compendium Tab 9** - Transcript of Wanda Liczyk on November 4, 2003, at page 58 lines 10 to 21

Compendium Tab 11 – June 30, 1999 draft Report (colour), COT012884

³⁵ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 148 lines 11 to 20

Q: So I'm suggesting that the harmony or disharmony between your June 30 notes and subsequent drafts, not just July 2nd but subsequent drafts, would be --

A: Stuck with Mr. Altman.

Q: -- with Mr. Altman not Mr. Rabadi?

A: Yes.³⁶;

and:

Q: And you'll agree with me, that Mr. Rabadi wouldn't have any way to know that your notes on this June 30 document, were sitting in the file of Mr. Altman, if that's where they were?

A: That's correct. I think I've stated that earlier, that when I posed my question on whether the changes had been made, that I think Mr. Rabadi's reference point would have been the conversation that we had at Council, not specifically to this report, because he understood probably that Mr. Altman had passed it to me earlier.

...

Q: In other words, assuming Mr. Altman and Mr. Brittain, were in the loop concerning the revisions of the draft, Mr. Rabadi, would be proceeding reasonably in his communications with you, July 9th?

A: Yes.³⁷

21. Accordingly, Mr. Rabadi clearly acted reasonably and responsibly in keeping his supervisors aware and active in drafting the Report.

PART VIII- \$43,000,000/\$43,150,000.00 COST ESTIMATE

22. In testimony, Messrs. Altman and Brittain stated that they were aware that the recommendations in the Report did not express a limitation of financial commitment in the amount of \$43,000,000. Messrs. Altman and Brittain specifically confirmed during their testimony that they were aware that Recommendation 1 in the Report had been changed from an earlier draft, which had expressed the sum of \$43,000,000 as a limitation of financial obligation

³⁶ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 158 lines 12 to 17

³⁷ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 195 line 12 to page 196 line 21

of the City of Toronto.³⁸ In her testimony, Ms. Liczyk agreed that Mr. Rabadi was entitled to proceed under the supervision of Mr. Altman concerning the composition of the Report in relation to the sum of \$43,000,000.³⁹

23. In the course of completing the Report, Mr. Rabadi sought confirmation from Ms. Viinamae that the purchases pursuant to the Contract would not exceed \$43,150,000.00.⁴⁰ Mr. Rabadi testified that throughout the duration of his employment in the Finance Department as a Senior Financial Analyst, he was unaware that Messrs. Andrew or Power, or any City of Toronto staff member, intended the RFQ and Report to support an interpretation that would allow for computer product acquisitions totalling more than \$43,150,000.00.⁴¹

PART IX - THE 90-DAY PERIOD OF VALIDITY OF THE QUOTES

24. It is basic business common sense that a quote submitted by a prospective equipment supplier cannot be expected to be valid for an indefinite period of time. Mr. Rabadi raised this limitation as an issue to his direct supervisors, Messrs. Altman and Brittain, early on in the process and in advance of preparing the Report.⁴²

25. In testimony, Ms. Liczyk confirmed that general experience informed her that quotes would not be valid beyond a 90-day period:⁴³

Q. Mr. Rabadi would be reasonable to proceed as he did in the believe (sic) that they, Mr. Altman and Mr. Brittain, were aware that the quote was effective ninety (90) days?

A. Yes.

³⁸ **Compendium Tab 6** - Transcript of Don Altman on July 8, 1999, at page 190 line 6 to page 193 line 6

Compendium Tab 4 - Transcript of Len Brittain on July 31, 1999, at page 64 line 19 to page 66 line 1

³⁹ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 149 lines 16 to 25
⁴⁰ Email from Nadir Rabadi dated July 7, 1999, COT014219 (Tab 8-022)

⁴¹ **Compendium Tab 1** - Affidavit of Nadir Rabadi sworn June 23, 2003 10 at para. 73
 Note that Mr. Rabadi's left this position on July 23, 1999.

⁴² **Compendium Tab 6** - Transcript of Don Altman on July 7, 2003, at page 32-33 lines 9-22
 Handwritten note of Mr. Rabadi to Mr. Brittain and Mr. Altman, COT12290

⁴³ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 158 line 19 to page 160 line 8

Q. So my suggestion to you, concerning both the \$43,000,000 issue and the ninety (90) day issue is that Mr. Rabadi would be tending to be reasonable in his actions, if his superiors were aware of those points. His superiors meaning Mr. Altman and Mr. Brittain.

A. Okay.

Q. You don't disagree? You're not disagreeing?

A. No.⁴⁴

26. Mr. Rabadi has confirmed that he did not know that Messrs. Andrew or Power, or any City of Toronto staff member, intended the RFQ and Report to support an interpretation that would allow for computer product acquisitions to be made after the 90-day period for which his analysis was conducted.⁴⁵

27. In any event, Mr. Rabadi's methodology was confirmed by his ultimate supervisor, Ms. Liczyk,⁴⁶ who confirmed during her testimony the obvious point that City Council would understand the reasonable assumption that the lease rate quoted by MFP would only be valid for a certain period of time.⁴⁷

PART X - SALE AND LEASEBACK

28. The Contract provided for a sale and leaseback transaction, wherein the City of Toronto would sell to MFP certain hardware that it had already purchased and lease it back from MFP. Mr. Brittain testified that he was aware of this aspect of the transaction,⁴⁸ while Mr. Altman has confirmed that he was aware that this aspect was not specified in the Report.⁴⁹ Accordingly, the fact that Mr. Rabadi's supervisors were aware of this aspect of the Contract confirms that Mr. Rabadi satisfied his responsibilities in this regard.

⁴⁴ **Compendium Tab 10**- Transcript of Wanda Liczyk on November 12, 2003, at page 162 line 24 to page 163 line 24

⁴⁵ **Compendium Tab 1** - Affidavit of Nadir Rabadi, sworn June 23, 2003 at para. 73

⁴⁶ **Compendium Tab 9** - Transcript of Wanda Liczyk on November 4, 2003, at page 39 lines 15 to 20

⁴⁷ **Compendium Tab 10** - Transcript of Wanda Liczyk on November 12, 2003, at page 163 lines 4 to 24

⁴⁸ **Compendium Tab 4** - Transcript of Len Brittain on July 31, 2003, page 40 line 23 to page 41 line 4

⁴⁹ **Compendium Tab 6** - Transcript of Don Altman on July 8, 2003, page 193 lines 15-24

PART XI - OPERATING VERSUS CAPITAL

29. Mr. Brittain directed Mr. Rabadi to consider the leases pursuant to the Contract as operating leases.⁵⁰ Accordingly, Mr. Rabadi, having acted pursuant to the direction of his supervisor, satisfied his responsibilities in this regard. The City of Toronto Auditor, Jeff Griffiths, has confirmed that, while the leases should have been characterized as capital leases, the City of Toronto's external auditors have advised that they were aware of this issue and have not recommended that the financial statements be amended.⁵¹

PART XII - CONCLUSION

30. It is submitted that Mr. Rabadi performed his work with adequate care, skill and diligence under the supervision of his superiors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 3, 2004

Cassels Brock & Blackwell LLP
 2100 Scotia Plaza
 40 King Street West
 Toronto, Ontario M5H 3C2

Paul J. Bates (LSUC# 26619D)
 Tel: 416.869.5969
 Fax: 416.644.9355

Michael Kealy (LSUC # 47176G)
 Tel: 416.869.5488
 Fax: 416.642-7153

Solicitors for Nadir Rabadi

⁵⁰ Transcript of Nadir Rabadi on June 25, 2003, at page 98 lines 11 to 20

⁵¹ **Compendium Tab 7** - Transcript of Jeff Griffiths on September 9, 2003, page 19 lines 7-19 (citing his affidavit at page 19)