

## **TORONTO EXTERNAL CONTRACTS INQUIRY**

### **Closing Submissions on Behalf of Lana Viinamae**

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## **Introduction**

1. These submissions should be read in conjunction with the Closing Submissions on Behalf of Lana Viinamäe delivered on December 6, 2004 in the Toronto Computer Leasing Inquiry ("TCLI"). To avoid duplication, these submissions will not address Ms. Viinamäe's work experience and other background information. In particular, the reader is referred to Parts 2 and 3 of Ms. Viinamäe's closing submissions in TCLI, with respect to her involvement in the Y2K Project and the reporting structure within the Y2K Project, and to Parts 14 and 15.

### **A. Beacon/Remarkable Phase**

#### **WMACS as a Y2K project**

2. The development of the WMACS system was legitimately designated as a Y2K Project. There was a need to have a single system for the City that could bill water and that system needed to be Y2K compliant. The legacy systems that did exist were not Y2K compliant. The estimated cost of retrofitting those systems was in the range of \$20 million.

***B. Ripley, October 25, 1994, p. 23, line 20 – p. 24, line 5***

***G. Carbone, November 5, 2004, p. 165, line 13 – p. 167, line 2***

***Exhibit 13, Vol. II, Tab 31, Begdoc 13104***

3. In hindsight, it might be suggested that the City required a central water billing system in the wake of amalgamation, rather than as a function of Y2K. However, in the context of Y2K time constraints in 1999, the City was

faced with a choice between developing one Y2K-ready system to serve the new City, or remediating each of the legacy systems, which only later would be scrapped and replaced by a central system. No witness who testified before the Inquiry questioned the inclusion of WMACS as a Y2K Project. In the words of Giuliana Carbone: "Water was definitely Y2K." The development of WMACS as a Y2K-related project received the requisite approvals from the Y2K Steering Committee, the Policy and Finance Committee, and City Council.

***Lana Viinamae, December 6, 2004, p. 194, line 3 – p. 195, line 13***

***G. Carbone, November 5, 2004, p. 166, lines 13 – 25; p. 172, lines 15 – 24***

***Exhibit 13, Tab 76, COT015135 @ 15139***

***Exhibit 13, Tab 77, COT064616 @ 64623***

***Exhibit 13, Tab 83 (No Begdoc No.)***

4. WMACS was a system in its own right and was not a module of TMACS.

***E. Ngan, October 27, 2004, p. 195, lines 12 – 19***

**B. Dell Phase**

**August 1998 Request for Proposals (RFP)**

5. The selection of value-added resellers (VARs) through the August 1998 RFP (the “RFP”) provided the City with pre-approved vendors. This was intended to save City departments from having to go to market for competitive pricing for every computer-related purchase they made. This was not to say that staff were precluded from obtaining the latest prices on required equipment.

***K. Bulko, November 22, 2004, p. 70, line 23 – p. 74, line 15***

6. The RFP had a broader purpose, and was intended to serve the City for computer-related acquisitions, beyond the Y2K Project. It covered a period of time up to December 31, 2001 – well beyond the moment of Y2K truth on January 1, 2000. It also was, by its own terms, *non-exclusive*. This meant that the City retained the freedom to buy from suppliers other than the VARs. The intention of City staff, notwithstanding the RFP process, always was to continue buying Dell computers and the RFP in no way prevented the City from purchasing Dell computers directly from Dell.

***Mike Franey, November 30, 2004, p. 234, line 21***

***K. Bulko, November 22, 2004, p. 81, line 2 – p. 83, line 15; p. 85, line 11 – p. 86, line 17; p. 121, line 3 – p. 127, line 10***

***K. Bulko, November 23, 2004, p. 152, line 18 – p. 154, line 9***

***Exhibit 15, Vol. I, Tab 2, TEC019416***

7. At his lunch with Ms. Viinamae on September 11, 1998, David Toms said there would have been some discussion of the RFP, as he understood that Ms. Viinamae was the Y2K Project Director. He wanted to show

Dell's commitment to City. However, Mr. Toms said he had no reason to believe the Ms. Viinamäe was directly involved in the RFP process.

***D. Toms, November 29, 2004, p. 209, lines 17 – 22; p. 226, lines 1 – 11***

8. While the terms of the RFP required that questions with respect to the RFP should be directed to Kathryn Bulko, Mr. Toms said this did not preclude the Sept. 11 lunch with Ms. Viinamäe. The purpose of meeting was not to discuss the RFP and no specific questions were directed to the RFP:

I wasn't asking questions about particular parts of the RFP. I was supporting Julianne Clyde in presenting Dell's credibility as a potential technology partner to the City. I was not there to go through areas of the RFP, in terms of clarifications on areas, for the purposes of changing Dell's response to the RFP.

***D. Toms, November 29, 2004, p. 240, line 7 – p. 246, line 23***

9. It is telling that, when asked whether he would have asked Ms. Viinamäe, at the Sept. 11 lunch, whether Dell had any chance of winning a VAR RFP, Mr. Toms said he wouldn't have gone into that level of detail with Ms. Viinamäe. Rather, he said, he would have had that sort of discussion in the meeting he had with Jim Andrew and Jeff Lyons.

***D. Toms, November 29, 2004, p. 249, line 13 – p. 250, line 1***

10. Prior to the Sept. 11 lunch, Ms. Viinamäe was not even aware that Dell would be submitting a bid as part of the RFP process. She also had no detailed knowledge of the RFP and therefore could not have shared any detailed

information with Dell, in any event. As a result, there is no way that she could have compromised the RFP process by meeting with Dell.

***Lana Viinamae, December 6, 2004, p. 65, lines 4 – 6***

***Lana Viinamae, December 8, 2004, p. 12, line 21 – p. 13, line 17***

11. This is underscored by the fact that Kathryn Bulko did not begin working out of Metro Hall, where Ms. Viinamae worked, until mid-October 1998, about one month after Ms. Viinamae's lunch with the Dell representatives and after the RFP had closed.

***K. Bulko, November 22, 2004, p. 89, lines 7 – 17***

**December 1998 Request for Quotations (RFQ)**

12. While the RFP was to select VARs to provide hardware and services to the City over a three-year period, leading up to 2001, the Request for Quotations ("RFQ") conducted by Ms. Bulko in December 1998 had a more narrow purpose: to supply hardware and services for the Y2K desktop rollout.

***Lana Viinamae, December 6, 2004, p. 91, line 3 – page 92, line 6***

13. The December RFQ was a necessary and appropriate step to supply the Y2K Project with desktop computers after the Y2K Project budget received approval from City Council at its meeting on November 25, 26 and 27, 1998. The RFP itself did not contain any spending authority by which to acquire desktops, meaning that purchase orders could not be issued under the RFP. Meanwhile, the Y2K Project's desktop team had been developing specifications for a Y2K-compliant desktop in parallel with the RFP, but had no involvement on the RFP. To extent that the desktop team developed Y2K-compliant

specifications that differed from the specifications under the RFP (as was the case), the City needed to obtain new pricing.

***K. Bulko, November 23, 2004, p. 173, lines 7 – 25***

***K. Bulko, November 23, 2004, p. 199, lines 2 – 12***

***M. Franey, November 30, p. 213, line 3 – p. 215, line 3***

***M. Franey, December 1, 2004, p. 57, lines 3 – 16***

14. As well, by about November 1998, Mike Franey and Kathryn Bulko had identified the need to obtain direct quotes from manufacturers to avoid the problem of “differential” pricing, by which the City would receive different prices from VARs on the same desktop computer, resulting from favoured relationships between certain manufacturers and VARs. The RFQ represented an opportunity to obtain “special bid pricing” to assure that the City received the manufacturers’ best prices on a consistent basis.

***K. Bulko, November 22, 2004, p. 134, line 21 – p. 138, line 24; p. 155, lines 13 – 23***

***M. Franey, November 30, p. 65, line 18 – p. 66, line 14***

15. There was no question in Mike Franey’s mind that Lana Viinamae had full authority to initiate the December 1998 RFQ.

***Mike Franey, November 30, page 237, line 25 – page 238, line 8***

16. The City’s intention always had been to utilize VARs to deploy desktop computers as part of the Y2K Desktop Rollout, but that did not necessarily mean that the VARs would supply those computers.

***M. Franey, December 1, 2004, p. 13, lines 8 – 18***

**Kathryn Bulko Conducts the RFQ**

17. Ms. Viinamae instructed Kathryn Bulko to proceed with an RFQ and to obtain standard pricing from the manufacturers, and pricing from the VARs for the services. She did not tell Ms. Bulko to include Dell. She did not tell Mr. Franey to include Dell. It was Ms. Bulko who suggested that the hardware and services be priced under separate quotes.

***Lana Viinamae, December 6, 2004, p. 99, line 9 – p. 100, line 13***

18. After providing Ms. Bulko with instructions to conduct the RFQ, Ms. Viinamae had no day-to-day involvement with the RFQ. In her words: “I wait[ed] for the results.” In fact, Ms. Viinamae was out of the office from December 1 to December 14, 1998.

***Lana Viinamae, December 6, 2004, p. 106, lines 11 – 20***

***Lana Viinamae, December 6, 2004, p. 94, line 4 – p. 95, line 6***

19. It made perfect sense that Ms. Viinamae would delegate and entrust the December RFQ to Ms. Bulko. Ms. Bulko agreed she was the City of Toronto’s “point person” for computer acquisitions prior to amalgamation, who in her words was “responsible for all corporate wide acquisitions.”

***K. Bulko, November 23, p. 142, line 22 – p. 143, line 4***

***K. Bulko, November 22, 2004, p. 36, lines 2 – 3***

20. Mike Franey acknowledged Ms. Viinamae’s need to delegate responsibility to her subordinates, given the enormity of the Y2K Project and its span across the entire City organization.

***M. Franey, November 30, 2004, p. 205, line 18 – p. 208 line 11***

21. Mike Franey recruited Ms. Bulko to assist with desktop deployment under the Y2K Project based on her past experience, and asked her to assist with desktop business case and desktop strategy. This is consistent with Ms. Bulko's evidence that she reported to Ms. Viinamae through Mr. Franey and it contradicts Mr. Franey's efforts to minimize, in his testimony, the extent of his role in relation to the Y2K Project (as discussed further below).

***M. Franey, November 30, 2004, p. 28, line 4***

***K. Bulko, November 23, 2004, p. 143, lines 15 – 19***

22. In advance of the December RFQ, Ms. Bulko and Mr. Franey had discussed the issue of differential pricing, possibly as early as November 1998.

***K. Bulko, November 23, 2004, p. 214, lines 5 – 21***

23. While Kathryn Bulko and Mike Franey had discussions independent of Ms. Viinamae about differential pricing, they also apparently discussed the issue of breaking out hardware from services in the December RFQ, again independent of Ms. Viinamae.

***Mike Franey, December 1, 2004, p. 61, line 4 – p. 62, line 22***

24. This suggests that Ms. Viinamae had a limited role in determining the mechanics of how the RFQ actually was conducted. For example, Ms. Viinamae testified that she had no knowledge of the 24-hour turnaround for the December RFQ. When Ms. Bulko initiated the RFQ by way of email on December 7, 1998, Ms. Viinamae was not copied on the email (although Mr. Franey was copied.)

***K. Bulko, November 23, 2004, p. 167, lines 13 – 17***

***Lana Viinamae, December 6, 2004, p. 105, line 23 – p. 106, line 3***

25. Significantly, Ms. Viinamäe was not aware that Dell would be invited to bid in the RFQ. Her evidence on this point was consistent throughout her testimony, notwithstanding the fact that her evidence was delivered in two parts, separated by a gap of six weeks.

26. Meanwhile, Ms. Bulko's assertion that Ms. Viinamäe instructed her to include Dell in the December was contradicted by Ms. Bulko's own testimony. In explaining that the RFQ represented a competitive process, Ms. Bulko stated: "the reason we included Dell was because they are one of the Enterprise Tier corporate standards."

***K. Bulko, November 23, 2004, p. 156, lines 12 – 20***

27. Earlier, asked whether David Shiner's amendment had "opened the door for Dell" to be included in the December RFQ, Ms. Bulko answered: "I'm not sure I would have seen it that way... Because as Dell being one (1) of our standards, we would have been getting quotes on them anyways."

***K. Bulko, November 22, 2004, p. 121, lines 3 - 16***

28. Similarly, Ms. Bulko said at one other point: "our intent when we went through the exercise at the beginning of the mini-RFQ was to tender for all three (3) Tier 1's."

***K. Bulko, November 22, 2004, p. 134, lines 7 - 16***

29. This also is consistent with Ms. Viinamäe's evidence that, when Ms. Viinamäe learned that Dell had won the RFQ, Kathryn Bulko explained to her that Dell had been included because Ms. Bulko had approached all Tier One manufacturers.

***Lana Viinamäe, December 6, 2004, p. 136, lines 12 – 22***

30. However, in questioning by Commission counsel, Ms. Bulko was adamant that Lana Viinamae had instructed her to include Dell in the RFQ.

***KB Nov 22 p. 156, line 4 – p. 158, line 1***

31. In her affidavit, Ms. Bulko referred to the inclusion of Dell in the context of instructions from Ms. Viinamae to include Dell as one of the three Tier One manufacturers. Ms. Bulko put the date of these instructions from Ms. Viinamae, in her affidavit, as on or around December 3 or 4, 1998.

***Affidavit of K. Bulko, para. 24, Exhibit 14, tab A***

32. In her testimony, after being lead through her notes by Commission counsel, Ms. Bulko put the date of the instructions from Ms. Viinamae as November 30, 1998 in reference to her note “Do mini RFQ.”

***K. Bulko, November 22, 2004, p. 144, lines 2 – 23***

33. On later cross-examination, Ms. Bulko acknowledged that she had reviewed her notes for the purposes of preparing her affidavit. She acknowledged that, in doing so, she had not made any reference in her affidavit to the November 30 note and agreed that her notes did not substantiate the purportedly detailed instructions from Ms. Viinamae that are described in paragraph 24 of her affidavit. In contrast, Ms. Bulko’s notes contain fairly detailed notes from a meeting with Mike Franey on December 1, 1998, describing the RFQ plan.

***K. Bulko, January 19, 2005, p. 163, line 1 – p. 167, line 15***

34. In fact, the evidence suggests that Ms. Bulko conducted the RFQ with a fair degree of independence and responsibility, consistent with her self-described role as the City’s point person for computer acquisitions. Tellingly,

when referring at one point in her testimony to the decision to conduct the RFQ, Ms. Bulko spoke in the first person: “So I figured, now we’ve got approval (of the Y2K budget), perhaps I thought okay, how do we go forward.”

***K. Bulko, November 22, 2004, p. 138, line 25 – p. 140, line 6***

35. Others viewed Ms. Bulko as the key staff member at the City responsible for computer acquisitions and the RFQ. For example, Bruce Mortensen of Dell perceived Ms. Bulko as the “primary person of interest” in sales efforts directed to City. As early as November 30, 1998, Mr. Mortensen – through prior contact with Ms. Bulko, had formed the belief that she was the one administering the RFQ; that she was the key person for moving towards pricing on desktops; and she would physically be the one to send out the RFQ. By comparison, when asked who he considered to be the key IT contacts and decision makers at the City in the fall of 1998, Mr. Mortensen did not name Ms. Viinamae.

***B. Mortensen, November 25, 2004, p. 70, line 4 – p. 72, line 22***

***B. Mortensen, November 25, 2004, p. 253, lines 11 – 15***

***B. Mortensen, November 25, 2004, p. 310, line 1 – p. 311, line 5***

36. Ms. Bulko’s contact with Mr. Mortensen calls into question her evidence, at paragraph 28 of her affidavit, that Ms. Viinamae provided her with contact information for Dell and Compaq, in order to conduct the RFQ, because Ms. Bulko only had contact information for IBM. Ms. Bulko acknowledged in her testimony that she met with Mr. Mortensen on November 19, 1998, at which time they probably exchanged business cards. Oddly, in earlier testimony, Ms. Bulko suggested that Mr. Mortensen may have been referring to a telephone

conversation with Ms. Viinamae when he referred in a November 30, 1998 email, addressed to Ms. Bulko, to “our telephone conversation.” Mr. Mortensen was clear that he had no contact with Ms. Viinamae prior to November 30, 1998 (and, in fact, before December 23, 1998).

***K. Bulko, November 23, 2004, p. 160, line 24 – p. 166, line 21***

***B. Mortensen, November 25, 2004, p. 140, lines 12 – 21***

**Kathryn Bulko’s Notebooks**

37. Ms. Bulko’s credibility also must be assessed in light of her late production of her notebooks by which she recorded her involvement in the issues that are material to this Inquiry. A limited selection of Ms. Bulko’s notes were provided to Commission Counsel and included in Volume V of Exhibit 15 only shortly before her testimony. Ms. Bulko gave no indication that the notes she produced formed part of a larger collection.

***Kathryn Bulko, November 22, 2004, p. 141, line 21 – p. 142, line 14***

38. On December 8, 2004, when the existence of Ms. Bulko’s notebooks first was revealed in the midst of Ms. Viinamae’s evidence, Ms. Bulko’s solicitor, Mr. Coblin, advised the Commissioner:

“And this morning, at the morning break, when I spoke to Ms. Bulko about another issue, she started flipping through a book and found these - - the additional notes.”

***Lana Viinamae, December 8, 2004, p. 132, lines 8 – 10***

39. This suggests that Ms. Bulko kept these notes close at hand during the course of the Inquiry and, in fact, referred to them in the course of her discussion with Mr. Coblin because they contained information that was relevant to Ms. Viinamae's evidence. This calls into questions her later evidence that she did not appreciate the importance of her handwritten notes.

***K. Bulko, January 19, 2005, p. 12, line 14 – p. 13, line 14***

40. In another instance that calls Ms. Bulko's credibility, she was asked by counsel for the City, on November 23, 2004, if she was aware if there ever was a report back to the Economic Development Committee in response to David Shiner's amendment at City Council concerning the 1998 RFP. Ms. Bulko answered definitively: "There wasn't a report." Ms. Bulko's notebook contain a draft report. In later evidence, after her notebooks were produced, Ms. Bulko acknowledged that she reviewed her notes for the purposes of preparing her affidavit. This means that Ms. Bulko presumably would have seen her draft report to the Economic Development Committee, contained in her notes, prior to denying the existence of any report when gave evidence on this point on November 23, 2004.

***K. Bulko, November 23, 2004, p. 220, line 6 – p. 222, line 1***

***K. Bulko, January 19, 2005, p. 14, lines 3 – 6; p. 151, lines 4 – 7***

**Mike Franey's Credibility**

41. Mike Franey's version of events relating to the decision to include Dell in the December RFQ bears no relationship to Kathryn Bulko's version. Both Ms. Bulko and Mr. Franey claim that Ms. Viinamae instructed them to conduct the RFQ and both claim that Ms. Viinamae instructed them to specifically to include Dell in that RFQ.

42. In describing the instructions that Ms. Viinamae purportedly gave him, to inform Ms. Bulko to conduct the RFQ, Mr. Franey states in his affidavit that Compaq, IBM and Dell were selected as the manufacturers to participate in the RFQ because they all were Tier One suppliers. Outside of that, Mr. Franey provides no explanation in his affidavit for the inclusion of Dell in the RFQ.

***Affidavit of M. Franey, para 11 and 12, Exhibit 14, Tab D***

43. In contrast to his Affidavit, in his testimony before the Inquiry Mr. Franey offered a seemingly elaborate but somewhat vague explanation for the inclusion of Dell in the RFQ. He provided a detailed recollection of Ms. Viinamae calling him into her office and telling him to include Dell. Yet, when asked by Commission counsel why Dell had been included, Mr. Franey offered a vague description of Ms. Viinamae saying something about a discussion she had had with Jeff Lyons. Mr. Franey was not even sure whether Ms. Viinamae's reference to Mr. Lyons was part of that conversation and he acknowledged that he only recently has linked this together. He went on to say that he didn't know who Mr. Lyons was at that point in time and that "it actually didn't mean anything until I looked at the evidence." Asked by the Commissioner what he meant about

looking at “the evidence”, Mr. Franey explained that he had made this recollection after reviewing copies of Ms. Viinamae’s calendar from that time.

***M. Franey, November 30, 2004 p. 77, line 20 – p. 80, line 1***

44. It must be emphasized that Mr. Franey made no suggestion that Ms. Viinamae had discussed Dell with Mr. Lyons. He said only that she referred generally to having spoken with Mr. Lyons. It is Mr. Franey who only now, five years later, has grasped a connection between Ms. Viinamae’s supposed conversation with Mr. Lyons, and the decision to include Dell in the RFQ.

45. Ms. Viinamae has no recollection of any conversation with Mike Franey concerning the RFQ in which she mentioned Mr. Lyons. Mr. Lyons has no recollection of any conversation with Ms. Viinamae about Dell around early December 1998. He said “she wasn’t the person involved with this issue [the RFQ] in my mind.” That person, Mr. Lyons said, was Jim Andrew.

***L. Viinamae, December 6, 2004, p. 99, line 25 – p. 100, line 3***

***J. Lyons, January 17, 2005, p. 94, line 21 – p. 96, line 2***

46. Neither Ms. Viinamae or Mr. Lyons have any recollection of any lunch occurring on or about November 26, 1998. In fact, Ms. Cross’s notes, regarding Mr. Lyon’s calendar, suggest that Lynn Marks (Ms. Viinamae’s assistant) had called to look into switching the lunch appointment. Ms. Viinamae had never met with Mr. Lyons on a one-on-one basis before and testified that, for that reason, she would have remembered such a lunch. In her mind, it did not happen.

***Lana Viinamae, December 6, 2004, p. 84, line 16 – p. 87, line 10***

***Lana Viinamae, December 8, 2004, p. 47, lines 15 – 21***

***Jeff Lyons, January 17, 2005, p. 86, lines 2 – 17***

47. On a related note, it is persuasive that Bruce Mortensen of Dell has testified that he wasn't aware of any relationship between Mr. Lyons and Ms. Viinamae

***B. Mortensen, November 25, 2004, p. 297, lines 2-5***

48. It is respectfully submitted that Mr. Franey's evidence on this point is dubious at best, and should be given no weight. Mr. Franey's Affidavit is direct on this point and makes no reference to Jeff Lyons. Any recollection Mr. Franey now has about a supposed conversation between Ms. Viinamae and Mr. Lyons, about the time of the December 1998 RFQ, clearly was based solely on Mr. Franey's recent review of Ms. Viinamae's calendar. The evidence of Ms. Viinamae and Mr. Lyons, each, is that they never actually met in November 1998. Neither recalls a conversation about Dell. Oddly, Mr. Franey now has a very specific recollection of Ms. Viinamae's supposed comment regarding Mr. Lyons. Yet when asked about a lunch that *he* attended, on November 26, 1998 with Mr. Mortensen of Dell, Mr. Franey could not recall *any* specifics.

***Mike Franey, November 30, 2004 p. 102, line 15 – 103, line 10***

49. In his later evidence discussing his knowledge of Jim Andrew's contact with Jeff Lyons, Mr. Franey acknowledged that, as of late 1998, "I didn't know who Mr. Lyons was." As a result, one has to question why Mr. Franey would specifically recall, now, that Ms. Viinamae had mentioned speaking to Mr. Lyons at that time, if Mr. Franey would not have known whom Jeff Lyons was. This further casts into doubt Mr. Franey's present recollection on this point.

***Mike Franey, December 1, 2004, p. 71 lines 17 - 20***

50. Mr. Franey's evidence that Ms. Viinamäe directed that Dell be included in the RFQ is further undermined by a response he gave when asked whether Ms. Viinamäe expressed surprise to see Dell included in the RFQ. His answer was:

Q: And obviously what we see Ms. Viinamäe expressing is surprise to see Dell included at the time the results coming in. And again you've touched on this topic to some extent, but, I just want to come back to this particular after the RFQ event, what's your recollection?

Was Ms. Viinamäe surprised, did she have words to say about, why is Dell included here, anything like that?

A: Well, again I believe that she would have known that Dell was included because Ruth Gastle [of Compaq] certainly would have told her and Debbie Ekins [of SHL] and these are the people who got the actual, you know, invite to provide the price.

If they felt that Dell was inadvertently included when they shouldn't have been, they certainly would have went back to Ms. Viinamäe and expressed their concern and their issues.

So I believe all along that Ms. Viinamäe did know that Dell was included and I guess that's about it."

***Mike Franey, November 30, 2004, Page 122 lines 2-20***

51. The preceding passage is instructive. If Ms. Viinamäe had instructed Mr. Franey or Ms. Bulko to include Dell in the RFQ, one would have expected Mr. Franey to answer that Ms. Viinamäe wasn't surprised to see Dell included in RFQ *because she had instructed that Dell be included*. Instead, he gives a very different explanation. As well, Mr. Franey makes no mention of Ms. Viinamäe's purported conversation with Jeff Lyons about Dell. In fact, Mr. Franey's answer suggests that Ms. Viinamäe didn't know that Dell had been

included in the RFQ until after the RFQ email was sent by Kathryn Bulko on December 7, 1998, because she would have had to hear about it from the other bidders. This is consistent with Ms. Viinamae's evidence.

52. When asked by the Commissioner why Ms. Viinamae would have instructed him to include Dell in the RFQ when her own past experience had not been positive, and when she didn't know that Dell was a Tier One manufacturer, Mr. Franey's answer focussed entirely on the second part of the question, about whether Dell was Tier One in December 1998. Mr. Franey chose not to answer the first part of the question about why Ms. Viinamae would have included Dell in the RFQ given her past negative experiences. In focusing his answer on Ms. Viinamae's supposed knowledge that Dell was a Tier One manufacturer, Mr. Franey pointed to the business case that he had prepared, which made explicit reference to HP, Compaq, IBM and Dell as the then-Tier One providers. Accepting Mr. Franey's logic, had Ms. Viinamae been basing her instructions on her knowledge of the business case, presumably she would have instructed staff to include HP in the RFQ as well. She did not, and this is consistent with Ms. Viinamae's evidence that she was not familiar with the desktop business case in detail.

***Mike Franey, November 30, 2004, p. 145, line 16 – 147, line 25***

***Lana Viinamae, December 6, 2004, p. 58, line 14 – p. 61, line 23***

***Lana Viinamae, December 6, 2004, p. 111, line – p. 112, line 23***

53. David Toms of Dell didn't have any sense, from his meetings with Ms. Viinamae, that she knew Dell was Tier One.

***David Toms November 29, 2004, p. 252 lines 13 - 25***

54. It is respectfully submitted that all of Mr. Franey's evidence must be assessed in light of his continuing friendship with Jim Andrew. The two friends had played golf together in the weeks leading up to their testimony at the inquiry.

***Mike Franey, November 30, p. 225, line 25 – p. 226, line 18***

55. Mr. Franey's credibility also must be assessed in light of his repeated attempts in the course of his testimony to distance himself from the decision-making process in connection with Dell in the Y2K project. Initially, Mr. Franey suggested "desktops don't fall within my portfolio." However, he later acknowledged substantial involvement with the desktop project including:

- (a) his role in instructing Kathryn Bulko to conduct the December 1998 RFQ;
- (b) that he, and not Lana Viinamae, was copied on the December 7, 1998 email message by which Kathryn Bulko initiated the RFQ;
- (c) that various Purchase Requisitions, for desktop computer purchases, bore his initials;
- (d) he prepared the Desktop Business Case document; and
- (e) he evaluated the desktop change request.

***Mike Franey, November 30, 2004, p. 128, line 222***

***Mike Franey, November 30, 2004, p 221, line 11 – p. 225 line 2***

56. As acting Director of Computer Operations and Telecommunication from June 1998 forward Mr. Franey had responsibility for the City's computer hardware including Y2K responsibility for ensuring that the City's desktops were Y2K ready.

***Lana Viinamae, December 6, 2004, p. 52, line 9 – p. 53, line 16***

**Dell wins the RFQ**

57. One thing that Ms. Viinamae, Ms. Bulko and Mr. Franey seemingly can agree on is that, once the results of the December RFQ were analysed, it made perfect sense to award the RFQ to Dell based on the Dell's low prices based compared to the other bidders. Ms. Bulko said there was "no way" that the City could have deployed higher priced machines. Mr. Franey said the decision to go with Dell, based on its price "stuck out like a sore thumb." He further described it as a "good decision" that saved the taxpayers money.

***Kathryn Bulko, November 22, p. 179, line 9 – p.180 line 2***

***Mike Franey, November 30, 2004, p. 246, line 1 – p. 247 line 8***

58. When asked by the Commissioner whether the award to Dell was "an alright thing" given that this followed on the heels of the RFP, which Dell had not won, Mr. Franey explained that the selection of the three VARS through the RFP process did not mean that the VARS had won the City's exclusive business. This is consistent with the fact that the August 1998 RFP, by its very terms, was non-exclusive.

***Mike Franey, November 30, p. 86 line 25 – p. 87, line 11***

59. Both in her Affidavit, at paragraph 34, and in her testimony, Ms. Bulko maintained that she made no recommendation with respect to awarding the RFQ to Dell. This simply is not believable. Ms. Bulko's analysis of the bids dated December 9, 1998 includes a comparison of the cost of a rollout using three manufacturers versus the cost of the rollout using only Dell. There is no evidence that Ms. Viinamae ever instructed Ms. Bulko to conduct such a comparison. One should ask why Ms. Bulko would have made such a

comparison unless it was to serve as the basis for a recommendation she intended to make.

***Kathryn Bulko, November 22, 2004, p. 179, line 9 – p. 180, line 2***

***Affidavit of Kathryn Bulko, para 34, Exhibit 14, Tab A, Exhibit 15, Volume 1, Tab 23, TEC 052889***

60. Ms. Bulko's assertion that she has no recollection of Ms. Viinamäe's reaction, to learning that Dell had been included in the RFQ, is entirely inconsistent with the evidence of Dell's representatives. David Kelly testified that the meeting of the Dell representatives with Ms. Viinamäe on December 23, 1998 was "pretty easy to remember". He said Dell had no margin for error, in part because of Ms. Viinamäe's past problems with Dell. Similarly David Kelly commented on Ms. Viinamäe's past problems with Dell and said "she wasn't happy about that." Similarly, Mike Franey confirmed that both he and Ms. Viinamäe had past experiences with Dell that had not been positive.

***Kathryn Bulko, November 23, 2004, p. 174, line 11 – p. 176, line 9***

***David Kelly, November 24, 2004, p. 109, lines 1 – 122***

***David Kelly, November 24, 2004, p. 204, line 23 – p. 205, line 3***

***Mike Franey, November 30, 2004, p. 138, lines 14 - 16***

61. Ms. Viinamäe's unchallenged evidence is that the Y2K Steering Committee members were informed and aware that Dell had won the RFQ. This was confirmed by Jim Andrew.

***Lana Viinamäe, December 8, 2004, p. 92, line 6 – p. 93, line 24***

***J. Andrew, January 25, 2005, p. 106, lines 4 – 7***

**January 1999 Change Request**

62. At the January 11, 1999 meeting of the Y2K Steering Committee, City Councillor Dick O'Brien requested an update on any steps that could be taken to expedite the timelines for completion of the Y2K Project. Ms. Viinamäe agreed to identify any available opportunities.

***Affidavit of Lana Viinamäe, para. 27, Exhibit 14, Tab I***

63. At around the same time, in or about January 1999, the head of the Y2K desktop team, Peter Somerville, had identified a risk associated with attempting to remediate the City's approximately 5,000 clone PCs for Y2K readiness. This risk related to the fact that clone PCs could not be counted on to use the same components in each model, so that each individual computer within the same make and model would need to be tested. Tier One computers, by comparison, could be counted on to use the same components in models of a certain type, meaning that the results of testing one computer of a certain make and model could be relied upon for all such computers of the same make and model. This meant that remediating and testing clone PCs would be significantly more expensive and time consuming than testing Tier One computers.

***Affidavit of Lana Viinamäe, para. 28, Exhibit 14, Tab I***

***J. Andrew, January 25, 2005, p. 199, line 25 – p. 200, line 17***

64. At the next meeting of the Y2K Steering Committee on January 21, 1999, in response to Councillor O'Brien's request, Ms. Viinamäe reported that the Desktop Team had proposed replacing all clone PCs instead of remediating them, as a means of speeding the process and reducing risk. Dell's low prices, obtained through the RFQ, meant that this change in strategy could be

accomplished within the original Y2K budget for desktop computers. The minutes of the January 21 Y2K Steering Committee state that Ms. Viinamäe was directed by the Y2K Steering Committee to seek approval from City Audit staff regarding this change, prior to the Steering Committee's next meeting.

***Affidavit of Lana Viinamäe, para. 29, Exhibit 14, Tab I***

***J. Andrew, January 26, 2005, . 105, line 2 – p. 107, line 9***

***Y2K Steering Committee Minutes, January 21, 1999 – Exhibit 15, Vol. 1, tab 32***

65. Mr. Somerville drafted a Change Request, which was assigned to Michael Franey for evaluation. At its next meeting, on January 28, 1999, the Y2K Steering Committee approved the Change Request. Ms. Viinamäe understood at that time that Ben Smid of the Audit Department supported the Change Request in principal and communicated this to the Y2K Steering Committee. The effect of the Change Request was to increase the number of PCs being ordered under the already completed RFQ.

***Affidavit of Lana Viinamäe, paras. 30, 31, Exhibit 14, Tab I***

***J. Andrew, January 25, 2005, p. 199, lines 11 – 22***

***Y2K Steering Committee Minutes, January 28, 1999 – Exhibit 15, Vol. 1, tab 37***

***Y2K Steering Committee Minutes, February 10, 1999 – Exhibit 15, Vol. 1, tab 44***

66. Jim Andrew, a member of the Y2K Steering Committee, confirmed that the change request was approved by the Steering Committee. His evidence suggested that, while the Steering Committee meeting minutes refer to obtaining the Audit Department's "approval", what was asked of Ms. Viinamäe by the Steering Committee was to obtain Audit's position on the change request. While

Mr. Andrew had no recollection of Ms. Viinamäe reporting back to the Steering Committee, he was aware that Audit's agreed that the change request could be accomplished within the original desktop budget. In particular, he said that he had a belief that Ben Smid of Audit was in favour of the change request.

***J. Andrew, January 26, 2005, p. 244, line 14 – p. 247, line 12; p. 250, lines 2 – 22***

67. Mr. Andrew's evidence on this point is consistent with that of Ms. Viinamäe, and it is submitted that Mr. Andrew would be aware of Mr. Smid's views because Ms. Viinamäe reported that to the Steering Committee.

68. Mike Franey agreed in his testimony before the Inquiry that this change in strategy made "good sense" both from a risk and from a financial perspective.

***M. Franey, November 30, 2004, p. 165 line 11***

**"Approval" by Audit**

69. Lana Viinamäe and Jerry Shaubel, of the City's Audit Department, are in agreement: Audit had no role in "approving" the change request

***Jerry Shaubel, December 1, 2004, p. 269, line 2 – p. 270, line 24; p. 279, line 13, p. 280, line 1***

***Lana Viinamäe, December 6, 2004, p. 128, line 23 – p. 130, line 6***

70. Consistent with Audit's proper role, there is not evidence that Ms. Viinamäe ever asked Audit to "approve" the change request. What she asked of Audit is consistent with their proper role: to confirm that the change request could be accomplished within the original desktop budget.

***Jerry Shaubel, December 1, 2004, p. 281, line 16 – p. 282, line 5; p. 343, line 17 – p. 344, line 15***

71. Asked about his understanding of the auditor's role, Mike Franey's evidence was consistent with Ms. Viinamae's. He said the "auditor never approves anything" and that staff would have been simply seeking direction from Audit "from a comfort perspective."

***M. Franey, November 30, 2004, p. 166, line 23 – p. 167, line 15; p. 169, lines 3 – 22***

72. Mr. Shaubel was not present at the Y2K Steering Committee meetings in question and, therefore, cannot say whether the minutes accurately reflect the substance of the discussion at those meetings and, in particular, whether Ms. Viinamae was being asked to obtain Audit's "approval."

***Jerry Shaubel, December 1, 2004, p. 340, line 14 – p. 341, line 8***

73. The Minutes of the Y2K Steering Committee were recorded by Line Marks, based on her notes, and represented her attempt to capture the "essence" of what was discussed but did not represent a verbatim record. To the extent that the minutes state that auditor approved the change request, the actual discussion before the Y2K Steering Committee would have concerned the fact that Audit supported the change request, in that it could be accomplished within the original desktop budget.

***Lana Viinamae, December 6, 2004, p. 130, line 13 – p. 134, line 20***

74. Jerry Shaubel acknowledged that it is possible that Ms. Viinamae approached Audit in January 1999.

***Jerry Shaubel, December 1, 2004, p. 343, lines 14 – 16***

75. Ben Smid's memo to the City Auditor dated February 25, 1999 accurately states Mr. Smid's view at that time: that the change request could be

accomplished within the original desktop budget. The memo does not suggest that Audit is looking into the matter further. Notwithstanding the later exchanges between Audit staff and Y2K staff regarding a “third option” that Mr. Shaubel generated, Audit never retracted Mr. Smid’s February statement that the change request could be accomplished within the original budget.

***Jerry Shaubel, December 1, 2004, p. 344, line 16 – p. 345, line 6; p. 347, line 12 – p. 349, line 23***

76. It is submitted that, to the extent that Ms. Viinamae would have had discussions with Mr. Smid in January 1999, she would have understood the statement contained in Mr. Smid’s February memo to reflect Audit’s view of the change request. Audit never changed that view.

***Lana Viinamae, January 27, 2005, p. 157 – lines 12 – 23***

77. Audit, in fact, was aware that the City had proceeded with the revised strategy. Asked whether that was cause for concern, in the absence of a letter from Audit, Mr. Shaubel said no: “That was a management decision.”

***Jerry Shaubel, December 1, 2004, p. 319, line 24 – p. 320, line 21***

78. This is consistent with Ms. Viinamae’s evidence, that she was looking for a letter from Audit to place in her files, not to signify any Audit approval for the purposes of the Y2K Steering Committee. In her mind, the Steering Committee had approved the change request in January and February 1999, based on report at that time that Audit had verified that the change request could be accomplished within the original budget

***Lana Viinamae, December 6, 2004, p. 138, lines 12 – 24***

***Lana Viinamae, December 6, 2004, p. 152, line 1 – p. 153, line 17***

79. In her evidence, Kathryn Bulko did not dispute Mr. Shaubel's evidence (consistent with the evidence of Ms. Viinamae and Mr. Franey) that Audit's role isn't to approve. She acknowledged that she may have misunderstood the role of Audit in 1999. She also accepted that the back and forth between Y2K staff and Audit, between March and June 1999, concerned the wording of Audit's letter, confirming that change could be accomplished within the original budget.

***K. Bulko, November 23, 2004, p. 184, line 10 – p. 185, line 23***

80. While Audit wanted to include a "third option" – referring to the cost of the original strategy using Dell's pricing – no one was saying that the original premise of the change request, that the change request could be accomplished within the original desktop budget, was wrong.

***M. Franey, November 30, 2004, p. 216, line 22 – p. 217, line 25***

81. Asked if he understood that the Y2K Project was holding off on ordering more computers in June 1999, while awaiting Audit approval, Jerry Shaubel's answer was anything but equivocal: "I *believe* it *may* have, but I *can't recall specifically*...[emphasis added]"

***Jerry Shaubel, December 1, 2004, p. 356, lines 7 – 19***

82. Asked where he got that idea, Mr. Shaubel said he was "just assuming" that this came from Ms. Viinamae.

***Jerry Shaubel, December 1, 2004, p. 357, lines 14 – 18***

83. Ms. Viinamae explained that, to the extent that there was urgency in obtaining a letter from Audit in June 1999, this was due to the fact that discussions with Audit concerning the letter had been ongoing for several months

and she wanted to bring closure to the matter – this had nothing to do with the ability of the Y2K Project to order more desktops in June 1999. In fact, the Desktop Team, under Ms. Bulko, had been ordering desktops throughout the months leading up to June 1999, suggesting that there had been no wait for Audit “approval”. By May 1999, approximately 5,000 desktops already had been ordered.

***Lana Viinamae, December 6, 2004, p. 153, line 13 – p. 158, line 2***

***Lana Viinamae, December 6, 2004, p. 170, lines 2 – 9***

84. While the December RFQ had spoken of an anticipated order of 1,000 to 4,000 desktops, this was only an estimate as of that time and did not represent a commitment by the City to order a specific number of desktops

***Lana Viinamae, December 6, 2004, p. 173, line 10 – p. 175, line 22***

**June 1999 Desktop Order**

85. On June 21<sup>st</sup>, 1999, the Desktop team ordered an additional 3,500 Dell PCs. Since the December 1998 RFQ, prices of these desktop computers had continued to drop. On behalf of the City, Ms. Viinamae negotiated a new price with Bruce Mortensen of Dell, for this phase of the rollout, of \$1,449.00 per unit, before tax.

***Lana Viinamae, para. 41, Exhibit 14, Tab I***

86. The City did not issue an RFQ at that time. Ms. Viinamae understood that a new RFQ was not required, because Dell already had been awarded the contract for Y2K desktops through the prior competitive RFQ process. It is submitted that the desktop change request, once approved by the Y2K Steering Committee, effectively expanded the quantity of desktops that

could be ordered under the December 1998 RFQ, which was a competitive process. The change request, combined with the December RFQ, obviated the need for a new RFQ in June 1999.

***Lana Viinamae, December 8, 2004, p. 117, line 10 – p. 118, line 6***

87. Bruce Mortensen of Dell acknowledged that Ms. Viinamae pushed Dell for a lower price in negotiations before the June order. Despite an email internal to Dell that Mr. Mortensen had sent about that time, suggesting that Dell had convinced the City to “circumvent” an RFQ process, Mr. Mortensen acknowledged in his testimony that: “I wasn’t actually aware of the process that they were required to follow at that particular time.”

***B. Mortensen, November 25, 2004, p. 277, line 15 – p. 279, line 8; p. 202, line 8 – p. 203, line 13***

88. Mike Franey confirmed that the City’s Purchasing department would not have issued a Purchase Order for the 3,500 desktops if it had not been satisfied that the Purchase Requisition had been made by individuals with the appropriate authority.

***M. Franey, November 30, 2004, p. 177, lines 1-10***

89. Switching suppliers at that stage of the rollout, with such a large number of PCs to be deployed, would have generated a substantial risk to the City after the City had standardized and tested its critical applications on the Dell PCs. This also would have had a significant impact on the Y2K Project’s rollout deadline, which was being accelerated at that time.

***Lana Viinamae, paras. 41, Exhibit 14, Tab I***

***Lana Viinamae, January 27, 2005, p. 160, line 9 – p. 161, line 3***

90. Numerous witnesses agreed with Ms. Viinamae's characterization of the risk that would have resulted from switching desktop suppliers from Dell in June 1999. Mike Franey called the decision to stay with Dell "good business sense" and "the right decision."

***M. Franey, November 30, 2004, p. 219, line 2 – p. 221, line 3; p. 241, line 19 – p. 244, line 11***

91. Ms. Bulko's evidence is that there was no discussion about re-tendering for the desktop order at that time because this would have increased the City's risk.

***K. Bulko, November 23, 2004, p. 19, line 23 – p. 21, line 13; p. 226, lines 10 – 19***

92. As noted above, the Desktop Team, under Ms. Bulko, had been ordering desktops throughout the months leading up to June 1999. By May 1999, approximately 5,000 desktops already had been ordered. As a result, the June 21 order of 3,500 desktops simply represented a continuation of these previous orders, and reflected the fact that the desktop rollout was being accelerated at that time.

***Lana Viinamae, January 27, 2005, p. 160, line 9 – p. 161, line 3***

93. In describing the decision to place the June 21 order, Ms. Bulko was asked about her recollection by Commission counsel, who suggested that this must have been a "big deal" given that Ms. Bulko presumably had been waiting for Audit's "approval" before placing the order. Clearly, Ms. Bulko was involved in a central way: the Purchase Requisition for the order was prepared on her instructions. In fact, Ms. Bulko had little by way of recollection. This is consistent with Ms. Viinamae's view that the June order really wasn't a big deal,

and represented a continuation of the previous orders that Ms. Bulko had made throughout the spring of 1999, albeit at the lower, newly negotiated price.

***K. Bulko, November 23, 2004, p. 17, line 6 – p. 19, line 12; p. 188, lines 14 – 24***

**September 1999 RFQ**

94. In September 1999, the Y2K Desktop Team had only about 700 PCs remaining to upgrade. City staff were concerned about the amount of time upgrading those remaining PCs would take. On behalf of the City, Ms. Viinamae again was able to negotiate a new price for desktop computers. This occurred because IBM had approached Ms. Viinamae through one of its re-sellers, IDI, and told Ms. Viinamae that IDI could provide IBM PCs for a price under \$1,000. This lower price meant the City would be able to replace rather than upgrade the last 700 PCs, and this could be accomplished at a faster pace. Other PC manufacturers polled by Y2K Project staff indicated they might be able to match IDI's price.

***Affidavit of Lana Viinamae, para. 45, Exhibit 14, Tab I***

95. As of September 1999, the risk considerations that had been present in June no longer were a factor. Even if Dell had not been the successful bidder in the September RFQ, Ms. Viinamae was confident that staff would have been able to manage the time line and risk involved in switching platforms because only 700 PCs were involved, and they were for priority 2 applications in the City's library. Ms. Bulko agreed with this assessment of the reduced risk.

***Affidavit of Lana Viinamae, para. 45, Exhibit 14, Tab I***

***K. Bulko, November 23, 2004, p. 21, lines 14 – 21***

96. While David Kelly of Dell expressed the view that he found it odd that the City conducted no RFQ in June, but then conducted one in September, he also acknowledged that he didn't know the reasons behind why the City conducted the September RFQ.

***D. Kelly, November 24, 2004, p. 125, line 10 – p. 126, line 22***

### **C. Ball Hsu Phase**

#### **Background with Ball Hsu**

97. The relationship between Ms. Viinamae and Mr. Hsu centred on their work and never extended beyond a business friendship. Mr. Hsu never attended any personal or family events of Ms. Viinamae.

***Lana Viinamae, December 8, 2004, p. 200, line 21 – p. 201, line 20***

#### **Metro's Request for Proposals for IT Contractors**

98. While she was employed by Metro at the time, Ms. Viinamae was not involved in preparing or evaluating bids as part of Metro's 1996 Request for Proposals for IT contractors.

***Lana Viinamae, December 7, 2004, p. 17, lines 6 – 11; p. 24, lines 8 - 15***

99. Prior to the Y2K Project, Ms. Viinamae's role in approving the invoices of Ball Hsu and Associates ("BHA") contractors was to verify that the services covered by the invoice in question had been delivered to the City; Mr. Andrew then signed off to authorize payment of the invoice.

***Lana Viinamae, December 7, 2004, p. 42, line 3 – p. 43, line 19***

100. Appropriate processes were in place to ensure that the hourly rates charged by contractors were consistent with, and authorized under, a corresponding contract schedule.

***Lana Viinamae, December 7, 2004, p. 50, line 24 – p. 52, line 5***

**Hiring Under the Y2K Project**

101. To the extent that BHA contractors were used extensively by the City, this was the product of BHA winning competitions based on the mix of excellent service and low prices that BHA afforded the City.

***Lana Viinamae, December 7, 2004, p. 64, line 15 – p. 65, line 2***

102. BHA's contract was extended under the Y2K Project on the basis of its 1997 contract with Metro, with the approval of the City's Purchasing Department. BHA also was included in the Y2K Project's contractor database, on the basis of the original Metro contract. In both cases, Y2K Project members had no reason to question the validity of BHA's contract with Metro.

***Lana Viinamae, January 27, 2005, p. 128, line 24 – p. 130, line 2; p. 131, line 21 – p. 134, line 4***

103. The process described by Taslim Jiwa for recruiting contract staff does not accord with Ms. Viinamae's experience. The Y2K Project established and utilized a streamlined competitive process, set up in consultation with the City Human Resources Department, by which contractors were selected on a competitive basis from a database that listed candidates from a variety of firms. To the extent that BHA contractors were hired under the Y2K Project, it was through a competitive process. BHA contractors were given no preference over those of other firms.

***Lana Viinamae, December 7, 2004, p. 70, line 7 – p. 73, line 22***

***Lana Viinamae, January 27, 2005, p. 124, line 12 – p. 131, line 20***

104. Work performed by BHA contractors was tracked against budget for the purposes of the Y2K Project. This was part of a detailed and uniform process

specifically established under the Y2K Project for tracking the invoices against budgeted amounts, according to the various Y2K business cases.

***Lana Viinamae, December 8, 2004, p. 174, line 23 – p. 176, line 16; p. 178, line 2 – p. 181, line 3***

***Lana Viinamae, January 27, 2005, p. 134, line 20 – p. 141, line 10***

105. In contrast with earlier contractor schedules, which established a maximum amount payable under the particular schedule, contractor schedules under the Y2K Project contained estimates. This was due to the time-sensitive nature of the Y2K work performed by contractors and it was anticipated that those contractors might work overtime, provided that the overtime was approved in advance by the manager responsible.

***Lana Viinamae, January 27, 2005, p. 139, line 21 – p. 141, line 10***

### **Montana Event**

106. During the course of her evidence, Ms. Viinamae was asked about a payment by the City to BHA that she authorized, which reimbursed BHA after it paid Montana restaurant for a Y2K team building event. Ms. Viinamae's involvement was restricted to reimbursing BHA after the fact: she cannot say how BHA came to pay Montana in the first place, she simply was correcting the situation once she learned of it and had satisfied herself that BHA actually had paid the invoice. Ms. Viinamae said she did this with the knowledge of her superior, Jim Andrew. When Ms. Viinamae's evidence was put to Mr. Andrew, he did not expressly deny that she spoke to him, but said: "I've no knowledge of that."

*Lana Viinamae, December 7, 2004, p. 90, lines 4 – 9; p. 92, line 23 – p. 93, line 5; line 25*

*Lana Viinamae, December 8, 2004, p. 205, line 2 – p. 208, line 1*

*J. Andrew, January 24, 2005, p. 237, line 14 – p. 240, line 8*