

# **TORONTO COMPUTER LEASING INQUIRY**

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

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## TABLE OF CONTENTS

	<b>Page</b>
<b>PART 1 - Executive Summary .....</b>	<b>1</b>
<b>PART 2 - LANA VIINAMAE AND THE Y2K PROJECT .....</b>	<b>11</b>
(a) Involvement in the Inquiry.....	11
(b) Lana Viinamae – Work Experience.....	11
(c) Y2K Project .....	12
<b>PART 3 - JOINT REPORTING RESPONSIBILITY FOR Y2K.....</b>	<b>18</b>
(a) Hiring of Ms. Viinamae .....	18
(b) "Dual and Concurrent" Reporting.....	19
(c) Integral Role of Jim Andrew on Y2K Project .....	22
<b>PART 4 - REQUEST FOR QUOTATION (RFQ).....</b>	<b>24</b>
(a) Brendan Power as IT Leasing Lead.....	24
(b) Drafting the RFQ .....	25
(c) Review of RFQ Responses .....	28
<b>PART 5 - THE COUNCIL REPORT.....</b>	<b>31</b>
(a) Occasions where Ms. Viinamae Provided Feedback .....	31
(i) July 5 Reply .....	32
(ii) July 6 Reply .....	33
(iii) July 7 Reply .....	33
(b) Not Responsible For Overall Report.....	34
(c) Testimony of Line Marks.....	36
<b>PART 6 - 90-DAY GUARANTEE PERIOD .....</b>	<b>39</b>
(a) Testimony of Brendan Power .....	39
(b) Testimony of Nadir Rabadi.....	41
(c) Testimony of Don Altman .....	43
(d) Testimony of Jim Andrew .....	44
(e) Testimony of Lou Pagano.....	44
(f) Testimony of Dave Beattie .....	45
<b>PART 7 - FIVE - YEAR LEASES.....</b>	<b>47</b>
(a) Communication of the Decision to Change the Lease Term .....	47
(b) Authority for the Change in the Lease Term .....	50
(c) Knowledge of Others That The Lease Term was Five Years.....	51
(i) Finance Department: Failure to Address the Financial Impact of the Change of the Lease Term .....	51
(ii) Involvement of Jim Andrew .....	55
(d) Letter to Commissioners .....	57
(e) Multiple Lease Terms .....	58
(f) Amount of Assets on Lease .....	60

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(g) Opinion of City Legal.....	62
<b>PART 8 - SALE - LEASEBACK.....</b>	<b>63</b>
<b>PART 9 - REVIEW OF LEASE RATE FACTORS.....</b>	<b>68</b>
(a) Testimony of Lana Viinamae.....	68
(b) Responsibility of Brendan Power .....	69
(c) Responsibility of Jim Andrew .....	70
(d) Responsibility of the Finance Department.....	72
(e) Other Evidence.....	73
<b>PART 10 - LEASE REWRITES.....</b>	<b>74</b>
(a) Testimony of Lana Viinamae.....	74
(b) Testimony of Joan Anderton.....	76
(c) Testimony of Paula Leggieri.....	76
(d) Testimony of Kathryn Bulko .....	77
(e) Testimony of Lee Ann Currie.....	78
(f) Testimony of Rob Wilkinson.....	78
(g) Testimony of Wanda Liczyk.....	80
(h) Testimony of Dash Domi.....	84
<b>PART 11 - SIGNING AUTHORITY .....</b>	<b>85</b>
<b>PART 12 - \$43 MILLION MAXIMUM EXPENDITURE.....</b>	<b>90</b>
(a) Testimony of Lana Viinamae.....	90
(b) Testimony of Jim Andrew .....	94
(c) Kathryn Bulko.....	96
(d) Brendan Power.....	98
(e) Opinion of City's Legal Department.....	98
(f) Finance Department .....	99
(g) Testimony of Len Brittain.....	100
(h) Testimony of Nadir Rabadi.....	103
(i) Testimony of Don Altman .....	105
(j) Al Shultz and Ken Colley .....	106
(k) Testimony of Lou Pagano.....	106
(l) Testimony of Wanda Liczyk.....	108
(i) Photocopiers.....	108
(ii) Software Acquisitions.....	109
(iii) January 17, 2001 Meeting.....	111
<b>PART 13 - ORACLE ACQUISITION.....</b>	<b>113</b>
(a) Introduction.....	113
(b) Stephen Wong's Concerns About the Oracle Agreement .....	115
(c) Earlier Oracle Proposals .....	116

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(i) 1995 Proposal.....	117
(ii) 1997 Proposal.....	117
(iii) Report Recommending Acceptance of Oracle ELA Proposal.....	118
(iv) 1998 Proposal.....	118
(d) Discussions Prior to Reaching Agreement in December 1999.....	120
(i) September 1999 .....	120
(ii) October 1999.....	121
(iii) December 1999 .....	123
(e) The Offer (1999 Oracle Proposal) .....	127
(f) A Good Deal For the City of Toronto and Consistent with the City's IT Strategy .....	128
(g) Oracle ELA Necessary for Y2K .....	131
(i) Number of Seats Needed .....	131
(ii) Maintenance and Licence Non-Compliance.....	133
(iii) Timing of Executing the Agreement.....	135
(h) Number of Seats in Use .....	136
(i) IT Strategy and Expected Use.....	136
(ii) City's Oracle User Charts.....	139
(i) Involvement of External Legal Counsel .....	141
(j) Delegated Approval Form.....	143
(k) Sole Source/ Competitive Process .....	147
(l) December 30 Y2K Steering Committee Meeting.....	148
(i) Minutes of the Meeting.....	148
(ii) Testimony of Jim Andrew .....	151
(iii) Testimony of Wanda Liczyk.....	153
(iv) Testimony of Dick O'Brien.....	154
(m) Business Case.....	155
(n) Communication About the Acquisition .....	158
(o) Consultation With Others .....	159
(p) Oracle Report.....	160
(q) Wong's Investigation.....	162
<b>PART 14 - CONFLICT OF INTEREST.....</b>	<b>166</b>
(a) Approval and Encouragement by Superiors .....	166
(b) Meetings with Suppliers .....	168
(c) Attendance at Conferences .....	169
(d) MFP Testimonial .....	170
(e) Hockey Games .....	171
<b>PART 15 - INTERACTION WITH JEFF LYONS .....</b>	<b>173</b>
(a) Acting Executive Director Position .....	173
(b) IT "Intelligence" .....	176

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
(c) Council Report .....	176
(d) Entertainment .....	176
<b>PART 16 - ROLE OF THE CITY AUDITOR .....</b>	<b>178</b>

## **PART 1 - EXECUTIVE SUMMARY**

### **Part 2: Lana Viinamae and the Y2K Project**

1. Ms. Viinamae is an experienced information technology professional who had been employed by the City of Toronto and its predecessor Metro Toronto for over thirteen years when she was dismissed without pay or notice on February 7, 2002. This occurred at the height of the media storm over the City's contract with MFP Financial Services Ltd. At that point, she was the remaining senior City official who was integrally involved in the City's Year 2000 (Y2K) Program and its related computer leasing initiative. The City's treatment of Ms. Viinamae attracted considerable attention in the media and in the IT community.

### **Part 3: Reporting Responsibility for Y2K**

2. As Y2K Director, Ms. Viinamae reported jointly to Mr. Andrew (Executive Director of IT) and Margaret Rodrigues (Commissioner of Corporate Services). Mr. Andrew was charged with a leadership role in the City's Y2K preparation, and was heavily involved in the project. He was accountable for the Y2K remediation of the City's IT infrastructure and for carrying out the "technical due diligence" on the Y2K Project. Mr. Andrew's evidence to the contrary should not be accepted.

3. Mr. Andrew assured Ms. Viinamae that he would help guide her through the project, and assist her in dealing with Councillors and Commissioners. Ms. Viinamae relied on Mr. Andrew's expertise and guidance.

### **Part 4: Request for Quotation (RFQ)**

4. The Request for Quotation (RFQ) for "Leasing Services on Information Technology Products" was issued by the Purchasing division on May 31, 1999.

5. Jim Andrew was aware of Brendan Power's substantial experience with RFQs and government purchasing processes, and placed him in the role of IT lead on the RFQ. Mr. Andrew supervised Mr. Power's work on the RFQ.

6. Any shortcomings of the drafting of the RFQ or the review of the responses are not the fault of Ms. Viinamae. Ms. Viinamae did not see any of the RFQ responses until late 2001 (more than two years after it was issued). She did not discuss the form or content of any of the responses to the RFQ with anyone at any time. Ms. Viinamae did not have the knowledge or experience in leasing or finance that would have enabled her to do any financial analysis of the RFQ responses.

7. Because Ms. Viinamae did not see any of the bids or participate in the evaluation of them, she obviously did not make any recommendation regarding the successful bidder (MFP).

#### **Part 5: The Council Report**

8. The report from the CFO & Treasurer (Wanda Liczyk) and Executive Director of IT (Jim Andrew) proposing leasing as a funding mechanism for the acquisition of IT products and services, and recommending MFP as the successful vendor, went to the Policy and Finance Committee on July 9, 1999. Any shortcomings of the report are not the responsibility of Ms. Viinamae.

9. Brendan Power drafted the report, and Ms. Viinamae knew that Ms. Liczyk and Mr. Andrew (on behalf of IT) would be thoroughly reviewing it. She did not mark up any of the drafts at any time, and only provided answers to specific questions she was asked by those involved in the drafting. Ms. Viinamae only reviewed the areas of the report that were pertinent to her involvement, as she was not responsible for the overall report. The focus of her own review of the report was on the budget implications for the Y2K project.

10. Because she had no leasing or finance experience, as others involved in drafting the report would have known, she was not in a position to review the financial or leasing aspects of the report.

#### **Part 6: 90-Day Guarantee Period**

11. As MFP stated in its response to the RFQ, the quoted lease rates were only guaranteed for 90 days. Ms. Viinamae was not responsible for reviewing the RFQ or the

responses, and therefore she was not aware of the guarantee period or its significance; nor did anyone inform her of this.

12. The individuals who had leasing knowledge and were aware of the guarantee period – such as Jim Andrew, Brendan Power, and a number of staff in the Finance Department– should have either ensured that all the equipment could be placed on lease within that time frame, or asked MFP to extend the guarantee period. Such action would have prevented the City from paying a higher lease rate than the rate quoted by MFP in the RFQ responses.

### **Part 7: Five-Year Lease Terms**

13. Ms. Viinamae was informed by Mr. Andrew of the change in the lease term, and Ms. Liczyk confirmed the direction that all hardware and software (except printers and storage technology) was to go on five-year leases. Ms. Viinamae had no role in the decision to extend the lease terms from three to five years.

14. Ms. Viinamae was assured by Mr. Andrew and Mr. Power that there was appropriate authority for the change to the lease term. It was entirely reasonable for Ms. Viinamae to rely on the opinion of Mr. Andrew (her superior) and Mr. Power (who was regarded as a leasing expert) that the flexibility clause provided sufficient authority. Ms. Viinamae was also informed by the City Solicitor, Ossie Doyle, that five-year leases were permissible.

15. Responsibility for the failure to address the financial impact of the change in the lease term rests primarily with the Finance department. Mr. Brittain's division in particular had an unreasonably narrow view of its role, and failed to correct its financial analysis, which was flawed in light of the new lease term.

### **Part 8: Sale-Leaseback**

16. Work began on the sale-leaseback by the end of August 1999, and the majority of the equipment was placed on lease by October 1999. Therefore, the sale-leaseback was a large task that was completed in just over four weeks. Mr. Andrew directed Ms. Viinamae and Line Marks to carry out the sale-leaseback because the Y2K Project Management Office (PMO) had the majority of the documents required to support the transaction.



17. Mr. Andrew, who had responsibility for assigning resources within IT, knew that neither Ms. Viinamae nor Ms. Marks had previous leasing experience or involvement in other sale-leaseback transactions. They were not given any specific training. Ms. Viinamae and Ms. Marks undertook the work at a time when the deadline for Y2K was approaching and there were many competing priorities. The disorganized state of the City's financial systems made the project much more onerous.

18. Either Mr. Power or Mr. Andrew informed Ms. Viinamae that the lease transaction with MFP would be structured as a sale-leaseback: Ms Viinamae had no role in the decision.

19. Since Mr. Power drafted the RFQ under Mr. Andrew's supervision, and the Purchasing division issued and reviewed it, Ms. Viinamae cannot be blamed for any lack of clarity in the RFQ about the sale-leaseback. Ms. Viinamae was not notified of a deadline for completing the sale-leaseback in order that the lease rate guaranteed by MFP for 90 days would apply. Had she been made aware of this, she could have recommended alternatives, such as completing a definite portion of the sale-leaseback within that time frame, negotiating an extension from MFP, or requesting additional staff for the project.

#### **Part 9: Review of Lease Rate Factors**

20. Ms. Viinamae was assured by Mr. Power and Ms. Bulko that the lease rate factor schedules from MFP were sent to the Finance department for their review. If in fact Finance staff did not carry out a review of the lease rate factors, it was unacceptable for them to fail to review the rates on their own volition, absent a request from IT.

21. Because Ms. Viinamae had no prior leasing experience, she did not even know what lease rate factors were until Mr. Power explained it to her when she was asked to sign the first lease rate factor schedule in October 1999. In contrast, Mr. Andrew, Mr. Power, and certain members of the Finance department had substantial leasing experience, understood what lease rate factors were, and were well-positioned to ensure that there was a suitable process for reviewing the rates and determining whether they were competitive.

### **Part 10: Lease Rewrites**

22. Ms. Liczyk executed a number of a equipment schedules that were rewritten by MFP in July 2000 without Ms. Viinamae's knowledge or involvement. Ms. Viinamae was not even aware that the leases had been rewritten until well after the fact, and therefore she could not have prevented the rewrites from occurring, or ensured that there was proper authority for doing so. Nor can she be held responsible for any negative financial or other impacts resulting from the rewriting of the MFP leases.

### **Part 11: Signing Authority**

23. Ms. Viinamae initially signed all lease documents, except the Master Lease Agreement and the Program Agreement. Ms. Viinamae signed these documents because the Council report stated that the contract would be "centrally administered" by the Contract Management Office (CMO), and she regarded the signing of documents as part of that function. It was her belief that the Certificate of Incumbency authorized her signing authority.

24. Up until February 3, 2000, Lana Viinamae was the sole signatory of several of the leasing documents. She executed these documents based on her reasonable belief that she had the authority to do so. After that date, Ms. Viinamae understood that it was also necessary for Ms. Liczyk to execute the documents. Any subsequent instances where documents bore only Ms. Viinamae's, or only Ms. Liczyk's signature, can be explained by deviations from Ms. Liczyk's usual signing procedure, including those caused by the actions of Dash Domi in transporting documents.

### **Part 12: \$43 Million Maximum Expenditure**

25. Ms. Viinamae testified that it was the common view in both the Information Technology and Finance (including Purchasing) departments that there was no \$43.15 million cap on the value of assets on the MFP lease. Many documents and other witnesses' testimony reflect the understanding other City staff had that the \$43.15 million did not represent a limit on leasing expenditures.

26. At no point was the idea of a \$43 million maximum brought to Ms. Vinnamae's attention. On the contrary, other people in more senior positions directed Ms. Viinamae to put

additional items on lease. Given that Ms. Viinamae's direct superior, Mr. Andrew, regarded MFP as a vendor of record, and did not consider that there was a limit on the contract of MFP, Ms. Viinamae can in no way be faulted for having the same understanding of the contract.

27. Ms. Viinamae was directed to put software on lease. Beginning in December 1999, she made others (including Ms. Liczyk, Mr. Andrew, and Mr. Brittain) aware that the acquisitions created an operating budget pressure of approximately \$24 million. The fact that this was not reported by Ms. Liczyk until her March 15, 2001 report to the Budget Advisory Committee is not the responsibility of Ms. Viinamae.

### **Part 13: Oracle Acquisition**

28. The Oracle Enterprise Licence Agreement (ELA) was approved by the Y2K Steering Committee at its December 30, 1999 meeting. Ms. Liczyk executed the master lease agreement, and CAO Mike Garrett, Ms. Liczyk, Purchasing Director Lou Pagano, and Ms. Viinamae all signed the Y2K delegated approval form. In doing so, they approved the Oracle acquisition, and confirmed that it was an appropriate Y2K purchase on a sole-source basis.

29. There was considerable IT experience on the Y2K Steering Committee, which was comprised of Ms. Liczyk, Mr. Andrew, and Councillor Dick O'Brien. By the time the Committee considered Oracle's November 1999 proposal for an ELA, the concept and pricing of an ELA was very familiar to them (particularly to Mr. Andrew and Ms. Liczyk). Ms. Liczyk, Mr. Andrew, and Stephen Wong had considered other ELA proposals prior to 1999. In the process they all gained an understanding of ELAs and their benefits.

30. The Oracle proposal in 1999 was an attractive offer. Prior to amalgamation in 1998, the ELA had been identified as something that would benefit the City and complement its IT strategy, and the pricing offered in 1999 was considerably improved from earlier proposals.

31. The 1999 Oracle ELA proposal did not come out of the blue. The City had considered earlier proposals that were more expensive. Further, there were a number of Y2K Steering Committee meetings in the fall of 1999 leading up to the signing of the agreement on where the need for an ELA, or the fact that an ELA was pending, was discussed.

32. By the fall of 1999, a significant number of program areas were asking the Y2K Project Management Office (PMO) for Oracle software as part of their business cases for "business as usual on January 1, 2000". The Y2K Steering Committee approved several requests, and at least 2000 additional seats were required for Y2K. A number of applications were internally developed and could not be accessed through run-time licences. Therefore, the Y2K solution for those applications required an ELA. Mr. Andrew and Ms. Liczyk also told Ms. Viinamae there was a need for 2000 licences for SAP.

33. Ms. Viinamae made a presentation to the Y2K Steering Committee at the December 9, 1999 meeting after receiving a proposal from Oracle in November 1999 with the pricing and details of the ELA. She had already discussed the proposal with Mr. Andrew. Ms. Viinamae presented a cost comparison of two scenarios, both of which had to be in place by December 31, 1999: either adding 2000 network (enterprise) licences to satisfy the Y2K needs of priority one business cases (\$13.1 million), or acquiring 10,000 enterprise network licences (\$11.3 million). The Committee gave approval in principle to negotiate the latter agreement.

34. Had the City purchased 2000 network licences (with none of the benefits of an ELA), the price per licence would have been \$1,745. Under the ELA entered into by the City, the price per licence was \$434.

35. By negotiating with Larry Griffith from Oracle in November and December 1999, Ms. Viinamae obtained several improvements in the offer, including a \$2 million price reduction.

36. The Oracle ELA was also needed for Y2K because it upgraded the City's previous maintenance agreement from bronze level to silver level. Bronze support did not include after-hours, weekends or holidays, including New Year's Day. Had the City faced database problems on January 1, 2000 (the key date) and had not upgraded the maintenance, it would have had no recourse until the next business day (January 3, 2000).

37. By entering into the ELA with Oracle, the City also resolved the problem that in the amalgamated City, software was being used contrary to agreements, due to unorganized records from previous municipalities on software acquisitions and usage. If a Y2K breakdown

related to licences being used illegally had occurred, the City would not have had any recourse against Oracle.

38. An inventory of existing licences, plus projections of increased use, confirmed that 10,000 users was reasonable. The hasty conclusion in the February 6, 2002 Auditor's report on Oracle that it was "highly unlikely the City would need ... (10,000) licences in the foreseeable future" had no basis, and was contrary to information provided by City staff as well as earlier reports and estimates. The IT strategy for the City also supported the evidence that the number of Oracle users was expected to increase.

39. The City did not produce its own charts of monthly usage of Oracle licences until March 2002. Many of these charts (particularly the earlier ones) underreported the number of users. Overall, the actual figures averaged at least 80 to 90 percent of the 10,000 licences.

40. Mr. Power worked with lawyer Mark Fecenko from Faskens on negotiating the Master Software Licence and Services Agreement with Oracle. Mr. Fecenko was a specialized IT lawyer with extensive experience in dealing with Oracle. Mr. Fecenko tailored Oracle's standard form agreement to meet the City's needs.

41. Ms. Viinamae set out the business case for Oracle verbally at the December 9, 1999. The Committee was very familiar with the ELA and its benefits. None of the Committee members asked Ms. Viinamae to prepare a written business case, or to provide them with more information, as they did on other matters. There was no written by-law or policy of the City at the time dictating that a written business case was required.

42. Ms. Viinamae notified all IT Directors of the Oracle acquisition. Once Ms. Viinamae told the Directors about the ELA, it was their responsibility to communicate the fact that the City had entered into an ELA and to explain its effect on each business area. As indicated in the network order form under the Oracle Agreement, Michael Franey was responsible for the administration of the contract.

**Part 14: Conflict of Interest**

43. Between the time of amalgamation (January 1, 1998) and communication of the City of Toronto's Conflict of Interest Policy (April 2001), Ms. Viinamae accepted invitations to several events from suppliers from the City of Toronto. These included industry award shows, charity and fundraising events, product launches, sporting and entertainment events, and conferences. She attended these events with the knowledge of her superiors, who encouraged senior staff to attend. Invitations to these events were extended to her through her superiors directly, or accepted by her with the approval of her superiors – in most cases, Jim Andrew.

44. Ms. Viinamae saw other senior staff, as well as politicians, at these events. She was never informed at events, where her superiors were in attendance, that her presence was inappropriate. On the contrary, they told her she should have been there, and by virtue of their own attendance, confirmed that it was acceptable. Ms. Viinamae understood that she was expected to attend such events, and that there would be negative repercussions for her if she did not. Clearly, she should not be criticised for attending promotional and other such events.

**Part 15: Interaction with Jeff Lyons**

45. Ms. Viinamae knew Jeff Lyons as a lobbyist who represented a number of IT suppliers to the City. In that capacity, she had occasional meetings with him. Mr. Lyons testified that he did not remember "getting much, if anything, from Lana Viinamae" in the way of "intelligence" from the IT Department. At no time did Ms. Viinamae improperly convey any information to Mr. Lyons about City business.

46. Mr. Lyons supported Ms. Viinamae for the acting Executive Director of IT position after Mr. Andrew resigned in early 2001. Mr. Lyons called the Mayor's office to express his support because he believed Ms. Viinamae was very well-qualified to fill the position. That was also the view of Mr. Lyons' IT clients and others within the IT industry.

47. Ms. Viinamae never asked Mr. Lyons to assist her in getting the position. Any calls made by Mr. Lyons were on his own initiative. Ms. Viinamae never asked Mr. Lyons to do favours of any kind for her.

**Part 16: Role of City Auditor**

48. At all times, Ms. Viinamae understood that the City Auditor, Jeff Griffiths, and his staff would have a financial governance role in the Y2K project. Ms. Viinamae also had the assurance that there was an external auditor (Ernst & Young).

**PART 2 -  
LANA VIINAMAE AND THE Y2K PROJECT**

**(a) Involvement in the Inquiry**

49. Ms. Viinamae is an experienced information technology professional who had been employed by the City of Toronto and its predecessor Metro Toronto for over thirteen years when she was dismissed without pay or notice on February 7, 2002. This occurred at the height of the media storm over the City's contract with MFP Financial Services Ltd. At that point, she was the remaining senior City official who was integrally involved in the City's Year 2000 (Y2K) Program and its related computer leasing initiative. The City's treatment of Ms. Viinamae attracted considerable attention in the media and in the IT community.

**(b) Lana Viinamae – Work Experience**

50. Ms. Viinamae acquired most of her initial information technology training through employment. From 1975 to 1980, she held computer programming positions at Jamaica Public Service, at Pitney Bowes, and at Fireman's Fund Insurance Company.

*Affidavit of Lana Viinamae, para. 2*

51. Since then, Ms. Viinamae has been a project manager/director for several major information technology projects in municipal government and the private sector. From 1980-1988, she was a Project Manager at Aetna Canada. She was hired by the former Metropolitan Toronto (Metro) in December 1988, and was employed in several progressively more senior and responsible positions at the City of Toronto until her termination in February, 2002.

*Affidavit of Lana Viinamae, para. 3*

52. From December 1998 to June 1998, Ms. Viinamae was Senior Manager, Applications and Infrastructure with the former Metropolitan Toronto. From June 1998 to June 2000 she was Director, Year 2000 for the City of Toronto. She delivered this project on budget, and on-time, with no service interruptions to the City.

*Affidavit of Lana Viinamae, para. 4*



53. From October 1998 until Ms. Viinamae's termination, she held the position of Director, Computer Operations and Telecommunications for the City of Toronto.

*Affidavit of Lana Viinamae, para. 5*

54. From June 2000 to February 2002, she held the acting positions of Senior Project Director, Master Accommodation Plan, and the Director, Capital Information and Technology Projects for the City of Toronto.

*Affidavit of Lana Viinamae, para. 6*

55. Ms. Viinamae had no leasing or financial experience, prior to her involvement in the City's contract with MFP for IT leasing services. She was never in a position to recommend that the City lease IT equipment.

56. Following amalgamation of the seven municipalities on January 1, 1998, there were many competing priorities and pressures for the IT department. The Executive Director position was not filled until May, 1998, and the director-level positions were not filled until the end of 1998. As a result, there was no clear reporting structure or accountability within IT or its client departments. There were major staff reductions of City employees, resulting in a significant loss of corporate knowledge. At the same time, there was a major increase in workload, with many deadlines and critical dates set to enable the delivery of amalgamated services. Y2K added to this burden and was an enormous challenge for the City.

*Affidavit of Lana Viinamae, para. 7*

**(c) Y2K Project**

57. In March, 1998, when Jim Andrew informed Ms. Viinamae that the competition for her job in the newly amalgamated City would not be held until the last quarter of 1998, she told him that she would be looking for other employment opportunities. In May 1998, she notified Mr. Andrew that she would be leaving the City for a Y2K opportunity at a major financial institution. The job call for the City of Toronto's Y2K Director had been posted and closed, and she had not applied.

*Affidavit of Lana Viinamae, para. 8*

58. At the end of May or the first week of June 1998, Ms. Viinamae received a call from Mr. Andrew, requesting that she apply for the opportunity at the City. After much discussion, she agreed to be interviewed by the interview board. She was informed the next day that she had been successful and that she would need to meet with the Commissioner of Corporate Services, Margaret Rodrigues, that week. After some discussion, Ms. Rodrigues confirmed the opportunity and told her that she was on an extremely critical time line to produce her first action report by June 8, 1998 in order to meet the last Council meeting deadline before the summer break.

*Affidavit of Lana Viinamae, para. 9*

59. Ms. Viinamae accepted the position at a much lower salary than she had been offered at the major financial institution, and agreed that she would report directly to Ms. Rodrigues and Mr. Andrew.

*Affidavit of Lana Viinamae, para. 10*

60. Ms. Viinamae was provided with a copy of the report prepared by the former Y2K Committee, which consisted of representatives from the seven former municipalities. The report outlined the seriousness of the Y2K problem and the potential liability that the City would face if it did not address this problem effectively. Using this report as a base, Ms. Viinamae developed her strategy for addressing the Y2K issue and provided a preliminary budget estimate of \$85 million to begin resolving the problem. This report was to be forwarded to the Strategic Policies and Priorities Committee (SPPC). Because the budget estimate was based on preliminary information, the SPPC approved \$5 million to enable her to provide more detailed budget information in support of the total project cost. This \$5 million would ensure that work could proceed as required throughout the summer with a report back in the fall with more information.

*Affidavit of Lana Viinamae, para. 11*

61. Throughout the summer and early fall, the Y2K Project Management Office (PMO) worked with each departmental project manager to prepare a business case that outlined

the approach to be taken to resolve the Y2K issue for each business function, and to estimate the cost associated with implementing the solution. On November 3, 1998, a Y2K Business Continuity report was put forward, requesting \$149.6 million to support the City's Y2K initiative. The report was clear that this was not the total amount expected and that subsequent requests for funding would be made. This report was approved with some amendments. The report set out a governance structure, including a Steering Committee consisting of Councillor Dick O'Brien (the mayor's designate), Margaret Rodrigues, and Jim Andrew.

*Affidavit of Lana Viinamae, para. 12*

62. Prior to the report being forwarded to Council, presentations were held to ensure that Councillors had an opportunity to ask any questions regarding the proposed program.

*Affidavit of Lana Viinamae, para. 13*

63. The project was also required to report to the SPPC (later the Policy and Finance Committee – PFC) and Council on a monthly basis, outlining the status of the program. Between November 1998 and January 1999, Ms. Viinamae completed staffing the management of each of the thirteen program areas. These were: the PMO; a program for each of the six operating departments, such as Community and Neighbourhood Services; and the six city-wide initiatives (desktops, servers, networks, fleet, facilities, and external partners and agreements).

*Affidavit of Lana Viinamae, para. 14*

64. Due to the critical, immovable deadline and the late start by the City, the strategy focused on ways in which we could implement solutions in as timely a manner as possible, working with external partners such as private sector companies and other levels of government, where appropriate.

*Affidavit of Lana Viinamae, para. 15*

65. The City began its Y2K program when most organizations of its size and importance had already completed their initiatives. The recent amalgamation of the seven former organizations was an additional obstacle to the timely completion of this program. The accountability of staff, the authority to make decisions, and the knowledge of the breadth of the

new organization, was unknown. The City's liability, estimated at more than \$750 million, was clearly understood.

*Affidavit of Lana Viinamae, para. 16*

66. In late January of 1999, IBM conducted a risk management study of their involvement in the City's Y2K program and reported that the City was at risk of not meeting its objective, which was "business as usual" on January 1, 2000.

*Affidavit of Lana Viinamae, para. 17*

67. By around April 1999, the program was fully resourced with approximately 450 people concurrently on board. By the end of the program, more than 1000 people had been employed through the Y2K program. The program, which involved confirming the readiness of almost 15,000 desktops, 1100 servers, three mainframes, more than 600 networked sites, more than 2000 facilities, approximately 2000 critical suppliers, and 6000 vehicles, was well underway.

*Affidavit of Lana Viinamae, para. 18*

68. A reassessment by IBM in April 1999 confirmed that the City was then on track to meet its objective. All of this occurred under Ms. Viinamae's direction and was reported on a regular basis. The size and complexity of the program was so large that the support units of the City could not adequately meet the needs of the program. The Legal Department had to hire a law firm to deal with all City contracts on which the Y2K program had an impact.

*Affidavit of Lana Viinamae, para. 19*

69. There was a weekly PMO meeting with the approximately forty members. In addition, every week, each of the twelve program areas met with the PMO and provided detailed status reporting on the initiatives within their program. Each week, there was a change management meeting where each of the program areas could bring forward changes to any of the existing 84 priority 1 business cases for approval by the PMO. There was also a weekly issues meeting where each of the program areas could escalate issues for resolution or direction from the PMO. This information was consolidated into a Y2K Steering Committee meeting package

and presented to the Committee with the PMO recommendation. The Steering Committee would either approve, reject, or request further information on the items brought before them, or request information on other items of interest to them.

*Affidavit of Lana Viinamae, para. 20*

70. Brendan Power was one of twelve project managers for Y2K. He and Bob Batten were the joint project managers of External Partners and Agreements. He was first hired under the EDS mainframe contract. Ms. Viinamae did not interview Mr. Power for a position, nor did she send him a letter or in any way inform him that he had a job at the City. She had met Mr. Power once or twice at Metro Hall before he had a contract with the City when he came to meet Mr. Andrew after work. The next time she met Mr. Power was some time in 1997, when Mr. Andrew brought him over to her office and told her that Mr. Power would be working with IT.

*Affidavit of Lana Viinamae, para. 21*

71. Once a month, the information presented to the Y2K Steering Committee, or any information they requested, was consolidated into a report to be sent to the SPPC for approval and forwarding to Council. The draft report would be distributed by e-mail to solicit input and feedback from the Y2K Steering Committee members prior to submission. At SPPC and PFC, a subcommittee of politicians would review the report, and question Ms. Viinamae on items they thought were relevant. They could also request information for either current or future reports. At Council meetings, all members of Council were given the same opportunity, which they exercised on occasion.

*Affidavit of Lana Viinamae, para. 22*

72. With the departure of Margaret Rodrigues, there was no Commissioner of Corporate Services from the spring of 1999 until February 2000. Ms. Viinamae was directed by Jim Andrew to report to him on all Y2K issues during this time.

*Affidavit of Lana Viinamae, para. 23*

73. Ms. Viinamae was required to meet with the City's insurers to outline the Y2K program and assure them that the issue was well in hand, that they should continue to insure the

City against potential liability, and charge premiums that would not be prohibitive. She was also required to meet with the City's internal and external auditors to ensure that they were comfortable that the City program was well managed and that all audit concerns had been addressed.

*Affidavit of Lana Viinamae, para. 24*

74. Councillor Dick O'Brien and Ms. Viinamae were the designated spokespersons for the City on all Y2K issues. As a result, Ms. Viinamae was required to present to forums such as BOMA, the Banking Association, Community Access Centres, and public meetings at the St. Lawrence Centre (and other community centres) to assure people that the City was taking the necessary steps to address the Y2K issue. Approaching the Year 2000 deadline, Ms. Viinamae was required to establish a Y2K response center to address any issues that might arise at the turn of the millennium. On numerous occasions, she was called at 6 a.m. in the morning to respond to media questions on morning radio programs. She was required to appear on television and she was required to provide interviews for newspapers on a frequent basis. She was on call, and called, seven days a week, twenty-four hours a day. She and other members of the PMO worked an average of sixty hours every week for more than eighteen months.

*Affidavit of Lana Viinamae, para. 25*

75. At the time Ms. Viinamae's mother was critically ill with cancer. She received phone calls from the media, and was required to respond, while taking her mother for treatment out of the country.

*Affidavit of Lana Viinamae, para. 26*

**PART 3 -  
JOINT REPORTING RESPONSIBILITY FOR Y2K**

76. As Y2K Director, Ms. Viinamae reported jointly to Mr. Andrew (Executive Director of IT) and Margaret Rodrigues (Commissioner of Corporate Services). Mr. Andrew was charged with a leadership role in the City's Y2K preparation, and was heavily involved in the project. He was accountable for the Y2K remediation of the City's IT infrastructure and for carrying out the "technical due diligence" on the Y2K Project. Mr. Andrew's evidence to the contrary should not be accepted.

77. Mr. Andrew assured Ms. Viinamae that he would help guide her through the project, and assist her in dealing with Councillors and Commissioners. Ms. Viinamae relied on Mr. Andrew's expertise and guidance.

**(a) Hiring of Ms. Viinamae**

78. Prior to hiring Ms. Viinamae as Y2K Director, Ms. Rodrigues and Mr. Andrew concluded that it was necessary to have a special director within Information and Technology, whose responsibility it would be to ensure that the city became Y2K compliant. Mr. Andrew and Ms. Rodrigues selected Ms. Viinamae for this position.

*Testimony of Margaret Rodrigues November 20, 2003, p. 17  
lines 9-23*

79. Ms. Viinamae did not apply for the Y2K Director position when it was posted. In May 1998, Ms. Viinamae notified Mr. Andrew that she was going to accept an offer she had received from a major financial institution. Shortly after the job call for the Y2K Director position had closed, Mr. Andrew called Ms. Viinamae and asked her to apply for the position. Ms. Viinamae's understanding was that he and others on the interview board were not satisfied with the candidates who had applied. Ms. Viinamae agreed to be interviewed and was offered the Y2K Director position. She then met with Ms. Rodrigues to confirm the offer and accept the position. Ms. Viinamae was told that she would report directly to both Ms. Rodrigues and Mr. Andrew.

*Affidavit of Lana Viinamae, para. 8-10  
Testimony of Lana Viinamae, October 15, p. 93 line 24-p. 97  
line 2; October 29, 2003, p. 190 lines 9-13*

**(b) "Dual and Concurrent" Reporting**

80. Ms. Rodrigues' testimony that Ms. Viinamae had a "dual and concurrent reporting responsibility" to both Ms. Rodrigues and Mr. Andrew mirrors the testimony of Ms. Viinamae. Ms. Rodrigues testified that all three of them "worked very closely together on the whole thing [the Y2K initiative]" until Ms. Rodrigues left the City of Toronto in May of 1999.

*Testimony of Margaret Rodrigues, November 20, 2003, p. 21,  
lines 15-16; p. 22, lines 1-6*

81. After Ms. Rodrigues left the City, Mr. Andrew told Ms. Viinamae that he was filling Ms. Rodrigues's role as Commissioner for Ms. Viinamae's Y2K reporting purposes because Brenda Glover took on the role of Acting Commissioner on the basis that she not responsible for Y2K. Ms. Viinamae never had a single meeting with Brenda Glover.

*Testimony of Lana Viinamae, October 15, 2003, p. 170,  
line 10 - p. 173 line 16; October 29, 2003; p. 190, line 16 -  
p. 91, line 22  
Affidavit of Lana Viinamae, para. 23*

82. The organizational chart for the I&T Division indicates a direct reporting line from Ms. Viinamae as Y2K Project Director to Mr. Andrew as Executive Director of IT.

*Exhibit 64, Volume 12, Tab 20, Begdoc 70848 at 70850*

83. Mr. Andrew testified that Ms. Viinamae did not report to him for Y2K, and that the organizational chart was not accurate. Mr. Andrew's assertion that he was not very involved in the Y2K project, and that Ms. Viinamae did not report to him for that purpose, is clearly at odds with the other witnesses' testimony and the documentary evidence.

*Testimony of Jim Andrew, September 24, 2003, p. 187 line 11  
- p. 188, line 3; p. 190, line 22 - p. 191, line 2  
Exhibit 63, Volume 12, Tab 7, Begdoc 16409  
Exhibit 63, Volume 12, Tab 20, Begdoc 70848 at 70850*



84. Ms. Viinamae testified that Mr. Andrew had always been her direct manager and Y2K did not change this: "Jim and I had worked together for twelve years ... we communicated daily."

*Testimony of Lana Viinamae, October 15, 2003, p. 169,  
lines 15 – 17; p. 173, line 10 –13*

85. Ms. Rodrigues specifically contradicted Mr. Andrew's testimony that he was Ms. Viinamae's reporting contact for Y2K for "administrative purposes" only. Ms. Rodrigues testified that Ms. Viinamae was "still accountable to Mr. Andrew for all aspects of the work that she did." Her Y2K role was considered a temporary position for the duration of the Y2K initiative. During this time, Ms. Viinamae was still on Mr. Andrew's staff, but had a special assignment for Y2K.

*Testimony of Margaret Rodrigues, November 20, 2003 p. 26,  
lines 1–11; p. 20 line 25–p. 21 line 4*

86. Ms. Viinamae's evidence about why it was only logical that she reported to Mr. Andrew for Y2K is consistent with the testimony of Ms. Rodrigues. Ms. Viinamae testified that Mr. Andrew wanted her to report to him on Y2K "because it was so inextricably entwined with the IT upgrade program." She testified that she "didn't take off one hat and put on another hat" when she talked to Mr. Andrew about Y2K because "it was all one initiative... in terms of obtaining... the technology the City needed and... harmonizing that technology." Further:

Being the Executive Director of Information and Technology, a significant component of Y2K is Information and Technology. So [Mr. Andrew] was the person that probably... was most impacted by this program. So any direction that I took had to be in sync with him to ensure that the actions I was taking in the Information and Technology direction of the Corporation were aligned.

*Testimony of Lana Viinamae, October 15, 2003, p. 170,  
line 20 – p. 171 line 3; p. 174, lines 14 – 25 (Emphasis added)*

87. The testimony of CFO & Treasurer Wanda Liczyk about the Y2K reporting relationship is also consistent with Ms. Viinamae's, and similarly contradicts the testimony of Mr. Andrew:

I always felt [Ms. Viinamae] was somewhat still within the IT group and, having worked with Jim for a number of years, that she would have been briefing him on certain things from time to time ... I heard ... that... they still enjoyed a pretty good working relationship. *It wasn't like a wall had... come down just because she was working on Y2K.*

*Testimony of Wanda Liczyk, November 12, 2003, p. 9, lines 17  
– 25 (Emphasis added)*

88. The memo from Ms. Rodrigues and Mr. Andrew announcing the appointment of Ms. Viinamae to Y2K Director states that Ms. Viinamae will have "joint reporting responsibilities through the Information and Technology Division and the Commissioner of Corporate Services."

*Exhibit 63, Volume 1, Tab 6, Begdoc 01900*

89. Mr. Andrew gave Ms. Viinamae her performance rating, overall rating, and manager's comments on her performance appraisal for the period June 1998 to June 1999. He carried this out as Ms. Viinamae's manager.

*Testimony of Lana Viinamae, Oct. 29, 2003, p. 188, line 15 –  
p. 190, line 8  
Exhibit 63, Volume 15, Tab 1, Begdoc 79556 at 79577*

90. Shortly after Ms. Viinamae accepted the position, she told Mr. Andrew that she was nervous about communicating with Councillors and Senior Management Team in her new role, since she had little experience in dealing with them. Mr. Andrew assured Ms. Viinamae that he was on good terms with Councillors and Commissioners and that he could help guide her through the process. Ms. Viinamae testified that Mr. Andrew was "very good" about assisting her. He attended most, if not all, Senior Management Team meetings, and usually accompanied her during meetings with Councillors about Y2K.

*Testimony of Lana Viinamae, October 29, 2003, p. 197 line 8–  
p. 198 line 7*

91. There are numerous Y2K "action slips" in the database that were sent from Ms. Rodrigues to both Mr. Andrew and Ms. Viinamae. Particularly where the action slip was related

to Council business or an issue that the CAO wanted to know about, Ms. Rodrigues sent the item to Mr. Andrew so that he could ensure that the work was done properly.

*Margaret Rodrigues testimony, Nov. 20<sup>th</sup>, 2003 p. 67, lines 9–  
p. 6, line 3  
Exhibit 64, Tabs 10, 13, 14, 16, 17, 18, 19, 21, 22, 23, 25,  
and 26*

92. There were occasions where CAO Mike Garrett, Ms. Rodrigues, and Mr. Andrew communicated together on significant Y2K issues without directly involving Ms. Viinamae. There are several examples of e-mails about Y2K-related issues that were sent to Mr. Garrett, Ms. Rodrigues, and Mr. Andrew. Ms. Viinamae was not always copied on such e-mails.

*Testimony of Margaret Rodrigues, November 20, 2003 p. 58,  
lines 7–11  
Testimony of Lana Viinamae, October 29, 2003, p. 196,  
lines 13–22  
Volume 20, Tab 11, Begdoc 1304  
Exhibit 63, Volume 10, Tab 4 Begdoc 00492  
Exhibit 63, Volume 10, Tab 5 Begdoc 000848  
Exhibit 63, Volume 10, Tab 6 Begdoc 01255*

**(c) Integral Role of Jim Andrew on Y2K Project**

93. Margaret Rodrigues' testimony was clear that by virtue of his IT position, Mr. Andrew played an integral role in the Y2K Project. As Executive Director of Information and Technology, Mr. Andrew "was accountable for every aspect of Information Technology...Y2K was an aspect of that..." Mr. Andrew had a "leadership role" in Y2K. Prior to the appointment of Ms. Viinamae as Y2K Project Director, there was even greater reliance on Mr. Andrew.

*Testimony of Margaret Rodrigues, November 20, 2003, p. 20,  
lines 16–20; p. 69, line 20; p. 72, lines 14–20*

94. Ms. Rodrigues was the lead Commissioner on Y2K. She had "special accountability" to Mike Garrett and to Council "for the overall management of the whole Y2K process... to make sure that the city... became fully Y2K compliant." Mr. Andrew reported to Ms. Rodrigues directly. Ms. Rodrigues testified that because she herself was not a technical IT specialist, it was important for Mr. Andrew, who had this background, to "carry out...technical due diligence on the Y2K Project."

*Testimony of Margaret Rodrigues, November 20, 2003, p. 16,  
lines 13–18; p. 24, lines 14–16; p. 59, lines 17–22*

95. Ms. Rodrigues testified that Mr. Andrew had a "medium and longer-term accountability" for the Y2K Project since "he was going to inherit all the remediated systems... once they were in place." Further, Mr. Andrew was accountable for making sure that "everything that was done in the Y2K Project would fit in... with the IT strategic tactical operational directions of the Corporation." He was on the Y2K Steering Committee and came to Council when items were on Council's agenda. He also did some external liaison by seeking out information about what other organizations were doing. He was accountable for the remediation of the corporate IT infrastructure: the networks, desktops, mainframes, and servers.

*Testimony of Margaret Rodrigues, November 20, 2003, p. 22,  
lines 10 – p. 23 line 19; p. 68, lines 17– p. 69, line 6*

96. Ms. Rodrigues and Mr. Andrew "played a kind of controllership role in relation to the Y2K budget." A determination had to be made as to whether there was a significant enough Y2K aspect of a particular project to fund it out of the Y2K budget. Ms. Rodrigues relied on Mr. Andrew's advice as to whether items were appropriately funded through the Y2K budget.

*Testimony of Margaret Rodrigues, November 20, 2003 p. 71,  
line 2 – p. 72, line 13*

**PART 4 -  
REQUEST FOR QUOTATION (RFQ)**

97. The Request for Quotation (RFQ) for "Leasing Services on Information Technology Products" was issued by the Purchasing division on May 31, 1999.

98. Jim Andrew was aware of Brendan Power's substantial experience with RFQs and government purchasing processes, and placed him in the role of IT lead on the RFQ. Mr. Andrew supervised Mr. Power's work on the RFQ.

99. Any shortcomings of the drafting of the RFQ or the review of the responses are not the fault of Ms. Viinamäe. Ms. Viinamäe did not see any of the RFQ responses until late 2001 (more than two years after it was issued). She did not discuss the form or content of any of the responses to the RFQ with anyone at any time. Ms. Viinamäe did not have the knowledge or experience in leasing or finance that would have enabled her to do any financial analysis of the RFQ responses.

100. Because Ms. Viinamäe did not see any of the bids or participate in the evaluation of them, she obviously did not make any recommendation regarding the successful bidder (MFP).

**(a) Brendan Power as IT Leasing Lead**

101. Brendan Power became the IT leasing lead in April or May, 1999 and remained in that position until January 2000. Mr. Andrew effectively asked Ms. Viinamäe if he could "borrow" Mr. Power from his regular duties on the Y2K project, in order to work on the leasing program. Mr. Andrew supervised Brendan Power on the RFQ.

*Testimony of Lana Viinamäe, October 16, 2003, p. 8, line 21 –*  
*p. 9, line 3*  
*Testimony of Lana Viinamäe, October 20, 2003, p. 107, lines 8*  
*- 18*

102. Mr. Andrew knew that Mr. Power had experience in drafting RFQs and evaluating RFQ responses. Mr. Power worked on about twenty RFPs in his six years at Management Board Secretariat of the Ontario government. Mr. Power testified that he had

extensive experience in purchasing and in leasing over a number of years. Mr. Andrew was well aware of Mr. Power's work experience at the time he started working at the City, and he informed Ms. Viinamae of this as well. Mr. Andrew knew of Mr. Power's experience because they met in the early 1970s while working for the Ontario government. At one point they worked in the same ministry, and they have been in regular contact since. It was Ms. Viinamae's perception that Mr. Power was "very experienced."

*Testimony of Jim Andrew, September 24, 2003, p. 214, lines 4  
– 13  
Testimony of Brendan Power, March 26, 2003, p. 129 lines 8  
– 22  
Testimony of Lana Viinamae, October 16, 2003, p 192, line 11  
– p. 193, line 16; October 20, 2003, p. 101, line 16 – p. 103,  
line 8*

103. Others at the City regarded Mr. Power as a leasing expert. According to the notes from his KPMG interview, Mr. Brittain stated that "only Brendan has expertise on leasing", when referring to an meeting with Mr. Power, Ms. Viinamae, Mr. Altman, and Mr. Brittain.

*Begdoc 13031*

104. Mr. Andrew supervised Brendan Power on the RFQ. Since Ms. Viinamae had no experience with leasing, she would not have been qualified to supervise Mr. Power's work on the RFQ.

*Affidavit of Lana Viinamae, para. 1*

**(b) Drafting the RFQ**

105. Jim Andrew agreed that Ms. Viinamae's testimony was correct – that he asked Ms. Viinamae if Mr. Power could take on this role. Mr. Andrew asked Ms. Viinamae if she could free up Mr. Power from his Y2K duties to work on the RFQ. Both Ms. Viinamae and Mr. Andrew's evidence contradicts that of Mr. Power who testified that it was Ms. Viinamae, rather than Mr. Andrew, who asked him to work on the RFQ.

*Testimony of Lana Viinamae, October 16, 2003, p. 9, line 13 –  
18  
Affidavit of Lana Viinamae, para. 1  
Testimony of Brendan Power, March 6, 2003, p. 59; March  
26, 2003, p. 120, lines 5 – 25*

*Testimony of Jim Andrew, September 24, 2003, p. 213, lines 7  
-13*

106. Ms. Viinamae had no role in drafting the RFQ and she did not review the RFQ. Mr. Andrew agreed that Ms. Viinamae was correct when she testified that she had very little involvement with the RFQ. He testified "I believe she didn't have very much involvement." Accordingly, Mr. Andrew sent a draft RFQ to Mr. Power and not to Ms. Viinamae.

*Testimony of Jim Andrew, September 25, pp. 94-95; October  
2, 2003, p. 136, line 23 - 137, line 25  
Testimony of Lana Viinamae, October 16, 2003, p. 9, line 13 -  
18*

107. Nadir Rabadi's<sup>1</sup> testimony was also consistent with Ms. Viinamae's. He stated that he dealt with Mr. Power, who was the IT contact for the RFQ. Mr. Rabadi does not believe that he provided Ms. Viinamae with a copy of the RFQ.

*Testimony of Nadir Rabadi, June 26, 2003, p. 86, line 23 - p.  
87, line 4  
Affidavit of Lana Viinamae, para. 1*

108. The only contribution to the RFQ made by Ms. Viinamae was responding to Mr. Power when he asked what portion of the Y2K project and other I&T projects would be put on lease in 1999. This information was provided by the various PMO managers (\$36.9 million of the \$43 million was from Y2K, and \$6.25 million was from other projects). It was not necessary for Ms. Viinamae to review the RFQ to confirm the figures.

*Affidavit of Lana Viinamae, para. 37  
Testimony of Lana Viinamae, October 16, 2003, p. 18, line 24  
- p. 22, line 8*

109. Ms. Viinamae never saw the RFQ before it went out even though she was sent a draft of the RFQ via e-mail on two occasions: the first as a co-recipient with Michael Franey,<sup>2</sup> and the second, when she was copied on an e-mail addressed to Len Brittain.<sup>3</sup>

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<sup>1</sup> Senior Financial Analyst, Treasury and Financial Services Division, Department of Finance

<sup>2</sup> Acting Director, Computer Operations and Telecommunications

<sup>3</sup> Director of Treasury and Financial Services Division, Finance Department

110. The first e-mail was sent to Ms. Viinamae and Mr. Franey from Mr. Power on May 18, 1999. It states: "Attached for your review and comments is a draft of the lease RFQ." Ms. Viinamae testified that she did not open the document. In the e-mail, Mr. Power wrote that there were some business decisions to be made before the document was finalized, such as: term of the lease; value of equipment; central or department management refresh decisions; number of refreshes allowed during the term." Ms. Viinamae testified that the "business decisions" referred to in the e-mail were all matters that Mr. Franey would have responded to because beginning around October 1998, Mr. Franey was working on the inventory to determine what hardware and software needed to be refreshed for Y2K. Mr. Franey could likely have been more current on this information than Ms. Viinamae. Contrary to Mr. Power's testimony, Ms. Viinamae testified that she had no discussions with Mr. Power about these "business decisions," and that any direction taken on those matters would be from Mr. Andrew, the Executive Director, rather than from herself.

*Exhibit 63, Volume 7, Tab 31, Begdoc 15660  
Testimony of Lana Viinamae, October 20, 2003, p. 163, line 6  
– p. 173, line 7 – p. 175, line 22*

111. Ms. Viinamae did not open the draft RFQ that was attached to the second e-mail (sent May 26, 1999 from Mr. Power to Mr. Brittain, copying Ms. Viinamae). Mr. Power specifically asked Mr. Brittain (rather than Ms. Viinamae) to review the RFQ and to provide feedback: "Len attached is a draft of the lease RFQ. Would you please review it and provide me with comments as soon as possible."

*Exhibit 63, Volume 2, Tab 16, Begdoc 12687 at 12733  
Testimony of Lana Viinamae, October 16, 2003, p. 12, line 22  
– p. 14, line 17; October 20, p. 177, line 21 – p. 178, line 17*

112. Ms. Viinamae was cross-examined at length about why she did not review the RFQs sent to her via e-mail. Ms. Viinamae understood that Mr. Power copied her on the e-mail to let her know that he had started working on the RFQ. Ms. Viinamae testified that Mr. Power never followed up seeking a response or a final review from her before releasing the RFQ. Mr. Andrew was managing that process and she expected him to have designed the requirements and to have reviewed the RFQ to ensure that it was compliant with those requirements. She understood that Mr. Andrew was supervising Mr. Power on the RFQ. Further, she was facing a



Y2K deadline in six months and was in "constant prioritization mode." She received about 100 e-mails a day. Had she been the lead on the RFQ initiative (as she was for Y2K), she would be more proactive.

*Testimony of Lana Viinamae, October 22, p. 82, line 4 – p. 87, line 19; p. 82, line 4 – p. 87, line 19*

113. Mr. Andrew was on holiday in Scotland between May 25 and June 1, 1999. Mr. Andrew was supervising the RFQ, and did not leave any instructions for Ms. Viinamae to take over this matter in his absence. She was never directed to review the RFQ. Whenever Mr. Andrew was away and Ms. Viinamae acted in his position, she was not directed to take on the day to day operations, but only to deal with specific issues that arose. Further, even when Mr. Andrew was on holiday, he often logged on and picked up his e-mail from remote locations.

*Testimony of Lana Viinamae, October 16, 2003, p. 16, line 16 – p. 18, line 23*

114. In cross-examination, it was put to Ms. Viinamae that Mr. Power sent the RFQ to her on May 26 knowing that she was acting on Mr. Andrew's behalf in his absence. There is no evidence that that was the reason Mr. Power sent the RFQ to Ms. Viinamae. Further, the May 26 e-mail was sent to Len Brittain (and only cc'd to Ms. Viinamae) specifically requesting Mr. Brittain's feedback.

*Testimony of Jim Andrew, October 22, 2003, p. 86, lines 10 – 16*

**(c) Review of RFQ Responses**

115. Brendan Power was the IT lead on the RFQ. Ms. Viinamae regarded Mr. Andrew as Mr. Power's supervisor for the RFQ. It was also MFP's perception that Mr. Andrew and Mr. Power headed up the RFQ. In an August 28, 2001 letter to James Ridge<sup>4</sup>, Dash Domi wrote "By mid-July MFP's response to the RFQ is being reviewed and discussed with Jim Andrew and Brendan Power. Brendan was at the time, a Project Manager for Y2K in the IT Department and

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<sup>4</sup> Then Executive Director, IT

reported to Jim Andrew."

*Begdoc 23217*

116. Other documentary evidence is consistent with Mr. Andrew and Mr. Power, rather than Ms. Viinamae, working on the RFQ for IT. On June 25, 1999, Mr. Rabadi asked some technical questions related to the RFQ of Ms. Viinamae and Mr. Andrew, but it was Mr. Andrew who responded. Mr. Andrew's reply to Mr. Rabadi indicates that he was familiar with MFP's response: "MFP sent a price for printers. It is the same price as the other hardware with the same residual value. We sent with the RFQ the technical specifications of all the hardware..."

*Exhibit 63, Volume 3, Tab 1a, Begdocs 13051,13050  
Affidavit of Lana Viinamae, para. 40  
Testimony of Brendan Power, March 26, 2003, p. 170, line 19  
- p. 175, line 25*

117. To respond to the inference from the June 25 e-mail that he saw MFP's RFQ response, Mr. Andrew stated in his affidavit that he did not get the information about the printers from MFP's response to the RFQ, but rather that he "likely obtained" that information from Ms. Viinamae or Mr. Power. There are no documents in the database supporting this contention, which is an attempt on Mr. Andrew's part to underplay his involvement in the RFQ. If in fact he received the information from Ms. Viinamae, it would have made more sense for him to simply have asked her to respond to Mr. Rabadi's email.

*Exhibit 63, Volume 3, Tab 1, Begdoc 13051,  
Exhibit 63, Volume 8, Tab 4, Begdoc 31847  
Affidavit of Brendan Power, para. 130*

118. Mr. Rabadi also testified that Mr. Power and Mr. Andrew were the IT contacts when he was working on the report. Mr. Rabadi conducted his financial analysis of the RFQ responses under the direction of Mr. Brittain and Mr. Altman. Ms. Viinamae did not assist him with his analysis. Mr. Rabadi sent copies of his analysis to Mr. Power, Mr. Altman and Mr. Brittain. On June 17, 1999 he met with Mr. Power to review his financial analysis. He followed up the meeting with an e-mail to Mr. Power with copies to Mr. Brittain and Mr. Altman. Ms. Viinamae was not copied.

*Affidavit of Nadir Rabadi, paras. 21 – 30*  
*Testimony of Nadir Rabadi, June 26, 2003, p. 87, line 12 – p.*  
*96, line 4*  
*Exhibit 63, Volume 8, Tab 15, Begdoc 12256*

119. Mr. Power testified that he may have "perhaps" given the six RFQ responses to Ms. Viinamae. However, Frank Spizarsky (from the Purchasing Division) sent Mr. Power the six RFQ responses and asked him for his recommendation. This memo was not sent to Ms. Viinamae. Mr. Power could not point to any document showing that the RFQ responses were transmitted to Ms. Viinamae from himself, nor any document where Ms. Viinamae provided Mr. Power with feedback on these responses. He could not specifically recall where he might have discussed the responses, or when he would have given Ms. Viinamae the responses. Ms. Viinamae did not see any RFQ responses until the KPMG investigation, and there is no documentary evidence indicating otherwise.

*Testimony of Brendan Power, March 24, 2003, p. 57 line 24 –*  
*p. 59 line 7; March 26, 2003, p. 164, line 23 – p. 168, line 23*

120. In cross-examination, Ms. Viinamae was asked about an e-mail from Len Brittain to Wanda Liczyk during the evaluation stage of the proposals stating: "We are meeting with Lana and/or Jim next week to review the results of the RFP and the case for leasing." It was suggested to Ms. Viinamae that from this e-mail, it appeared Mr. Brittain was under the impression that Ms. Viinamae had a role to play in reviewing the results of the RFP. Ms. Viinamae replied that such information was "never, ever shared with me by Mr. Brittain." There is no evidence that Ms. Viinamae was at such a meeting or was in any way involved in reviewing or evaluating the RFQ responses.

*Exhibit 63, Volume 7, Tab 38, Begdoc 64002*  
*Testimony of Lana Viinamae, October 28, 2003, p. 132, line 9*  
*– p. 134, line 19*

**PART 5 -  
THE COUNCIL REPORT**

121. The report from the CFO & Treasurer (Wanda Liczyk) and Executive Director of IT (Jim Andrew) proposing leasing as a funding mechanism for the acquisition of IT products and services, and recommending MFP as the successful vendor, went to the Policy and Finance Committee on July 9, 1999. Any shortcomings of the report are not the responsibility of Ms. Viinamae.

122. Brendan Power drafted the report, and Ms. Viinamae knew that Ms. Liczyk and Mr. Andrew (on behalf of IT) would be thoroughly reviewing it. She did not mark up any of the drafts at any time, and only provided answers to specific questions she was asked by those involved in the drafting. Ms. Viinamae only reviewed the areas of the report that were pertinent to her involvement, as she was not responsible for the overall report. The focus of her own review of the report was on the budget implications for the Y2K project.

123. Because she had no leasing or finance experience, as others involved in drafting the report would have known, she was not in a position to review the financial or leasing aspects of the report.

**(a) Occasions where Ms. Viinamae Provided Feedback**

124. Ms. Viinamae did not make any revisions to the Council report by marking up a draft at any time. Ms. Viinamae only provided feedback on the report on the following occasions:

- On July 2, 1999, Nadir Rabadi<sup>5</sup> sent a list of questions about the report via e-mail. In a July 5 e-mail, Ms. Viinamae responded to these questions. She informed Mr. Rabadi that not all of the equipment would be received by July 31, 1999 but that “the target would be September, 1999.” Ms. Viinamae also informed Mr. Rabadi that the entire \$43 million should not be taken from the Y2K budget because it was funded by other projects, and that some of the respondents' information might be confidential.
- On July 5, 1999, Mr. Power sent a draft report to Ms. Viinamae, indicating that he had restructured the document and that “it still needs a lot of work by Finance.”

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<sup>5</sup> Senior Financial Analyst, Treasury and Financial Services Division, Department of Finance

He asked her to give it a "rigorous review" and provide her comments. In a July 6, 1999 reply e-mail, Ms. Viinamae recommended that the following be included in the report: that the purpose refer to the Corporation of the City of Toronto; that Finance might want to be more specific about the source of funding; that confidential information be segregated; and that reference be made to central administration by I&T. Most of these "boiler plate" comments resulted in changes to the July 6, 1999 version of the report.

- In a July 6, 1999 e-mail, Mr. Power sent Mr. Andrew and Ms. Viinamae a draft of the report, pointing out that he had made some minor changes to "Nadir's report." Ms. Viinamae's July 7, 1999 reply was "Looks good. Has Wanda seen and approved it?"

*Exhibit 63, Volume 8, Tab 13, Begdoc 31462*  
*Exhibit 63, Volume 8, Tab 24a, Begdoc 142*  
*Exhibit 63, Volume 8, Tab 15a, Begdoc 12257*  
*Exhibit 63, Volume 8, Tab 20a, Begdoc 13805*

**(i) July 5 Reply**

125. In cross-examination, it was suggested to Ms. Viinamae that she saw the July 2 version of the report that was attached to Mr. Rabadi's e-mail from that date. (The July 2 version refers to a \$43.15 million cap.) Ms. Viinamae testified that she did not review the draft, but only responded to the specific questions posed by Mr. Rabadi.

*Testimony of Lana Viinamae, October 21, 2003, p. 15, line 15*  
– p. 18, line 9  
*Exhibit 3, Volume 8, Tab 14, Begdoc 30481*

126. Ms. Viinamae testified that there are several reasons she believes she did not review the July 2 version of the report. Had she reviewed it, she would have provided many more comments than she did (rather than only responding to Mr. Rabadi's questions). For example, she would have corrected the "Purpose" of the July 2 version, which states that the report proposes leasing the "acquisition of computers under the Y2K project valued at \$150 million."

*Testimony of Lana Viinamae, October 21, 2003, p. 20, line 2 –*  
*p. 24, line 15*  
*Exhibit 48, Tab 10, Begdoc 15623*

**(ii) July 6 Reply**

127. In cross-examination, it was suggested to Ms. Viinamae that she did not conduct "a rigorous review" of the report she was sent on July 5. Ms. Viinamae testified that she reviewed the areas of the report that were pertinent to her involvement. She was not responsible for the overall report. She would not have gone through the financial parts with any detail "because it wouldn't make any sense to me." Ms. Viinamae had no leasing or finance experience. Brendan Power drafted the report and Ms. Viinamae knew that Mr. Andrew and Ms. Liczyk would be thoroughly reviewing it. Indeed, in Mr. Power's July 5 e-mail to Ms. Viinamae, he told her that the report "still needs a lot of work by Finance" and that "Jim has indicated to Wanda that she may get a draft of this document tonight."

*Testimony of Lana Viinamae, October 16, 2003, p. 42, line 12 – p. 62, line 21; October 21, 2003, p. 36, line 6 – p. 39 line 16; October 28, 2003, p. 104, line 7 – line 25 Exhibit 63, Volume 8, Tab 13, Begdoc 31858*

**(iii) July 7 Reply**

128. Mr. Power sent Mr. Andrew and Ms. Viinamae a copy of the report on July 6, 1999, stating that he had made some minor changes to "Nadir's report." Ms. Viinamae's July 7, 1999 reply was "Looks good. Has Wanda seen and approved it?" Ms. Viinamae testified that she asked whether Ms. Liczyk had seen and approved the report because she wanted to ensure that Ms. Liczyk was comfortable with the amount of \$36.9 million funding coming from the Y2K budget and going towards the leasing program. Ms. Viinamae's comment that the report "looks good" was not meant to represent the view of all of IT, particularly since she knew Mr. Andrew was going to be reviewing and signing the report. Ms. Viinamae was only referring to the items she had participated in and had knowledge of: "I'm saying from my standpoint, and my role on this, that I'm happy." She was not in a position to comment on financial matters or the benefits of leasing: "I wouldn't have had any knowledge or experience with this report in those areas. The only areas that I had been involved in, I had actually provided [Mr. Power] with written feedback on."

*Testimony of Lana Viinamae, October 16, 2003, p. 28, line 6 – p. 33, line 5*

129. By commenting that the report “looks good,” Ms. Viinamae was also confirming that the feedback she had previously provided on July 6 (boiler plate items) had been incorporated into the next version of the report.

*Testimony of Lana Viinamae, October 16, 2003, p. 33, line 18  
– p. 38, line 20*

130. Ms. Viinamae’s comment was not intended to be a sign-off for IT. She testified:

A lot of reports have a lot of contributors to them, and no one party usually can sign off on the whole thing. The lead is usually the person that has to ensure that the entire thing comes together and that they get the approval from each party that their specific interests have been looked after.

131. She testified that Mr. Andrew would have known that her comments only related to the specific areas she had responsibility for, such as Y2K funding.

*Testimony of Lana Viinamae, October 16, 2003, p. 40, line 6 –  
p. 42, line 2  
Exhibit 63, Volume 8, Tab 23, Begdoc 14218*

132. When Ms. Viinamae asked whether Ms. Liczyk had “seen and approved” the report, Mr. Andrew responded that Ms. Liczyk had a copy and that "she intends to rewrite the first paragraph." Ms. Viinamae's understood that to mean that Ms. Liczyk would be reviewing the funding paragraph.

*Testimony of Lana Viinamae, October 16, 2003, p. 40*

**(b) Not Responsible For Overall Report**

133. Ms. Viinamae agreed that with the benefit of hindsight, there is ambiguity in the report. However, she considered that it was Mr. Andrew and Ms. Liczyk’s responsibility to determine the style and content of the report. She testified that she was seeing e-mails where Mr. Andrew was providing feedback and making changes to the report and her understanding was he was "running with this." Mr. Power provided the IT piece of the report and reported directly to Mr. Andrew for that purpose.

*Testimony of Lana Viinamae, October 28, 2003, p. 107, line 7  
- p. 111*

134. Any input by Ms. Viinamae was given because the Y2K Program was going to be using part of the funds for the acquisition of hardware and software. Her input was given as a client of the leasing program.

*Testimony of Lana Viinamae, October 16, 2003, p. 26, line 13  
- p. 27, line 21*

135. The focus of her own review of the report was on the budget implications for the Y2K Project. She did not agree that it was her responsibility to make sure that the report "did what ... it was supposed to do." Mr. Andrew and Ms. Liczyk were responsible for determining how the information was put forward. They were Ms. Viinamae's superiors, and therefore Ms. Viinamae was not in a position to "tell them what to report and put forward on their program."

*Testimony of Lana Viinamae, October 28, 2003, p. 101, line  
10 - p. 102, line 15; p. 104, lines 16-25*

136. Ms. Viinamae testified that the reason her name was listed as a contact on the report was so that she could respond to questions regarding the \$36.9 million for Y2K. She stated that a Councillor would understand that she was not going to respond to questions on the whole report.

*Testimony of Lana Viinamae, October 16, 2003, p. 23, line 9 -  
p. 26, line 6*

137. In a June 25, 1999 e-mail from Nadir Rabadi to Mr. Andrew, Mr. Power, and Ms. Viinamae, Mr. Rabadi asked for the "text with respect to your piece which you wish to incorporate in your report." He also asked for the value of items "already received from the \$43.15 million we intend leasing." It was Mr. Power, rather than Ms. Viinamae, who provided the IT piece of the report and worked with Mr. Rabadi.

*Testimony of Lana Viinamae, October 20, 2003, p. 216, line  
20 - p. 219, line 18; October 28, 2003, p. 111  
Exhibit 63, Volume 7, Tab 40, Begdoc 31948*



138. Ms. Viinamae was asked about a July 2 e-mail sent by Mr. Rabadi to herself and Mr. Andrew in which he sent them a draft report. It was Mr. Andrew who replied to this e-mail with his feedback on the report. He noted that "Lana will confirm the purchases," and Ms. Viinamae confirmed purchases by providing her feedback to Mr. Rabadi on July 5 that not all of the equipment would be received by September 1999.

*Testimony of Lana Viinamae, October 21, 2003, p. 12, line 20*  
– p. 15, line 13  
*Exhibit 63, Volume 8, Tab 15a, Begdoc 12257*  
*Exhibit 63, Volume 8, Tab 9, Begdoc 67473*

139. In cross-examination, Ms. Viinamae agreed with the statement that "you narrowly prescribed your jurisdiction on this report and you didn't step outside of that jurisdiction." It was put to Ms. Viinamae that Mr. Andrew wanted her to be responsible for the implementation of the entire leasing program. Ms. Viinamae denies Mr. Andrew played an active role in leading the leasing program initiative and was the person who asked Mr. Power to be the IT lead on it. She was never assigned that task and was never asked to have any type of leadership role in the leasing program.

*Testimony of Lana Viinamae, October 28, 2003, p. 128, line 8*  
– p. 130, line 14

**(c) Testimony of Line Marks**

140. Line Marks<sup>6</sup> initially testified that Ms. Viinamae was responsible for the removal from the report of the reference to \$43 million being a maximum value of assets on lease – that either Ms. Viinamae asked Ms. Marks to tell Mr. Power to remove it, or that the three of them discussed the matter. Her evidence is not reliable on this point.

*Testimony of Lana Viinamae, October 28, 2003, p. 264, line 14 – p. 267, line 23*

141. On cross-examination, Ms. Marks agreed that the conversation may not have been in relation to the report. She testified: "What I remember and now that I think of it a little bit more, it may have been something after maybe during the... photocopier when they were dealing with MFP and when legal started looking at it but I know it dealt with \$43 million." The

suggestion that Ms. Viinamae was responsible for the removal of the reference was not contained in Ms. Marks' affidavit, even though it relates to one of the most significant issues before the Inquiry. Nor did Ms. Marks give KPMG this information when she was interviewed by them.

*Testimony of Line Marks, August 14, 2003, p. 197, line 8 – p. 206, line 21; p. 208, line 10 – p. 212, line 13*

142. After Ms. Marks gave this evidence at the hearing on August 13, 2003, she contacted Ms. Viinamae by telephone and told her she was concerned that she had given incorrect testimony. Ms. Marks told Ms. Viinamae that her recollection was of a conversation in her new office location, and she was not at this new location until after the report to Council had gone through Council, and therefore the conversation she recalled and testified about could not have been about removing the reference to a \$43 million cap in the report.

143. Testimony of Lana Viinamae, October 20, 2003, p. 230, line 15 – p.236, line 22 Affidavit of Lana Viinamae, paras. 46 -- 48 Ms. Marks called Ms. Viinamae after she testified, and did so on her own volition. Ms. Viinamae did not ask Ms. Marks to call her, coach or ask her to change her evidence in any way.

*Testimony of Line Marks, August 14, 2003, p. 218, line 20 – p. 219, line 8*

144. Ms. Viinamae did not give the direction to remove the reference to \$43 million from the report. She testified that if she had seen it, however, she would have recommended that it should be removed, because she did not regard the \$43 million as a cap.

*Testimony of Lana Viinamae, October 16, 2003, p. 104, line 18 – p. 105, line 16*

145. Ms. Marks agreed that Ms. Viinamae made a habit of documenting her communications with others, particularly via e-mail. She agreed that Ms. Viinamae would document important decisions and feedback to other people in writing. She agreed that some of the other feedback that Ms. Viinamae provided in writing related to changes that were less significant than the \$43 million cap. Ms. Marks agreed that if Ms. Viinamae had instructed her to make the change (which she did not), Ms. Viinamae would have done so in writing.

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<sup>6</sup> Program Assistant in the Year 2000 Office

*Testimony of Line Marks, August 14, 2003, p. 217, line 15 – line 25; August 14, 2003, p. 216, line 25 – p. 218, line 19*

146. Mr. Power did not have any specific recollection of deleting that reference in the report, or of being asked by Ms. Viinamae to do so. Mr. Power testified that if he was the person who deleted the reference to \$43 million in the report, he probably would not have done it without consulting someone in the IT Department, and that had he consulted with someone in the IT department before making such a change, it would have been Ms. Viinamae. Mr. Power's evidence is purely hypothetical, however, because he could not identify any document indicating that he consulted with Ms. Viinamae, and he did not recall a specific discussion he had with her about this issue.

*Testimony of Brendan Power, March 25, 2003, p. 163, line 7 – 18; March 26, 2003, p. 187, line 24 – p. 188, line 5*

**PART 6 -  
90-DAY GUARANTEE PERIOD**

147. As MFP stated in its response to the RFQ, the quoted lease rates were only guaranteed for 90 days. Ms. Viinamae was not responsible for reviewing the RFQ or the responses, and therefore she was not aware of the guarantee period or its significance; nor did anyone inform her of this.

148. The individuals who had leasing knowledge and were aware of the guarantee period – such as Jim Andrew, Brendan Power, and a number of staff in the Finance Department– should have either ensured that all the equipment could be placed on lease within that time frame, or asked MFP to extend the guarantee period. Such action would have prevented the City from paying a higher lease rate than the rate quoted by MFP in the RFQ responses.

**(a) Testimony of Brendan Power**

149. Brendan Power was in the best position to have ensured that the 90-day period was sufficient to complete the transaction. He was the IT lead on the RFQ at the request of Mr. Andrew, and was the contact in IT for the financial analysis of the RFQ responses. Mr. Power had significant experience with issuing RFQs, and worked on approximately twenty of them when he worked with the provincial government.

150. Mr. Power testified that in hindsight, he "most probably would have" considered making the time period longer than 90 days. He knew that by the time of the Council meeting at the end of July, about half the 90-day period had expired, and he knew that after Council approval, it was still necessary to negotiate a master lease and associated documents.

*Testimony of Brendan Power, March 6, 2003, p. 147 line 6 –  
p. 152 line 25.*

151. Mr. Power testified that the purpose of having a specified lease rate guarantee period "is to ensure that the prices won't change while we are evaluating and getting approval for the transaction." He testified that 90 days "seemed like a reasonable time but perhaps, it could have been longer give the length of time it takes to go through Committee and to Council." Mr. Power should have ensured that the guarantee period was appropriate for the transaction.

*Testimony of Brendan Power, March 24, 2003, p. 24 lines 15  
– 20*

152. Mr. Power also testified that he was aware that the City had the option of asking MFP for an extension of the guarantee period, yet he was "not sure anybody ever used it," nor did he himself ask MFP. Given that Mr. Power knew the transaction was not completed within the 90 days, he should have responded. From his experience working with the Province, he knew that the Province asked for prices to be held for longer than 90 days – sometimes 120 days - because of "the length of time it takes things to get approved in the public sector organizations." He testified that in his view there was no reason why all the equipment could not have been put on lease during the guarantee period, and that he was not the cause of any delay in carrying this out. However, although he may not have been "the cause of any delay," there is no evidence that Mr. Power explained to Mr. Andrew, or Ms. Viinamae, the significance of the timing. Ms. Viinamae was never told that there was a guarantee period.

*Testimony of Brendan Power, March 6, 2003, p. 15, p. 18 –  
152; March 31, 2003, p. 13 line 20 – p. 16, line 25*

153. Mr. Power also knew that not all the equipment would be in place by the expiry date of the 90-day guarantee period. He drafted a briefing note that included a chart indicating that equipment would be received up to December 1999. The RFQ indicates that 9,000 desktops would be installed in 1999, "with 4,000 to be installed during the term of the agreement." He was also aware that Section 1.1.21 of the RFQ contemplated major software acquisitions at an unspecified date in the future. Nonetheless, he did nothing to have the guarantee period extended, or to inform anyone in Finance or other departments to ensure that the financial analysis for the Council report was carried out accurately. Nor did he express any concerns to Mr. Andrew, to whom he was reporting on the RFQ.

*Testimony of Brendan Power, March 24, 2003, p. 130 line 5 –  
p.131 line 25; March 25, 2003, p. 144 line 12 – p.145 line 12  
Exhibit 63, Volume 8, Tab 31, Begdoc 14223  
Begdoc 6117*

**(b) Testimony of Nadir Rabadi**

154. Mr. Rabadi<sup>7</sup> created his assessment model and conducted his financial analysis for the lease transaction based on assumptions rather than facts. Mr. Rabadi's assumption that everything (including the tender, report to Committee on Council, and contract negotiations) could be completed in 90 days, his failure to explain why he was asking for the date of the receipt of the equipment, and his unreasonable interpretation of what Ms. Viinamae meant by "target" date – particularly since he knew some equipment would be received beyond the 90-day period – had significant implications for the City. He did not properly consider variability in future lease rates, given that a different rate than that quoted by MFP in the RFQ response applied.

*Testimony of Nadir Rabadi, June 25, 2003, p. 80, line 20 – p. 81, line 11*

155. In a July 2, 1999 e-mail to Ms. Viinamae, Mr. Rabadi stated: "If you are not receiving all the equipment by July 31, 1999, then please give me a schedule in \$\$ [sic] of the likely time by which we will receive the stuff so that I can calculate the monthly lease charges reasonably accurately." Ms. Viinamae replied: "We will not have received all the equipment by July 31<sup>st</sup>, 1999. The target would be September, 1999. I will provide you with this information tomorrow."

*Exhibit 63, Volume 8, Tab 15, Begdoc 12257*

156. In no way did Ms. Viinamae assure Mr. Rabadi, in this or any other communication, that all the equipment would be received by September 1999. Further, Mr. Rabadi did not inform Ms. Viinamae, nor was she aware, that the lease rate quoted by MFP in the RFQ response was only guaranteed for 90 days. Nor did Mr. Rabadi explain that the date of the receipt of equipment was connected to the 90-day period. Had Ms. Viinamae understood that fact, and had it been explained to her, she would have proceeded accordingly. For example, she would have asked for more resources to complete the sale-leaseback by that date, put the equipment she was able to identify on lease so that "a significant chunk would have been under the deadline," or sought an extension.

*Testimony of Lana Viinamae, October 16, 2003, p. 62, line 3 –  
21, p. 64 line 25 – p. 76*

157. Mr. Rabadi failed to adjust his financial analysis even when he was informed by Ms. Viinamae that some equipment would be received in October 1999 - a date to which he knew the lease rate quoted by MFP in the RFQ would not apply. In her July 5, 1999 e-mail with italicized responses, Ms. Viinamae stated "I will provide you with this information tomorrow" regarding the target date for the receipt of equipment. The following day, she attached information from Clem Chan<sup>8</sup> and Katheryn Bulko<sup>9</sup> indicating that there would be desktops deployed and received in October 1999. Dan Altman<sup>10</sup> testified that he did not recall Mr. Rabadi alerting him to the fact that some equipment would be received in October 1999.

*Testimony of Don Altman, July 8, 2003, p. 120, line 21 – p.  
122, line 19,*

158. Mr. Rabadi did not have a reasonable interpretation of Ms. Viinamae's statement in her July 5 e-mail that "the target would be September 1999." He testified: "the target means it's the latest date she's talking about, not the earliest date...I expected the entirety of \$43 million to be received before September." This is an illogical interpretation of the word "target," particularly given that Ms. Viinamae told Mr. Rabadi in her July 6 e-mail that some of the desktops would be received in October.

*Testimony of Nadir Rabadi, June 25, 2003, p. 67, line 10 – 17;  
June 26, 2003, p. 130, line 10 – p. 134, line 8*

159. Mr. Rabadi testified that he was aware that within 90 days, there had to be a tender process, a review of responses, a report to a committee of Council, consideration by Council, and contract negotiations. He assumed everything could be completed within the 90 days, because he knew that "the meetings are held almost every month." However, by the time the report went to Council, the guarantee period was about half over.

*Testimony of Nadir Rabadi, June 25, 2003, p. 24, line 10 – p.  
27, line 15; p. 66, line 12 – 23*

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<sup>7</sup> Senior Financial Analyst, Treasury and Financial Services Division, Department of Finance

<sup>8</sup> Manager of Systems Products and Services, IT Division, Corporate Services Department

<sup>9</sup> Project Manager, Y2K City-Wide Initiatives-Desktops

<sup>10</sup> Manager of Financial Planning, Treasury and Financial Services Division of the Finance Department

(c) **Testimony of Don Altman**

160. By his own admission (“I may have overstated a bit”), Don Altman’s testimony about what Mr. Rabadi did to inquire into the date of the receipt of equipment is exaggerated. It bears no resemblance to the evidence. Mr. Altman testified that "Nadir was so fixated on getting a statement back from Lana concerning, you know, are you absolutely certain you – that it's all going to be here by the middle of September" because the analysis would fall apart if the vast majority of the acquisition was not going to be within the 90 days. He further testified that "Nadir was practically hounding them to death with e-mails getting assurance about... when are we going to have all the stuff." Far from being "fixated on," or “hounding” Ms. Viinamae about whether she was “absolutely certain” that the equipment would be received in September, Mr. Rabadi proceeded with his financial analysis based on the rate quoted in the RFQ despite the fact that he had information that should reasonably have alerted him that that rate would not apply.

*Testimony of Don Altman, July 7, 2003, p. 31, line 24 – p. 32, line 5; p. 171, line 18 – p. 175, line 23; July 8, 2003, p. 116, line 1 – p. 119, line 7*

161. Mr. Altman testified that Mr. Rabadi was concerned that it would be a "real struggle to get this through the committee because the City had a long history of – of being sceptical about IT arrangements". If this was the case, then Mr. Rabadi and Mr. Altman should have been concerned about whether the transaction could be completed within 90 days.

*Testimony of Don Altman, July 8, 2003, p. 54, lines 9 – 25*

162. Mr. Altman agreed that there was nothing in Mr. Rabadi's July 2, 1999 e-mail to explain to Ms. Viinamae that the reason he was asking when the equipment would be received was because the rates quoted only applied for 90 days. Mr. Altman assumed that fact was "well known." However, Ms. Viinamae was unaware of the 90-day guarantee period, and Mr. Altman could not point to any specific discussions or meetings where Ms. Viinamae would have been made aware of it. Mr. Altman agreed that nothing in Mr. Rabadi's e-mail would inform the reader of the 90-day period or its significance. Further, he agreed that it was a very important issue because if the financial analysis was done based on the rates quoted within the 90 days, but in fact another rate applied, "that would change everything."



*Testimony of Don Altman, July 8, 2003, p. 111, line 9 – p. 15,  
line 23*

**(d) Testimony of Jim Andrew**

163. Jim Andrew testified that he "would have thought" the City could identify all of the sale and leaseback hardware so that the transaction could be completed within 90 days. Mr. Andrew knew that the lease rate quoted in the RFQ was only valid for 90 days, but he did nothing to ensure that the City completed the transaction within that time. Nor did he respond when he received Ms. Viinamae's October 1, 1999 e-mail stating that she had recently signed the first certificate of acceptance covering "the majority" (rather than all) hardware acquisitions to date.

**(e) Testimony of Lou Pagano**

164. Lou Pagano<sup>11</sup> testified that the length of time for the guaranteed lease rate is usually determined by either the initiating department or the purchasing agent. Mr. Pagano does not know where the 90-day period for the computer leasing RFQ originated. He gave no evidence that any Purchasing staff satisfied themselves that 90 days was an appropriate period of time for this transaction.

*Testimony of Lou Pagano, February 24, 2003, p. 159, line 18  
– p. 160, line 2*

165. Mr. Pagano could not say whether 90 days was a typical time period compared to other transactions because he testified it would depend on the nature of the transaction. He assumed (but did not confirm) that "the requesting department would have been comfortable with that timeframe."

*Testimony of Lou Pagano, February 25, 2003, p. 48, line 10 –  
p. 52, line 4*

166. The RFQ indicates that approximately 9,000 desktops would be installed in the calendar year 1999 "with another 4,000 to be installed during the term of the agreement". Mr. Pagano testified that he might have questioned whether some of the acquisitions would be made

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<sup>11</sup> Director, Purchasing and Materials Management Division, Purchasing Department

beyond the 90-day time period because it is not specific that all the desktops would be installed or delivered within the 90 days. He testified that he would have asked his staff (Frank Spizarsky or Dave Beattie) to contact the department to see if 90 days was reasonable, or he would have contacted the department himself. Had he not been comfortable with the response, he could have indicated his concern and told his staff that he did not want the RFQ issued until these issues were addressed. However, Mr. Pagano took no such action, nor did he direct any of his staff to communicate with Finance and IT to ensure the timeline was appropriate.

*Testimony of Lou Pagano, February 25, 2003, p. 52, line 25 –  
p. 54, line 12*

167. Mr. Pagano was copied on Ms. Viinamae's July 5, 1999 response to Mr. Rabadi in which she stated that not all the equipment would be received by July 31, 1999, but that the target would be September 1999. Mr. Pagano testified he did not recall receiving this e-mail, but that because he was not aware of the 90-day period, he would not have questioned whether September 1999 was after the 90-day period. If he had been aware of the requirement, he may have questioned it. Someone in Mr. Pagano's department should have been attuned to this issue and, along with Brendan Power (the IT lead on the RFQ who dealt with the Purchasing division) assured themselves that all the equipment would be received within 90 days.

*Testimony of Lou Pagano, February 25, 2003, p. 78, line 3 –  
p. 82, line 21  
Begdoc 12257*

**(f) Testimony of Dave Beattie**

168. Dave Beattie<sup>12</sup> stated in his affidavit that he was "not aware of the implications of [paragraph 1.1.21 of the RFQ] for the cost or the timing of the lease acquisitions", that he "did not focus on" paragraph 1.1.17 of the RFQ, and so did not consider whether 90 days would be enough time to complete the quotation call, report to committee and Council, and acquire assets on lease.

169. Mr. Beattie's affidavit contradicts his testimony. He testified that ordinarily Purchasing would contact the initiating department and ask when the materials were going to be

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<sup>12</sup> Buyer, Goods and Services, Purchasing and Materials Management Division, Finance Department

delivered, and over what period of time. When asked for his explanation for not doing so he testified: "I have no explanation." He only contacted Mr. Power after the issuance of the RFQ, when he was contacted by vendors with questions about technology configurations and estimated leasing volumes. In response, an addendum was sent to bidders, but Mr. Beattie did not know whether it included additional equipment. Mr. Beattie was the contact name on the RFQ. If he was not capable of "focussing" on such critical matters, he should have notified Mr. Pagano.

*Affidavit of Dave Beattie, paras. 49-50  
Testimony of Dave Beattie, March 31, 2003, p. 132, line 22, p.  
134, line 17*

**PART 7 -  
FIVE - YEAR LEASES**

170. Ms. Viinamae was informed by Mr. Andrew of the change in the lease term, and Ms. Liczyk confirmed the direction that all hardware and software (except printers and storage technology) was to go on five-year leases. Ms. Viinamae had no role in the decision to extend the lease terms from three to five years.

171. Ms. Viinamae was assured by Mr. Andrew and Mr. Power that there was appropriate authority for the change to the lease term. It was entirely reasonable for Ms. Viinamae to rely on the opinion of Mr. Andrew (her superior) and Mr. Power (who was regarded as a leasing expert) that the flexibility clause provided sufficient authority. Ms. Viinamae was also informed by the City Solicitor, Ossie Doyle, that five-year leases were permissible.

172. Responsibility for the failure to address the financial impact of the change in the lease term rests primarily with the Finance department. Mr. Brittain's division in particular had an unreasonably narrow view of its role, and failed to correct its financial analysis, which was flawed in light of the new lease term.

**(a) Communication of the Decision to Change the Lease Term**

173. Ms. Liczyk agreed in her testimony that she was ultimately responsible for the decision to extend the leases from three to five years (She testified that Len Brittain made the recommendation, and she concurred.)

*Testimony of Wanda Liczyk, November 3, 2003, p. 270, line 16  
– p. 271, line 14; November 4, 2003, p. 73, line 5 – p. 75, line  
19*

174. Ms. Viinamae had no role in the decision to extend the term of the leases from three to five years. She was first informed of this decision by Mr. Andrew in a conversation with him around the last week of September 1999. Mr. Andrew did not specify who in Finance proposed this term, but the only people Ms. Viinamae considered senior enough to make such a decision were Mr. Brittain or Ms. Liczyk.

*Affidavit of Lana Viinamae, para. 56  
Testimony of Lara Viinamae, October 28, 2003, p. 198, line 24  
– p. 199, line 5*

175. Ms. Viinamae disagreed with this decision. She told Mr. Andrew that she felt that three-year terms were preferable to five-year terms because the lease terms would coincide with the warranties and the life of the assets. She was particularly concerned about PCs, printers, and storage technology. In response, Mr. Andrew told Ms. Viinamae that longer lease terms would ameliorate budget pressures, and that a five-year refresh was better than having no refresh at all. Further, Mr. Andrew said that he and Ms. Liczyk agreed that printers and storage technology could go on three-year leases.

*Affidavit of Lana Viinamae, para. 57-58  
Testimony of Lana Viinamae, October 29, 2003, p. 4, line 18 –  
p. 13, line 18;*

176. Within two or three days of her discussion with Mr. Andrew, Ms. Viinamae discussed the decision to go to five-year leases with Ms. Liczyk. This occurred while Ms. Viinamae was on her way to a meeting, and ran into Ms. Liczyk in the lobby of City Hall. During this brief conversation, Ms. Liczyk explained to Ms. Viinamae that it was necessary to have five-year leases in order to address budget constraints. Ms. Viinamae let Ms. Liczyk know that she was not happy with this decision because a five-year lease term was longer than the IT asset life-cycle. Although Ms. Liczyk testified that she did not recall having the conversation with Ms. Viinamae in the elevator lobby, she did not deny that it occurred.

*Affidavit of Lana Viinamae, para. 59  
Testimony of Lana Viinamae, October 16, 2003, p. 164, line 2  
– p. 165, line 22  
Testimony of Wanda Liczyk, November 18, 2003, p. 38, line 3  
– 24*

177. Ms. Viinamae testified that during her discussion with Ms. Liczyk about the five-year lease, Ms. Viinamae told Ms. Liczyk that Mr. Andrew had indicated that "everything" (meaning all hardware and software) would be put on five-year leases. Ms. Viinamae believes that she told Ms. Liczyk that she understood that Ms. Liczyk and Mr. Andrew had agreed that printers and storage technology would be exceptions. Ms. Viinamae wanted to make sure that Ms. Liczyk was comfortable with these exceptions.

*Testimony of Lana Viinamae, October 29, 2003, p. 4, line 18 –  
p. 13, line 18*

178. Line Marks testified that during the time of the sale leaseback in August or September of 1999, Ms. Viinamae told her that Ms. Liczyk directed that the lease term be five years. Ms. Marks also recalled Ms. Viinamae telling her that she had had a conversation with Mr. Andrew in which he had also indicated that the lease term would be five years. Ms. Marks recalled that Ms. Viinamae did not agree with this change to the lease term.

*Testimony of Line Marks, August 14, 2003, p. 55, line 6 – p.  
58, line 24*

179. Ms. Viinamae signed the certificate of acceptance dated October 1, 1999. On the same day, she sent an e-mail to Mr. Andrew copying Ms. Liczyk, Mr. Brittain, Mr. Pagano, Mr. Power, and Mr. Spizarsky, informing them that the first certificate of acceptance had been approved. She wrote: "As requested by Finance, the lease term of 60 months has been used for this certificate." No one contacted Ms. Viinamae to express concerns about the five-year term, or to ask who authorized the term or what amount of assets were placed on the lease.

*Affidavit of Lana Viinamae, para. 62  
Exhibit 63, Vol. 3, Tab ; Begdoc 13087*

180. When Ms. Viinamae signed the first equipment schedule, it already had the 60-month term written on it. Ms. Viinamae did not direct anyone to insert a 60-month term on this or any other lease document. She does not know whom the direction to MFP came from, but presumes it was from Mr. Power. When the equipment schedules were subsequently re-executed after (presumably) being reviewed by the City's legal department, there were no concerns raised about the 60-month term. Nor did Ms. Liczyk raise concerns about the term when she re-executed the documents at the time, nor when she signed the rewritten leases on July 1, 2000.

*Testimony of Lana Viinamae, October 22, 2003, p. 219;  
October 30, 2003, p. 24, line 19 – p. 25, line 24  
Testimony of Wanda Liczyk, November 13, 2003, p. 145, line 1  
– p. 146, line 14  
PAI-1, MLA Vol. 3, Tab 37  
Equipment Schedule 838-1, MLA, Vol. 1, Tab 5  
Equipment Schedule 838-3, MLA, Vol. 1, Tab 13  
Exhibit 18, Volume 1, Tab 5, Begdoc 20648*

**(b) Authority for the Change in the Lease Term**

181. Within about two or three days of her discussion with Mr. Andrew at the end of September 1999, Ms. Viinamae sought confirmation from Mr. Power that there was Council authority for the extended term of the leases. Mr. Power told her that the motion passed by Tom Jakobek permitted five-year leases. Mr. Andrew confirmed that the flexibility clause was the authority. Ms. Viinamae testified that she was satisfied because "My boss was satisfied that that flexibility clause gave the authority". Ms. Viinamae was assured that there was the appropriate authority for the change in the lease term – a decision that Ms. Liczyk claimed responsibility for. It was reasonable for Ms. Viinamae to rely on the opinions of her supervisor and of Mr. Power, who had RFQ leasing experience, that there was the requisite authority. In his closing submissions, City Solicitor Ossie Doyle has stated that the flexibility clauses authorized the extension.

*Affidavit of Lana Viinamae, para. 57-58  
Testimony of Lana Viinamae, October 29, 2003, p. 17, line 9 –  
p. 20, line 24; p. 20, line 25 – p. 24, line 8  
Closing Submission of Ossie Doyle, Para. 74*

182. Ms. Viinamae assumed that the RFP responses from all bidders covered multiple terms. She did not ask Mr. Power to confirm there had been a competitive process with respect to five-year lease rates. She relied on Mr. Power since he was the IT lead and a leasing expert. She did agree that with the benefit of hindsight it "would have been good" if she had verified her assumption that there was a competitive process for the five-year lease terms: "I would take indirect responsibility for not asking for documents to support all of the decisions."

*Testimony of Lana Viinamae, October 29, 2003, p. 50, line 21  
– p. 57, line 9*

183. It was also the responsibility of the Purchasing department to ensure that there was authority for the extended lease term. Purchasing Director Lou Pagano and his staff both received Ms. Viinamae's October 1, 1999 e-mail about the 60-month term. Mr. Pagano testified that in his view, a new RFQ should have been issued in light of the changed term. However, there is no evidence that he or any member of the Purchasing department suggested at the time

that there should have been an RFQ. In fact, Anne Corbett from that department issued a blanket contract for a term exceeding five years, citing the July 27, 1999 Council report as authority.

*Testimony of Lou Pagano, March 4, 2003, p. 111, line 13 – p.  
115, line 20  
Exhibit 20, Volume 1, Tab 23, Begdoc 30456*

**(c) Knowledge of Others That The Lease Term was Five Years**

**(i) Finance Department: Failure to Address the Financial Impact of the Change of the Lease Term**

184. In spite of having been made aware of the change in the lease term – a factor that rendered the financial analysis conducted by Len Brittain, Don Altman, and Nadir Rabadi useless – no one in the Finance department did anything to correct the analysis or in any way address the financial impact of the change of the lease term.

185. Mr. Altman testified that at the time he received Ms. Viinamae's October 1, 1999 e-mail stating that the first certificate of acceptance had been approved for 60 months, he had already been informed by Mr. Brittain that Council had made an explicit amendment allowing the five-year term, and that this had been moved by Mr. Jakobek. Nonetheless, Mr. Altman did not raise with Mr. Brittain the fact that the financial analysis should have been revisited because it was based on a three-year rather than a five-year term. Mr. Altman agreed that in retrospect this should have been done by himself or someone else.

*Testimony of Don Altman, July 9, 2003, p. 106, line 4 – p. 107,  
line 6;  
July 10, 2003, p. 52, line 6 – p. 61, line 13*

186. This contradicts Mr. Brittain's testimony that he was not aware that the term of lease was 60 months until he received the e-mail from Ms. Viinamae. Mr. Brittain testified that he assumed that the reference to "As directed by Finance," meant that Ms. Liczyk had authorized the 60-month term, yet he did nothing to confirm his assumption.

*Testimony of Len Brittain, July 10, 1999, p. 236, line 20 – p.  
238, line 20*



187. Mr. Brittain testified that when he received Ms. Viinamae's October 1, 1999 e-mail, "I didn't follow up with this and I probably should have." He did not speak to Ms. Viinamae, Ms. Liczyk, or anyone else with respect to the e-mail. He testified that at this point, he saw the role of his division "coming to an end" and "that's probably an explanation why I didn't spend as much time reviewing this e-mail as I might have otherwise." He was aware that Ms. Viinamae's style with the Y2K program was that she was "very, very particular about getting sign-offs on all aspects of the Y2K program," so he assumed that Ms. Viinamae ensured she had the proper sign-off to make the statement "As requested by Finance, the lease term of 60 months has been used." However, Mr. Brittain made no inquiries of Ms. Viinamae with respect to this assumption. Nor did he direct his staff to undertake another financial analysis based on the new term. The mandate of Mr. Brittain's division was clearly not yet "at an end". The change to a five-year lease term – a change he was aware of – rendered that analysis incorrect and it was his division's responsibility to assess the financial impact of the change.

*Exhibit 63, Volume 8, Tab 59, Begdoc 15649  
Testimony of Len Brittain, July 28, 2003, p. 171, line 13 – p.  
174, line 22, July 29, 2003, p. 13, line 7 – p. 15, lines 6 - 12*

188. Mr. Brittain forwarded Ms. Viinamae's October 1, 1999 e-mail to Mr. Altman. Therefore, Mr. Brittain read the e-mail thoroughly enough to know that he wanted Mr. Altman to be aware of its contents. Mr. Brittain testified that he knew Mr. Rabadi's financial analysis was carried out on the assumption of a three-year lease. Nevertheless, he did not express any concern to Mr. Altman about the fact that there was an inconsistency between the final lease term and the lease term used for the purposes of the financial analysis, or ask him or Mr. Rabadi to re-do the analysis. Mr. Brittain testified that he left it to the IT division to determine whether further financial analysis was required by his division. Neither he, nor anyone in his division, notified anyone that the financial analysis was flawed.

*Exhibit 52, Volume 2, Tab 56, Begdoc 64348  
Testimony of Len Brittain, July 29, 2003, p. 15, line 13 – p. 18,  
line 16*

189. Mr. Brittain testified that "in hindsight... knowing what I know now, I would have pressed IT to come back to me to fully analyze the implications of changing from three years to five years." In fact, it was Mr. Brittain's division, rather than IT, that was qualified to

know what the implications were. He assumed that IT would have approached him if they thought his division's participation was necessary. This was an unreasonable narrowing of his division's role.

*Testimony of Len Brittain, July 29, 2003, p. 18, line 17, p. 19, line 15*

190. Mr. Brittain attended a September 22, 1999 meeting with Ms. Viinamae, Glenn Vollebregt, Mr. Altman, Mr. Andrew, and possibly Mr. Power. At the meeting, there was discussion of various lease terms and whether departments would be able to request varying terms. Mr. Brittain's handwritten notes from the meeting e.g. "Lease terms 3/4/5" reflect these discussions. There was also discussion of software being acquired for five years and whether upgrades could be included in maintenance. Mr. Brittain also attended a September 21, 1999 meeting at which Rob Wilkinson's chart, comparing lease payments for three-year and five-year lease terms, was discussed.

*Affidavit of Lana Viinamae, Para. 60-61  
Exhibit 63, Volume 8, Tab 33, Begdoc 64006  
Exhibit 63, Volume 2, Tab 9, Begdoc 15770*

191. Mr. Brittain agreed that there was no doubt that by January 6, 2000 he was fully aware that the extension of the term to five years gave rise to budget relief. Mr. Brittain, Ms. Viinamae, (and perhaps Mr. Andrew) had discussed the operating pressure spreadsheet she had prepared on January 5. The spreadsheet clearly refers to the five-year term ("Hardware – 5 year lease"). Len Brittain revised a version of the spreadsheet on January 6, 2000 which referred to five-year lease terms, and then summarized the information in a memo to Ms. Liczyk. In his memo, he acknowledged that the change in lease term lowered the total annual lease cost: "The total lease costs on the \$43m. has dropped from \$14m. to \$11.6m. because of 5 yr. vs. 3 yr. on equipment..." Nonetheless, he does not recall raising any concern about the change in the lease term, and testified that if he had raised such a concern he would remember.

*Testimony of Len Brittain, July 30, 2003, p. 227 – p. 231, line 8  
Affidavit of Lana Viinamae, para. 63-64  
Exhibit 43, Volume 13, Tab 25, Begdoc 5240,  
Exhibit 43, Volume 3, Tab 5(a), 13539,  
Exhibit 43, Volume 13, Tab 12(a), 64007,*

*Exhibit 43, Volume 13, Tab 12(a)64008  
Exhibit 43, Volume 13, Tab 8A(a), Begdoc 31648*

192. None of the people who received this spreadsheet (e.g. Len Brittain, Ms. Liczyk, Al Shultz, Ken Colley) expressed any concern to Ms. Viinamae about the lease term being five years, or questioned what authority there was for it.

193. Ms. Viinamae sent the operating budget pressure spreadsheet to Mr. Shultz and Mr. Colley (on February 2, 2000) as a follow-up to a meeting she had with them in late January 2000 about the leasing program. She reviewed the spreadsheet with them at this meeting, and there was discussion of the five-year lease terms for hardware and software that are clearly shown on the document. Mr. Shultz testified that he was never informed that the term of most of the leases was for five years, yet he also testified that he did not review or read the information he was sent. He assumed that Mr. Colley would "react" to the information. However, the five-year term was discussed at the meeting. Even if Mr. Shultz did not see the reference to the lease term on the spreadsheet, he was party to the discussions about the five-year term, as Ms. Viinamae testified.

*Testimony of Al Shultz, September 5, 2003, p. 106, line 7 – p.  
107, line 25  
Exhibit 43, Volume 13, Tab 8(a), Begdoc 31648 and  
Exhibit 43, Volume 13, Tab 8(a) Begdoc 31649*

194. Despite Mr. Shultz's expectation that Mr. Colley would review and "react to" the information, Mr. Colley claimed that he also did not know the lease terms were five years. He testified that he did not recall receiving the spreadsheet from Ms. Viinamae or noticing that it refers to a contract term of five years for hardware and software. It is apparent from the e-mail attaching the spreadsheet that Mr. Shultz and/or Mr. Colley requested the document (the e-mail states "revised spreadsheet as promised"). It seems highly improbable that neither of them had any knowledge of the five-year terms at the time, given the information before them and the discussions they had with Ms. Viinamae.

*Testimony of Ken Colley, September 3, 2003, p. 110, line 1 –  
p. 117, line 12*

195. Mr. Power testified that no one from the Finance department ever asked for his input on the effect of changing to five-year lease terms. Nonetheless, Mr. Power did not take the initiative to ensure that the financial analysis was based on the correct term, or consider the financial impact of the five-year lease term.

*Testimony of Brendan Power, March 26, 2003, p. 33, line 17 –  
p. 34, line 4*

**(ii) Involvement of Jim Andrew**

196. Mr. Andrew understated his knowledge about the change to the lease term. He initially testified that he did not know about the extension of the leases from three to five years until he read Ms. Viinamae's October 1, 1999 e-mail. He testified that he did not recall having a conversation with Ms. Viinamae in the last week of September 1999 about the decision, but rather that the conversation described by Ms. Viinamae occurred after the signing of the lease. This is contrary to Ms. Viinamae's evidence that she was first informed about the decision by Mr. Andrew. Mr. Andrew's evidence should not be accepted.

*Testimony of Jim Andrew, September 24, 2003, p. 101, lines  
22 – 25; September 29, 2003, p. 104, line 3 – 9, p. 105, line 17*

197. When Ms. Viinamae's assertion that this conversation occurred in the last week of September was put to him, Mr. Andrew's testimony was less than definite. He stated "I believe these comments were made after the – the signing of the – the leases... I think it was after the signing of the leases." In the end, Mr. Andrew could not identify when it was that he and Ms. Viinamae spoke, or who informed whom of the decision: "At some point, I don't know exactly when, that I talked to Lana about it and she said they decided to go to five year leases".

*Testimony of Jim Andrew, September 29, 2003, p. 104, line 3 –  
p. 105, line 17;  
October 1, 2003, p. 158, line 9 – p. 160, line 12*

198. Mr. Andrew could not even get his recollection of Ms. Viinamae's response to the change of the lease term straight. He initially testified that she had very little reaction: "I don't think she was upset". Later, he testified "I think she was a little bit upset, I think she, you know, I've read her affidavit ... No, no, she – no, she was a bit upset ... she was angry ... yeah I know her body language, she was upset."

*Testimony of Jim Andrew, September 29, 2003, p. 107, line 24  
– p. 108, line 8; October 1, 2003, p. 158, line 9 – p. 160, line  
12; October 2, 2003, p. 220 – line 25 – p. 223, line 11*

199. Mr. Andrew recalls receiving Ms. Viinamae's October 1, 1999 e-mail, but he did not respond in any way. If it were in fact the case that Mr. Andrew did not know about the extension of the lease term prior to reading the e-mail, it would seem implausible that he would not follow up and ask Ms. Viinamae how this decision was made, or what authority there was for this change, particularly given that he was Ms. Viinamae's supervisor and was in constant contact with her. If the change in the lease term was news to him upon reading the e-mail – which we submit was not the case – Mr. Andrew surely would have replied to Ms. Viinamae.

*Testimony of Jim Andrew, September 29, 2003, p. 108, line 21  
– 17; p. 114, line 1 – p. 116, line 1*

200. Mr. Andrew greatly understated his knowledge about five-year leases throughout his testimony. His statement in his affidavit that: "I had been involved in no discussion regarding five-year leases on any occasion prior to my receiving that e-mail", is contradicted by the evidence. For example, on August 3, 1999, Mr. Andrew attended a meeting where he and Ms. Bulko met with MFP representatives Rob Wilkinson and Dash Domi. Mr. Andrew testified that Mr. Wilkinson brought charts and graphs outlining the various financial options available through three, four, or five-year lease terms.

*Affidavit of Jim Andrew, para. 124  
Testimony of Jim Andrew, September 30, 2003, p. 91, line 25 –  
p. 94, line 5*

201. Another example of Mr. Andrew's involvement in these discussions is his request of Mr. Wilkinson to send him a copy of the chart comparing lease payments for five-year and three-year leases that was discussed at a September 21, 1999 meeting. The meeting was attended by Mr. Domi, Mr. Wilkinson, Ms. Liczyk, and Mr. Brittain. Mr. Andrew did not attend the meeting but requested the information. Mr. Andrew agreed that he had some discussion with Mr. Wilkinson about the five-year leases to find out what happened at the meeting; this clearly contradicts the statement in his affidavit that he did not have any discussion about the five-year leases prior to October 1, 1999. When cross-examined on that point, he stated "Now are you talking about City people? I didn't have a conversation with people at Finance about 60 months,

that I can recall." His affidavit was therefore misleading, and his testimony that he did not inform Ms. Viinamae of the change in the lease term at the end of September should not be believed.

*Testimony of Jim Andrew, September 29, 2003, p. 95, line 4 –  
p. 99, line 4; October 14, 2003, p. 52, line 12 – p. 55, line 14  
Affidavit of Jim Andrew, para. 124  
Affidavit of Rob Wilkinson, para. 71, 75  
Exhibit 43, Volume 14, Tab 4, Begdoc 29302*

202. Mr. Andrew also made an appearance at a September 22, 1999 meeting attended by Mr. Brittain, Ms. Marks, Mr. Vollebregt, Mr. Altman and Ms. Viinamae, though he testified that he left the meeting right after it started. There are references to "3/4/5" year leases in the minutes of the meeting and to five-year leases for software, e.g. "May need to ask for how much maintenance for five years i.e., Oracle and C.A." Although Mr. Andrew had no specific recollection of whether he was briefed on what occurred at the meeting (including that the issue of various lease terms was discussed), he surely would have followed up, given his interest in the meeting and the extent of his regular communications with Ms. Viinamae.

*Testimony of Lana Viinamae, October 22, 2003, p. 27, line 1 –  
p. 29, line 5, p. 34 lines 22 – p. 35, line 4; p. 191, line 5 –  
p. 193, line 1  
Testimony of Jim Andrew, September 29, 2003, p. 106, line 5-  
p. 107; line 23; September 30, 2003, p. 99, line 8 – p. 102,  
line 2  
Exhibit 43, Volume 3, Tab 33, Begdoc 64006  
Exhibit 43, Volume 2, Tab 9, Begdoc 15770  
Exhibit 43, Volume 3, Tab 5(a), Begdoc 13509*

203. Mr. Andrew testified that he assumed that Finance would have performed the appropriate financial analysis in order to move to five years. He agreed that in hindsight, more planning was needed. Nonetheless, Mr. Andrew did nothing to ensure that this occurred.

*Testimony of Jim Andrew, October 14, 2003, p. 48, line 12 –  
line 21 – p. 50, line 13*

**(d) Letter to Commissioners**

204. A draft letter to Commissioners (drafted by Mr. Power) was sent out October 1, 1999 to Ms. Liczyk, Mr. Andrew, Ms. Viinamae and Mr. Power. The letter referred to "three-

year lease terms coinciding with the manufacturer's warranty being available," and "leasing terms of 4 and 5 years are also available." Three hours later on the same day, Ms. Viinamae sent her e-mail that referred to a lease term of 60 months. Mr. Andrew testified that he read both e-mails, saw the contradiction (in that the letter referred to three-year leases, and the e-mail to five-year leases), but did not say anything to anyone about it.

*Testimony of Jim Andrew, September 29, 2003, p. 118, line 8 –  
p. 121, line 9*

205. Since this was only a draft letter (and there is no evidence that it went out to the Commissioners), and since the recipients subsequently received Ms. Viinamae's October 1 e-mail, there was no harm done by the draft letter's inconsistencies. If Mr. Andrew had noticed the inconsistency of the previous day's e-mail from Ms. Viinamae, he surely would have asked her about it. Ms. Viinamae would not have reviewed the final draft of the letter before it was sent to Ms. Liczyk unless she had been told there was a significant change. She testified: "Mr. Andrew may have done the same thing that I did, which is not reviewed the letter again."

*Testimony of Lana Viinamae, October 22, 2003, p. 36, line 5  
(Volume 8, Tab 59) – p. 44, line 2*

206. Not one of the recipients of the October 1, 1999 draft letter objected to the contents, or even replied to the e-mail. Had the letter created any kind of confusion, any of the recipients could have contacted Ms. Viinamae. No one raised this issue with Ms. Viinamae at any time.

*Testimony of Lana Viinamae, October 30, 2003, p. 26, line 13  
– p. 28, line 9*

**(e) Multiple Lease Terms**

207. In a July 18, 2001 letter to Mr. Dash Domi, Ms. Viinamae requested that prior to the beginning of each new quarter that MFP provide the City with lease rate factors "for both hardware AND software for all terms: 36, 48 and 60 months." Despite the reference in the letter to 36, 48 and 60 month terms, the CMO did not use any independent discretion or authority to choose the lease term. Rather, the CMO followed the direction to use 60-month terms for hardware, and a 36-month term for the identified exceptions.

*Testimony of Lana Viinamae, October 22, 2003, p. 202, lines 5  
– 9 – p. 213, line 6; October 22, 2003, p. 213, line 22 – p. 217,  
line 11*

208. Ms. Viinamae does not believe that any assets were put on 48-month terms. The letter drafted by Ms. Leggieri states: "Generally the City will lease printers, scanners, office automation, software and Intel servers over 36 months, and all other Hardware over 60 months. However, based on our internal analysis and the maturity of different technology, the City may determine and choose to exercise different terms." Ms. Viinamae testified that her intent was to tell MFP that it was up to the City to decide the lease term, rather than the other way around.

*Testimony of Lana Viinamae, October 22, 2003, p. 202, lines 5  
– 9 – p. 213, line 6; October 22, 2003, p. 213, line 22 – p. 217,  
line 11*

209. Mr. Brittain's May 12, 2000 e-mail referred to a 48-month term for printers. Ms. Viinamae testified that she did not believe any assets were on 48-month terms, but that there had been discussions between the CMO and Finance Department about charging departments over four years for three-year leases (a 48-month internal charge back term as part of the TCO and common service model). However, Mr. Shultz told Ms. Viinamae that instead, the issue should be handled through a contingency fund. Ms. Viinamae testified that whoever informed Mr. Brittain's staff that there were 48-month terms was incorrect because Mr. Shultz had already informed the CMO about the contingency fund by the date of Mr. Brittain's email. Ms. Viinamae agreed that there had been discussions but that "We hadn't received a – final decision on it from Finance at that point and we were advising the departments that this [was] how we foresaw the program working, but at that point, we still had a lot of questions on the program, and that's why we kept sending questions to Finance."

*Exhibit 43, Volume 9, Tab 52(a), Begdoc 65179  
Exhibit 43, Volume 11, Tab 70, Begdoc 2771  
Testimony of Lana Viinamae, October 22, 2003, p. 200, line  
20 – p. 210, line 4*

210. Ms. Viinamae admitted in her testimony that if there were printers put on the first equipment schedule for 60 months, this was a mistake: "I didn't myself recognize that the printers were on there, that was an oversight on my part."



*Testimony of Lana Viinamae, October 22, 2003, p. 213, line 22 – p. 219, line 15*

211. Mr. Power testified that Ms. Viinamae instructed him to get five-year lease rates from the bidders, including MFP. Ms. Viinamae strongly disagreed that she ever made such a request of Mr. Power. Contrary to Mr. Power's testimony, Ms. Viinamae never directed Mr. Power to get five-year lease rates from bidders. There is no evidence that Ms. Viinamae had any contact with bidders at all during the RFP process.

*Testimony of Lana Viinamae, October 29, 2003, p. 42, line 9 – p. 45, line 10*

**(f) Amount of Assets on Lease**

212. Ms. Liczyk testified that following the in-camera session of the July 1999 Policy and Finance Committee (PFC) meeting, she and Mr. Brittain spoke to Mr. Jakobek to seek confirmation of the intent of his motion. She testified that she knows for certain that she took Mr. Brittain with her to speak to Mr. Jakobek, but does not recall whether Mr. Andrew and Ms. Viinamae, who she claims were at the PFC meeting, also spoke with Mr. Jakobek.

*Affidavit of Wanda Liczyk, para. 172  
Testimony of Wanda Liczyk, November 4, 2003, p. 156, line 18  
– p. 157, line 17*

213. Ms. Viinamae testified that she was never asked to be at this meeting. Usually the signatories of the report (Mr. Andrew and Ms. Liczyk) would be answering questions, unless they directed someone else to respond. She did answer questions at certain PFC meetings, but that was on Y2K specific issues and usually only after either Mike Garrett or Mr. Andrew asked her to respond. Ms. Viinamae attended the July 20, 1999 PFC meeting in the morning, but she was not there for the in-camera meeting. It is in her calendar for the entirety of the day, but she testified it was always in her calendar in case Y2K matters kept her there for the full day. When asked whether she had an appreciation that she was supposed to attend this meeting, Ms. Viinamae replied "Absolutely not."

*Volume 8, Tab 15, Begdoc 12259  
Testimony of Lana Viinamae, October 22, 2003, p. 170,  
line 24 – p. 173, line 12*

214. Ms. Liczyk testified that after the meeting, she asked Mr. Brittain to determine whether the flexibility clause could be applied to the hardware and software assets, and that in late September, 1999, Mr. Brittain informed her that there was an amount of assets that could go on five-year leases. She assumed Mr. Brittain exercised his due diligence by doing an appropriate financial analysis and having discussions with IT. However, Mr. Brittain never asked for Ms. Viinamae's assistance.

*Testimony of Wanda Liczyk, November 3, 2003, p. 270, line 16  
– p. 271, line 14; November 4, 2003, p. 73, line 5 – p. 75,  
line 19; November 4, 2003, p. 78, line 13 – 19*

215. IT did not give Mr. Brittain a list of assets which they believed could last for more than three years and which he could have used for an analysis. Other than the fact that Mr. Brittain's notes refer to different lease terms, Ms. Liczyk could not provide any evidence to the contrary that IT gave Mr. Brittain any information for a financial analysis. She agreed Mr. Brittain could not do an analysis without that information.

*Testimony of Wanda Liczyk, November 18, 2003, p. 21, line 7  
– p. 24, line 4*

216. Ms. Liczyk assumed that only a minor amount of the assets would go on five-year leases. This assumption was not based on anything that Mr. Brittain, Ms. Viinamae, or anyone else said to her. She testified: "Len being as diligent as he was, that he would have been aware of our procurement policies and would have been aware of the need that if there was a substantial amount of assets that were going to be considered for five (5) years that he would have advised me that there needs to be more work done, or whatever".

*Testimony of Wanda Liczyk, November 4, 2003, p. 104, line 22  
– p. 106, line 5*

217. Equipment Schedule 838-1, which has a lease term of 60 months, had a list of equipment in excess of 200 pages. Ms. Liczyk testified that she believed only a minor amount of equipment would have been put on 60 month leases, yet the document she signed was attached to a 200 page list of hardware and software. Clearly it was not a minor amount of equipment. She testified that all the documents she received "were huge stacks. I mean they'd come in boxes, so I would never have flipped through every single page of any document that came my way."

*Testimony of Wanda Liczyk, November 13, 2003, p. 146, line 15 – p. 148, line 19*

218. When asked whether she recalled actually reviewing Ms. Viinamae's January 6, 2000 spreadsheet as updated by Mr. Brittain, Ms. Liczyk testified "I recall perhaps quickly reading through it." However, she testified that she did not notice the reference to five-year leases and the indication from the numbers in Mr. Brittain's memo that there was more than a small portion of assets on five-year leases. The fact that others simply "did not notice" information about the leases that was provided to them by Ms. Viinamae is something that they, rather than Ms. Viinamae, should be faulted for.

*Testimony of Wanda Liczyk, November 18, 2003, p. 124, line 9 – p. 125, line 8*

**(g) Opinion of City Legal**

219. Ossie Doyle testified that "My original opinion would have been, that anytime within the three-year period, the City could enter into a five-year lease with MFP." He testified that Ms. Viinamae told him that she felt that she could do a five-year lease.

*Testimony of Ossie Doyle, April 7, 2003, p. 187, line 9 – p. 188, line 12, p. 186, lines 13 – 24*

220. Mr. Doyle testified that Ms. Viinamae told him what her understanding was of the lease term "and I was sitting there saying, well, yeah, you can do that."

*Testimony of Ossie Doyle, April 8, 2003, p. 22, lines 9 – 18*

221. Mr. Doyle testified that his opinion was that hardware and software could have been leased for a maximum of six years. On the first day of the first year a three-year lease could be entered into, and then at the end of that three years, the same equipment could be leased for another six years.

*Testimony of Ossie Doyle, April 7, 2003, p. 186, lines 13 – 17  
Closing Submissions of Ossie Doyle, paras. 71 – 75*

**PART 8 -  
SALE - LEASEBACK**

222. Work began on the sale-leaseback by the end of August 1999, and the majority of the equipment was placed on lease by August 1, 1999. Therefore, the sale-leaseback was a large task that was completed in just over four weeks. Mr. Andrew directed Ms. Viinamae and Line Marks to carry out the sale-leaseback because the Y2K Project Management Office (PMO) had the majority of the documents required to support the transaction.

223. Mr. Andrew, who had responsibility for assigning resources within IT, knew that neither Ms. Viinamae nor Ms. Marks had previous leasing experience or involvement in other sale-leaseback transactions. They were not given any specific training. Ms. Viinamae and Ms. Marks undertook the work at a time when the deadline for Y2K was approaching and there were many competing priorities. The disorganized state of the City's financial systems made the project much more onerous.

224. Either Mr. Power or Mr. Andrew informed Ms. Viinamae that the lease transaction with MFP would be structured as a sale-leaseback: Ms Viinamae had no role in the decision.

225. Since Mr. Power drafted the RFQ under Mr. Andrew's supervision, and the Purchasing division issued and reviewed it, Ms. Viinamae cannot be blamed for any lack of clarity in the RFQ about the sale-leaseback. Ms. Viinamae was not notified of a deadline for completing the sale-leaseback in order that the lease rate guaranteed by MFP for 90 days would apply. Had she been made aware of this, she could have recommended alternatives, such as completing a definite portion of the sale-leaseback within that time frame, negotiating an extension from MFP, or requesting additional staff for the project.

226. On August 12, 1999, Ms. Viinamae attended a meeting with Dash Domi and Rob Wilkinson from MFP, and members of the Finance department. It was at this meeting that MFP informed representatives from the City of what was required to support a sale leaseback transaction. In order to provide more detailed information (such as serial numbers) for the sale leaseback transaction, the City was required to retrieve a copy of every purchase order and invoice for all acquisitions to date (approximately \$17 million worth of hardware and software).

*Affidavit of Lana Viinamae, para. 49  
Testimony of Lana Viinamae, October 16, 2003, p. 80, line 3 –  
p. 83, line 4*

227. Ms. Viinamae was not informed of any deadline for completing the sale leaseback transaction. The only deadline the Y2K PMO was working to was year-end, to ensure that the transaction could be charged against the non-program (operating) budget. Neither Ms. Viinamae nor Line Marks<sup>13</sup> was aware, and no one from MFP or within the City informed them, that the lease rates provided by MFP in the RFQ were only guaranteed for 90 days and could change thereafter. Therefore, they did not know that in order to take advantage of these rates, the sale-leaseback had to be completed by September 30, 1999. If Ms. Viinamae had been made aware of this, she could have considered alternatives, such as completing a definite portion of the sale leaseback within that time frame, negotiating an extension from MFP, or requesting that more people be assigned to the project.

*Affidavit of Lana Viinamae, para. 54  
Testimony of Lana Viinamae, October 16, 2003, p. 62, line 3 –  
21, p. 80, line 3 – p. 83, line 4  
Testimony of Line Marks, August 14, 2003, p. 15, line 12 – p.  
16, line 9; August 14, 2003, p. 117, lines 17 – 25*

228. Mr. Andrew told Ms. Viinamae that Ms. Marks was in the best position to pull the information since the Y2K PMO had the majority of the documents required to support the sale leaseback. Ms. Marks had never been involved in the sale and leaseback transaction before, and she was not given any training. Mr. Andrew, rather than Ms. Viinamae, had responsibility for assigning resources within IT. He knew that neither Ms. Viinamae nor Ms. Marks had previous leasing experience.

*Testimony of Lana Viinamae, October 22, 2003, p.13, line 14  
– p.14, line 14  
Testimony of Line Marks, August 14, 2003, p. 7, line 21 –  
p. 15, line 7*

229. While Ms. Marks was working on the sale-leaseback, she had a number of competing priorities. She was Program Assistant and the Y2K Project Coordinator in the Y2K PMO, and had a heavy workload associated with these positions. Further, there was an

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<sup>13</sup> Program Assistant in the Year 2000 Office

impending strike at the time, and the Y2K office had to make special arrangements for ensuring the project stayed on track in the event of a strike. At the same time, she was also handling new acquisitions for Y2K. Ms. Marks worked sixty or more hours per week. Ms. Marks testified that "it was a big task, there was other priorities and I could not devote... all of my time to that. So it probably would have gone a lot quicker if you'd have someone working on that full time."

*Testimony of Line Marks, August 14, 2003, p. 22, line 1 – p. 28, line 12; September 2, 2003, p. 74, line 17 – p. 76, line 8*

230. Some of the difficulties with the sale leaseback were created by the state of the City's financial system. The City had consolidated all the financial information from the former municipalities during amalgamation, and was in the process of implementing SAP as the financial system. The switch to SAP occurred during the implementation of the leasing program, requiring information to be gathered from two systems (the old and the new). It was very difficult to get management reporting information of any kind from the new SAP system. Further, Accounts Payable was behind on paying invoices. Some of the invoices were more than a year old. The effect of this was that some vendors would send another invoice if they had not received payment, and in some cases both the original invoice and the duplicate were processed by Accounts Payable. Once invoices were sent by the CMO to Accounts Payable, the CMO had no way of knowing whether an invoice had been paid or not.

*Testimony of Lee Ann Currie, September 2, 2003, p. 76, line 13 – p. 78, line 5  
Affidavit of Lana Viinamae, paras. 50-51  
Affidavit of Lee Ann Currie, para. 14*

231. Lee Ann Currie from MFP characterized the sale leaseback as chaotic and disorganized. Some of her evidence on that point is overstated. For example, she testified that the sale-leaseback was more complicated for the City because not all of the asset information was in a centralized location. This is not accurate because in fact, the Y2K PMO tracked on spreadsheets every invoice by supplier, invoice number, the amount expended, and the total cost of the invoice. The spreadsheets may not have had the serial numbers or the full asset description, but this information was available on the invoices that the PMO kept. Accounts Payable was unable to provide this asset information, and so the responsibility fell to the PMO.

*Testimony of Lee Ann Currie, September 2, 2003, p. 26, line 2  
– p. 27, line 14; p. 78, line 24 – p. 81, line 10  
Affidavit of Lee Ann Currie, para. 7–9*

232. It was suggested that the PMO did not have the serial numbers for the equipment acquired, but in fact the numbers were on the invoices. When it was realized that the serial numbers were needed in electronic form, the vendors were asked to provide this information and did so. The manually recorded serial numbers from the invoices were then cross-referenced with the electronic versions. In order to reduce the amount of data entry required by the City and to speed things up given the critical time frame, suppliers were asked to – and most did – provide electronic copies of invoices and asset information. The tracking spreadsheets kept by the Y2K PMO were also helpful to the process.

*Testimony of Lana Viinamae, October 30, 2003, p. 11, line 15  
– p. 12, line 20  
Affidavit of Lana Viinamae, para. 53*

233. With respect to the tax (PST) implications of the sale-leaseback transaction, Ms. Viinamae sent a list of questions for Finance to Len Brittain and Ken Colley, among others, in a January 17, 2000 e-mail. One of the questions Ms. Viinamae asked was: “Do you require a report from Y2K to justify why leasing was a pre-planned activity? Ms. Viinamae asked this question because she heard from either Mr. Power, Mr. Andrew, or MFP that there were tax advantages to leasing. She wanted to make sure someone was addressing this issue.

*Testimony of Lana Viinamae, September 4, 2004, pp. 27-29  
Exhibit 63, Volume 13, Tab 5, Begdoc 13801, 13802*

234. In response to Ms. Viinamae's question, Ken Colley assigned Alex So to work on the tax issues. Ms. Viinamae was aware of this, and she later received an e-mail from Mr. So, stating: "Lana, I have been assigned by Mr. Colley to look at the GST issues."

*Testimony of Ken Colley, September 4, 2003, p. 13, line 4 – p.  
14, line 4  
Exhibit 63, Volume 9, Tab 28, Begdoc 15584*

235. Mr. Colley testified that Mr. So had conversations with the CMO to gain an understanding of the tax issues raised.

*Testimony of Ken Colley, September 4, 2003, p. 28, lines 3-6*

236. Ms. Viinamae should not be faulted in any way for the City's inability to recover taxes. Her involvement ended after she flagged the issue for Finance and knew Mr. Colley had assigned Mr. So to recover GST and PST.



**PART 9 -  
REVIEW OF LEASE RATE FACTORS**

237. Ms. Viinamae was assured by Mr. Power and Ms. Bulko that the lease rate factor schedules from MFP were sent to the Finance department for their review. If in fact Finance staff did not carry out a review of the lease rate factors, it was unacceptable for them to fail to review the rates on their own volition, absent a request from IT.

238. Because Ms. Viinamae had no prior leasing experience, she did not even know what lease rate factors were until Mr. Power explained it to her when she was asked to sign the first lease rate factor schedule in October 1999. In contrast, Mr. Andrew, Mr. Power, and certain members of the Finance department had substantial leasing experience, understood what lease rate factors were, and were well-positioned to ensure that there was a suitable process for reviewing the rates and determining whether they were competitive.

**(a) Testimony of Lana Viinamae**

239. When Ms. Viinamae received the lease rate factor schedule for the first transaction that occurred on October 1, 1999, she did not even know what the document was. She had to ask Mr. Power for an explanation prior to signing the document since Mr. Power had substantial IT leasing experience. Mr. Power explained to Ms. Viinamae that the lease rate factors were the rates to be used for the next quarter for any lease agreements, and that they would change on a quarterly basis according to industry factors such as bond rates. Mr. Power told Ms. Viinamae that the lease rate factors were consistent with MFP's response to the RFQ.

*Affidavit of Lana Viinamae, para. 75  
Testimony of Line Marks, August 14, 2003, p. 183, line 17 – p.  
184, line 7  
Testimony of Lana Viinamae, October 17, 2003, p. 6, line 10 –  
p. 7, line 12; p. 13, lines 2 – 21*

240. In response to an inquiry from Ms. Viinamae, Brian Loreto<sup>14</sup> provided an opinion on February 3, 2000, that the Council report did not authorize Ms. Viinamae to execute the contract or certain related agreements or schedules, and consequently that "the Program Agreement and the Equipment Schedules will [need] to be re-executed." Mr. Loreto's opinion

made no reference to the need to re-execute lease rate factor schedules that were signed only by Ms. Viinamae.

*Testimony of Lana Viinamae, October 29, p. 177-83*  
*Affidavit of Lana Viinamae, para. 130-33*  
*Begdocs 11035, 15531*

241. After receiving Mr. Loreto's opinion, Ms. Viinamae understood that she could not be the sole signatory of leasing documents. However, even when Ms. Viinamae was the only signatory of the lease rate schedules prior to February 2000, she never thought she was the only person at the City who saw them. At all times, she understood that Finance received the schedules after she signed them. It was Ms. Viinamae's belief that since the Finance department had carried out the financial analysis of the tender evaluation, they also needed the documents to perform the financial analysis for lease payments over the course of the contract. She understood that no analysis of the lease rates was required by herself or anyone else in IT; nor would she have been capable of conducting a financial analysis of the rates, or determining whether they were competitive.

*Testimony of Lana Viinamae, October 17, 2003, p. 16;*  
*October 22, 2003, p. 219, line 16 – p. 221, line 4; October 29,*  
*2003, p. 183*

**(b) Responsibility of Brendan Power**

242. Ms. Viinamae testified that for approximately the first six months of the contract, Mr. Power reviewed the lease rate factors for the CMO. This responsibility evolved to Paula Leggieri<sup>15</sup> and Kathryn Bulko<sup>16</sup> when they took on permanent management roles in the CMO. Ms. Viinamae specifically asked and was assured by Mr. Power, and later by Ms. Bulko, that all leasing documents, including the lease rate factor sheets, were sent to Finance. Ms. Viinamae understood that the lease rate factor schedules were being sent to the Finance lead at the time (Len Brittain<sup>17</sup> prior to January 2000 and Ken Colley<sup>18</sup> after January 2000).

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<sup>14</sup> A lawyer in the City's Legal Department

<sup>15</sup> Supervisor, Technology Leasing Administration Coordinator

<sup>16</sup> Project Manager, Y2K City-Wide Initiatives-Desktops

<sup>17</sup> Director of Treasury and Financial Services Division, Finance Department

<sup>18</sup> Manager, Financial Reporting, Finance Department

*Affidavit of Lana Viinamae, para. 76  
Testimony of Lana Viinamae, October 17, 2003, p. 22, line 17  
– p. 23, line 4, October 30, 2003, p. 15, line 24 – p. 16, line 7*

243. Ms. Viinamae's evidence on this point is consistent with Ms. Bulko's and Mr. Power's. Ms. Bulko testified that she forwarded the signed lease rate factors to Finance – to either Ms. Liczyk's office directly or to Mr. Colley. Ms. Bulko understood that Finance would have been doing the financial analysis to determine that leasing was still the most cost-effective option. This understanding was based on Ms. Bulko's belief that IT did not have enough information to carry out a financial analysis on lease rates.

*Testimony of Kathryn Bulko, August 11, 2003, p. 113, line 10  
– p. 123, line 5*

244. Mr. Power testified that the lease rate factor sheets went to the Finance department in order to determine the lease cost for equipment. Ms. Viinamae testified that Mr. Power was "absolutely" clear that Finance would be involved in reviewing lease rate factors, and that he handled all of the "interface" with Finance – "both from a purchasing standpoint, as well as from a financial analysis standpoint."

*Testimony of Brendan Power, March 27, 2003, p. 220, line 2 –  
p. 221, line 18  
Testimony of Lana Viinamae, October 17, 2003, p. 35, line 8 –  
p. 36, line 24*

245. Mr. Power never told Ms. Viinamae that the lease rates were negotiable. Ms. Viinamae thought that the lease rates were *non-negotiable* because an RFQ is based on price which is not negotiable. Her assumption at the time, which has changed now that she has seen the RFQ, was that there was a fixed formula that would be used to calculate the lease rate factors. She presumed that it would have to go to Finance in order for the debt charges to be calculated.

*Testimony of Lana Viinamae, October 17, 2003, p. 15, line 1 –  
p. 18, line 6*

**(c) Responsibility of Jim Andrew**

246. It was reasonable and appropriate for Ms. Viinamae to rely on the advice of Mr. Power. It was Mr. Andrew who asked Mr. Power to provide his leasing expertise, and Mr.

Andrew was aware of the relative level of expertise of Mr. Power compared with Ms. Viinamae. Mr. Andrew testified that he knew that Mr. Power had the expertise to know whether the lease rates quoted by MFP were competitive.

*Testimony of Lana Viinamae, October 17, 2003, p. 33, line 2 –  
p. 34, line 22 Begdoc 64007, 64008, 5240  
Testimony of Jim Andrew, September 29, 2003, p. 94, lines 2-7*

247. Ms. Viinamae was informed by Mr. Andrew that he and Ms. Liczyk had agreed that the Finance department would be responsible for the financial management of the leasing program. Ms. Viinamae regarded their review of the lease rates for reasonableness as part of that responsibility. She understood that her own role in signing the lease rate factor sheets was acknowledging the rates that would be used for the next quarter in calculating the cost of equipment and software for departments, and for inclusion in the equipment schedule.

*Affidavit of Lana Viinamae, para. 77 Testimony of Lana  
Viinamae, October 17, 2003, p. 19, line 18 – p. 20, line 23*

248. Mr. Andrew was knowledgeable about lease rate factors. Not only did he administer the leases with MFP for the councillors' computers starting in 1997, but he signed some of the lease rate factor schedules for those leases. Referring to these schedules, he testified: "I made the mistake of signing them myself, at one time." Mr. Andrew testified that if he had known the lease rate schedules were going to Ms. Viinamae, he would have told her not to sign them and to send them on to Finance. If Mr. Andrew thought, based on his experience, that it was a "mistake" for someone from IT to sign the lease rate schedules, he should have warned Mr. Power and Ms. Viinamae of this. He did no such thing, even though he knew that as a matter of course, the schedules would come to IT.

*Testimony of Jim Andrew, October 14, 2003, p. 55, line 15 –  
p. 58, line 11; September 30, 2000, p. 20*

249. Mr. Andrew testified "there was no expert in lease rate factors in the CMO." He did not expect that anyone in IT would evaluate the lease rates, but that they would sign them "as they came in...much the same way I did" with the councillors' complete leases. He testified that perhaps the RFQ should have set out whom the lease rates should have been sent to, because "they just came to IT." Given that he knew that the lease rate documents came to the CMO

automatically, and that the CMO did not have expertise in this area, he should have taken positive steps to ensure that Finance (which did have expertise) reviewed them. Further, if Mr. Andrew thought the RFQ should have stipulated details about the lease rate factors, he should have ensured that it did.

*Testimony of Jim Andrew, September 29, 2003, p. 98.*

250. Mr. Andrew testified that Mr. Power informed him that according to the RFQ, if the lease rates quoted by MFP were too high, the City could negotiate a different rate or seek other alternatives. Mr. Andrew testified that the conversations about the lease rate factors took place during the contract negotiations (around August 1999). Given that both Mr. Andrew and Mr. Power understood that the City could negotiate the rates, either or both should have ensured that the rates were reviewed for competitiveness. Ms. Viinamae had no prior leasing experience that would have enabled her to determine whether the rates were competitive. She did not even understand that they were negotiable.

*Affidavit of Jim Andrew, September 29, 2003, p. 94, line 6 – p. 95, line 21, para. 105 Testimony of Jim Andrew, October 1, 2003, p. 166, line 3 – p. 170, line 8*

251. Mr. Andrew testified that Finance should have been monitoring and negotiating the quarterly lease rate factors. Nevertheless, Mr. Andrew took no steps to ensure, or to direct anyone else to ensure, that Finance received and reviewed these documents.

*Testimony of Jim Andrew, October 1, 2003, p. 171, lines 10 – 19; October 14, 2003, p. 58, line 15 – p. 59, line 3*

**(d) Responsibility of the Finance Department**

252. Although Jim Andrew and Brendan Power were well-positioned to establish a process for Finance to review the lease rates, it was not acceptable for Finance to fail to review the rates on their own, absent a request from IT. Finance dealt with the lease rates from the beginning. When determining the most favourable response to the RFQ, members of the Finance department, including Len Brittain,<sup>19</sup> Don Altman,<sup>20</sup> and Nadir Rabadi,<sup>21</sup> used the quoted lease

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<sup>19</sup> Director of Treasury and Financial Services Division, Finance Department

<sup>20</sup> Manager of Financial Planning, Treasury and Financial Services Division, Finance Department

rates to carry out the financial analysis. Mr. Power was the IT lead on the RFQ, and so he had substantial dealings with Mr. Brittain's division.

253. Further, Finance calculated debt charges, which necessitated referring to the lease rate factors. Indeed, Mr. Brittain wrote a memo to Ms. Liczyk on January 5, 2000, in which he set out the debt charges for the 1999 budget. He had to have referred to the lease rate factors to calculate the debt charges. In addition, Mr. Brittain updated Ms. Viinamae's January 5, 2000 spreadsheet with handwritten markings that indicated that he was calculating debt charges. Ms. Viinamae's notation on the spread sheet - "Estimate debt charges (confirm figure with Finance)" confirms that she understood that Finance was calculating debt charges, and therefore referred to the lease rates. Finally, the Finance lead for leasing - Mr. Brittain and later Mr. Colley - should also have ensured that the lease rates were reviewed.

**(e) Other Evidence**

254. Mr. Andrew testified that after this Inquiry had started, he had a conversation with Mr. Power, in which Mr. Power said he was not aware that Ms. Viinamae was signing the documents until after two or three quarters, at which point he informed her that she should not have signed them. This evidence is not reliable. Not only did the alleged conversation take place after the Inquiry began, but it is Mr. Andrew's version of Mr. Power's testimony; there was no opportunity to challenge this evidence, since Mr. Power did not say this at all when he testified seven months before. Ms. Viinamae and Mr. Power discussed lease rates around the time of the first transaction in October 1999.

*Testimony of Jim Andrew, October 1, 2003, p. 172, line 1 – p. 173, line 10*

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<sup>21</sup> Senior Financial Analyst, Treasury and Financial Services Division, Finance Department

**PART 10 -  
LEASE REWRITES**

255. Ms. Liczyk executed a number of a equipment schedules that were rewritten by MFP in July 2000 without Ms. Viinamae's knowledge or involvement. Ms. Viinamae was not even aware that the leases had been rewritten until well after the fact, and therefore she could not have prevented the rewrites from occurring, or ensured that there was proper authority for doing so. Nor can she be held responsible for any negative financial or other impacts resulting from the rewriting of the MFP leases.

**(a) Testimony of Lana Viinamae**

256. Equipment schedules 838-5, 838-6, 838-7, 838-8, 838-9 were rewritten and then executed by Wanda Liczyk on July 1, 2000. Ms. Viinamae was not involved in the decision to rewrite the leases, and that decision was executed without her knowledge. She did not see or sign the equipment schedules before Ms. Liczyk executed them. Ms. Viinamae was not even aware that the leases had been rewritten until the end of November 2000, when she was looking into why certain invoices had not been paid (an issue brought to the attention of Jim Andrew by Al Shultz<sup>22</sup>). The reason the invoices had not been paid was because the CMO did not even have the (rewritten) equipment schedules that were referred to in the invoices.

*Testimony of Lana Viinamae, October 16, 2003, p. 184, lines 9 – 14, p. 187, lines 10 – 15; October 22, 2003, p. 58, line 24 – p. 59, line 6; October 30, 2003, p. 7, line 2 – p. 10, line 8  
Affidavit of Lana Viinamae, para. 73  
Exhibit 63, Volume 8, Tab 20, Begdoc 67826,  
Exhibit 63, Volume 8, Tab 21, Begdoc 6776,  
Exhibit 63, Volume 8, Tab 22, Begdoc 67915,  
Exhibit 63, Volume 8, Tab 19, Begdoc 15705*

257. Ms. Viinamae did not know about the rewrites because the usual process (in which the documents would be sent to the CMO to ensure that the schedules were accurate) was not followed. She testified that the communication with Finance “obviously ... wasn’t what it should be.”

*Testimony of Lana Viinamae, October 16, 2003, p. 188, line 24 – p. 190, line 12*

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<sup>22</sup> Director, Accounting Services, Finance Department

258. Kathryn Bulko<sup>23</sup> knew that the leases had been rewritten before Ms. Viinamae did. However, they did not speak about the rewrites until after Ms. Viinamae found out about them in November 2000. When cross-examined as to why she would not have known given that she was Ms. Bulko's boss, Ms. Viinamae pointed out that she was never informed about the meeting that Ms. Bulko attended with Mr. Andrew in August 1999 with MFP, and so obviously "did not know all of the day to day activities that were occurring even though I did meet with them on a regular basis and sat very close to them whenever I was at Metro Hall."

*Testimony of Lana Viinamae, October 16, 2003, p. 189, line 19 – p. 190, line 112*

259. Ms. Viinamae recalls attending a meeting with Rob Wilkinson from MFP prior to July 2000. Kathryn Bulko and Paula Leggieri<sup>24</sup> (and probably Brendan Power and Line Marks<sup>25</sup>) were also present. The purpose of the meeting was to gather information to begin work on a refresh plan. Mr. Wilkinson provided a spreadsheet which showed when the equipment on the various equipment schedules would be coming off lease. However, he made no references to rewriting leases. Ms. Viinamae did not give instructions to MFP to rewrite the leases at this or any other time. This evidence is consistent with Rob Wilkinson's testimony about the September 1999 meeting.

*Testimony of Lana Viinamae, October 16, 2003, p. 184, line 25 – p. 187, line 11*

260. On July 12, 2001, Ms. Viinamae sent a letter to Mr. Domi, stating: "As you are aware, Lease Schedules 838-5 to 10 were rewritten as requested by our Chief Financial Officer of the City of Toronto in order to categorize the items on lease. The rewritten schedules were received and signed by the CFO of the City." The letter also stated that the schedules were signed "without first review of the CMO." Mr. Domi replied to the letter, but did not contradict the reference to the CFO & Treasurer having requested the rewrites or Ms. Liczyk having signed before the CMO reviewed the schedules. Nor is there evidence that those at the City who were copied on the letter (James Ridge, Kathryn Bulko and Paula Leggieri) contradicted Ms. Viinamae's statement about the rewrites.

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<sup>23</sup> Project Manager, Y2K City-Wide Initiatives-Desktops



*Testimony of Kathryn Bulko, August 12, 2003, p. 162, line 20*  
– p. 165, line 7  
*Exhibit 63, Volume 13, Tab 51, Begdoc 3574*

**(b) Testimony of Joan Anderton**

261. During cross-examination by counsel for the City, Ms. Viinamae was advised that Joan Anderton<sup>26</sup> would testify that in the summer of 2000, Ms. Viinamae told her that she had been unable to direct her full attention to the MAP Project and Capital I&T Projects “because of the time commitment of Ms. Viinamae's work on the lease rewrites.” Ms. Viinamae denies ever having had such a discussion with Ms. Anderton, and Ms. Anderton’s actual testimony differed from what counsel for the City projected.

*Testimony of Lana Viinamae, October 29, 2003, p. 117, lines 17 – 24*

262. Ms. Anderton testified that Ms. Viinamae had not specifically referred to the rewrite of the leases, but rather that Ms. Viinamae had mentioned an "administrative reorganization of leases" (a term that seems to have arisen during Ms. Liczyk's testimony). Ms. Anderton could not identify any documents in the database indicating that Ms. Viinamae or any other City staff were busy with either lease rewrites or any “administrative reorganization” of leases, nor was she aware of any document in the database suggesting that Ms. Viinamae was involved. Significantly, Ms. Anderton did not provide this information about the alleged discussion with Ms. Viinamae to KPMG during its investigation. The reason given by Ms. Anderton to explain this omission was that her recollection of the conversation was "more sparked by the activities of this inquiry than it was by the KPMG review."

*Testimony of Joan Anderton, November 20, 2003, p. 122, lines 15 – 25; p. 123, lines 5 – 11; p. 125 lines 5 – 9, p. 126, line 4 – p. 127 line 9*

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<sup>24</sup> Supervisor, Technology Leasing Administration Coordinator

<sup>25</sup> Program Assistant in the Year 2000 Office

<sup>26</sup> Commissioner of Corporate Services

**(c) Testimony of Paula Leggieri**

263. Ms. Leggieri testified that the lease rewrites were carried out under the direction of Wanda Liczyk. She testified that Ms. Bulko told her that Ms. Liczyk had directed that the leases be rewritten.

*Testimony of Paula Leggieri, April 9, 2003, p. 110, line 6, p. 11, lines 10 – 11, p. 130, lines 5 – 11*

**(d) Testimony of Kathryn Bulko**

264. Kathryn Bulko testified that she did not know who at the City made the decision to rewrite the leases, but that she had since heard that "it was either Wanda or Lana or a combination of both but I don't know." When cross-examined on this remark, Ms. Bulko was less certain of Ms. Viinamae's involvement: "My thought was, it was Lana and Wanda but I don't know who – who decided.... I was told it was Len Brittain and Wanda that renegotiated the terms and rates. So perhaps it was them that made the decision to rewrite the lease, I don't know...."

*Testimony of Kathryn Bulko, August 11, 2003, p. 134, line 20 – p. 135, line 11; August 12, 2003, p. 102, line 5 – 25*

265. In a July 21, 2000 e-mail to Ms. Leggieri, Ms. Bulko asked, "When are we getting copies of those rewrites that Dash had Wanda sign?" This was in reply to a July 20, 2000 e-mail from Ms. Leggieri that stated: "This is in regard to those invoices I had no idea what for." Ms. Viinamae was not copied on either of these e-mails. This is consistent with Ms. Viinamae's testimony that she become aware of the rewrites later than Ms. Bulko and Ms. Leggieri. The e-mail also implies that Ms. Bulko may have had independent knowledge about the manner in which the rewrites were signed by Ms. Liczyk.

*Testimony of Kathryn Bulko, August 12, 2003, p. 99, line 7 – p. 99, line 20  
Exhibit 55, Volume 2, Tab 38, Begdocs 67356, 67357*

266. Under examination by counsel for the City, Ms. Bulko agreed when shown her July 21, 2000 e-mail to Paula Leggieri asking "When are we getting copies of those rewrites that Dash had Wanda sign?" that she knew about the lease rewrites in July of 2000. It was suggested

to Ms. Bulko that since Ms. Viinamae had informed her of the rewrites, Ms. Viinamae must have told her about them by that time. Ms. Bulko's testimony on this point is not accurate, because Ms. Viinamae did not know about the rewrites until November 2000.

*Testimony of Kathryn Bulko, August 12, 2003, p. 179, line 4 –  
p. 180, line 11  
Exhibit 55, Volume 2, Tab 38, Begdoc 67356, 67357*

**(e) Testimony of Lee Ann Currie**

267. Lee Ann Currie's understanding of how the decision to rewrite the leases was made was that Rob Wilkinson was in communication with Ms. Viinamae. However, when cross-examined on this point, she agreed that she could not say with certainty that Mr. Wilkinson had told her that it was Ms. Viinamae who made the decision that the leases should be rewritten. In fact, Mr. Wilkinson himself testified that he had no knowledge of who at the City made the decision. Therefore he could not have told Ms. Currie it was Ms. Viinamae.

*Testimony of Lee-Ann Currie, September 2, 2003, p. 53, line  
18 – p. 54, line 13; p. 84, line 15 – p. 85, line 7*

**(f) Testimony of Rob Wilkinson**

268. Rob Wilkinson testified that he and Mr. Domi had a meeting with Ms. Viinamae, Ms. Bulko (and perhaps Mr. Power and Ms. Marks) in September 1999 to discuss the issue of allocating IT costs to the various departments. The grouping of assets into logical groups in relation to the total cost of ownership concept was one of the matters discussed. However, Mr. Wilkinson testified that there was no discussion or decision by anyone at the September 1999 meeting to rewrite the leases to achieve these ends. This is consistent with Ms. Viinamae's testimony about the meeting.

*Affidavit of Rob Wilkinson, paras. 101 – 106  
Testimony of Rob Wilkinson, September 18, 2003, p. 32, line 5  
p. 33, line 3*

269. Mr. Wilkinson testified that around May 2000 he was asked to meet with Wanda Liczyk. He testified that they discussed the grouping of assets into five logical leases and he left the meeting thinking there was a high degree of interest in doing this on the part of Ms. Liczyk.

When asked what instructions MFP was given, Mr. Wilkinson testified: "We wrote the leases into the logical groups, I'm assuming that the word was that they wanted to proceed with grouping the assets... into the logical groups."

*Testimony of Rob Wilkinson, September 16, 2003, p. 277, line 25, p. 278, line 8; p. 285, line 9, p. 286, line 22  
Affidavit of Rob Wilkinson, para. 110 – 116*

270. Mr. Wilkinson testified that by late June 2000 he received word that the City had decided to follow such a process and we were directed to go ahead and group the leased assets into logical pools, each pool to be the subject of a separate lease with a common term.... I do not have a clear recollection of how the City's direction in this regard was communicated to me but I think that I learned of it through Dash Domi. I did not know who at the City gave this direction or exactly who was involved in the City's decision-making process.

Since Ms. Viinamae was not made aware that the leases were rewritten until well after the fact, she could not have directed MFP to rewrite the leases.

*Affidavit of Rob Wilkinson, para. 118 – 199*

271. On cross-examination, Mr. Wilkinson did not agree that Lana Viinamae, Kathryn Bulko or others in the CMO were aware that MFP was regrouping the assets and then rewriting the leases. He testified: "I think in fairness to them... I don't know when they would have been aware of it. I mean, they would have had a general knowledge that was the direction we were taking..."

*Testimony of Rob Wilkinson, September 18, 2003, p. 93,  
lines 8 – 23*

272. Mr. Wilkinson testified that he thought the regrouping of assets by type would be beneficial to the Finance department. He did not agree that it would only be of assistance to people in IT (a contention of Ms. Liczyk's).

*Testimony of Rob Wilkinson, September 18, 2003, p. 89,  
line 25, p. 90, line 9*

273. Mr. Wilkinson testified that the rewritten lease schedules were sent to the CMO both in hard copy and electronically. However, there is no documentary or other evidence indicating that Ms. Viinamae received these documents prior to Ms. Liczyk having signed them. The fact that Ms. Viinamae did not sign the rewritten lease schedules indicates that she did not review them before Ms. Liczyk signed.

*Testimony of Rob Wilkinson, September 18, 2003, p. 93,  
line 24 - p. 95, line 4*

274. An e-mail from Ms. Currie to Ms. Leggieri in 2001 (not copied to Ms. Viinamae) with the subject "Items on lease that should not be (according to Line)" states: "The leases as they stand, have been reviewed by Rob/Lana. A decision was made to leave equipment that should not have been placed on lease as is and going forward, these items would not be leased... This conversation took place prior to 7/1/00." In cross-examination, counsel for Ms. Liczyk suggested to Mr. Wilkinson that the e-mail implied that he had a discussion with Ms. Viinamae about the rewrite on that day. The date "7/1/00" is the same date the lease rewrites were executed (July 1, 2000). However, Mr. Wilkinson did not agree that the e-mail referred to discussions with Ms. Viinamae about the lease rewrite; rather, it referred to consumables, such as printer cartridges, that should not have been put on lease. Council for Ms. Liczyk did not cross-examine Ms. Viinamae on this point.

*Testimony of Rob Wilkinson,, September 18, 2003, p. 112 line  
1 - p. 114, line 18  
Begdoc 24188*

**(g) Testimony of Wanda Liczyk**

275. Ms. Liczyk could not point to any direct evidence that Ms. Viinamae, Ms. Bulko, Ms. Marks or Ms. Leggieri saw, reviewed or approved the rewrites before she signed them.

*Testimony of Wanda Liczyk, November 17, 2003, p. 148, line  
23 - p. 150, line 1*

276. Ms. Liczyk testified that she recalled a meeting with Mr. Wilkinson, Ms. Viinamae, and Ken Colley, where Mr. Wilkinson passed around a binder (in the form of a report) of what had been done for another client to assist it in allocating costs by department. Ms.

Licznyk testified that none of the conversations they had related to lease rewrites. Ms. Liczyk testified that she does not know who was responsible for making the decision to rewrite the leases.

*Testimony of Wanda Liczyk, November 4, 2003, p. 114, line 2  
– p. 117, line 11*

277. Ms. Liczyk testified that there was no discussion of restructuring the leases in any of the conversations she had with staff, or at her meeting with Mr. Wilkinson. She did not agree with Mr. Wilkinson's testimony that after their meeting there was "a high degree of continuing interest on the part of the City in proceeding with the restructuring of the leases." She testified that she did not direct anyone at MFP to rewrite the leases.

*Testimony of Wanda Liczyk, November 4, 2003, p. 121, line 5  
– p. 125, line 19*

278. It was put to Ms. Liczyk that Ms. Viinamae, Mr. Andrew, and Ms. Bulko had testified that they had no involvement in the lease rewrites. When asked who else would have been involved in this, Ms. Liczyk said that it would have been IT who was most interested in organizing the assets by asset type. However, she testified that as far as she knows, no one in IT asked anyone in Finance to instruct Mr. Wilkinson to proceed with rewriting the leases. There is no evidence that the direction came from anyone in IT.

*Testimony of Wanda Liczyk, November 4, 2003, p. 126, line 14  
– p. 127, line 8*

279. When cross-examined on her contention that it would be IT who would most benefit from organizing the leases by asset and type, Ms. Liczyk testified that this would have helped IT with the refresh strategy. She agreed, however, it would not necessarily have had to have been done by lease schedule, and that a report would have met that objective. Ms. Liczyk's opinion that IT would have most benefited from re-organizing the leases contradicts the evidence of Mr. Wilkinson.

*Testimony of Wanda Liczyk, November 17, 2003, p. 94, line 25  
– p. 95, line 24*

280. Ms. Liczyk testified that Mr. Domi came to her office with a box of documents (the rewrites) stating the documents were from the CMO, and that he was acting as a courier. She recalls that Mr. Domi said that the rewrites were "administrative reorganizations" for the purpose of meeting the cost allocation reporting that they had previously discussed. Ms. Liczyk testified that on this basis, she signed the documents. Ms. Liczyk assumed that her assistant (Ms. Scarcello) vetted the documents before she signed. She assumed that her assistant received a call from the CMO indicating that Mr. Domi was bringing the documents over. In hindsight, she testified that she should not have:

accommodated a City process being jumped, in terms of the proper signatures, in the right order. And I think Giuli let him come... for me to sign these, as a favour to the CMO, with respect to my timeline and availability and I had always wanted Ms. Viinamae's signature on documents to show me that she had done review and due diligence on them.

However, Ms. Viinamae's signature is not on these rewritten schedules because she did not review them before Ms. Liczyk signed.

*Testimony of Wanda Liczyk, November 6, 2003, p. 75, line 11  
- p. 78, line 22; November 17, 2003, p. 18 lines 2-22*

281. Ms. Liczyk acknowledged that she did not actually have any direct knowledge as to whether in fact her assistant did call the CMO, or whether her assistant relied on Mr. Domi saying that he was doing a favour to the CMO by bringing the document to Ms. Liczyk. Ms. Liczyk agreed on cross-examination that she did not know whether her assistant actually double checked that what Mr. Domi said was accurate: that he was coming from the CMO and that he had been asked by them to deliver documents. She did not look at the documents long enough to see that they looked more like lease schedules than department reports. She agreed that she was frequently asked to sign documents and did not always "mentally identify whether it was a contract" or some other kind of document. She did not read the documents, nor even scan them. Ms. Liczyk should have been more diligent.

*Testimony of Wanda Liczyk, November 17, 2003, p. 120, line  
10 - p. 123, line 5*

282. Ms. Liczyk agreed that there was nothing on the face of the documents, such as initials or other markings, that indicated that someone else in the City had reviewed them before passing them on for signature. She just assumed her assistant satisfied herself that the CMO had in fact asked Mr. Domi to act as a courier.

*Testimony of Wanda Liczyk, November 17, 2003, p. 140, line  
20 – p. 142, line 9*

283. Ms. Liczyk testified there were occasions when because of time lines, she would be asked to jump the process and sign before the other signatures. Ms. Liczyk states in her affidavit that her expectation, as with all other contracts she signed as a statutory signing officer, was that the originating department would perform its review and due diligence prior to forwarding contracts for her signature. Again, there is no evidence that the CMO ever reviewed these equipment schedules before Ms. Liczyk signed.

*Testimony of Wanda Liczyk, November 6, 2003, p. 73, line 5 –  
p. 75, line 6  
Affidavit of Wanda Liczyk, paras. 211– 212*

284. As noted earlier, Ms. Liczyk testified that she did not read or scan the documents she signed. The situation when she was working at the City was that, because of the volume of documents:

there was no expectation on the part of myself or Novina Wong, to be actually reading any of these documents. That our names were truly just... there because they had to have our signatures on them.... I signed everything that came into my office and expected that everyone else had done all the due diligence, that they knew I was just a signature and nothing else.

285. As a statutory signing officer, Ms. Liczyk should have ensured, rather than assumed, that the due diligence had been completed before she signed.

*Testimony of Wanda Liczyk, November 17, 2003, p. 123, line  
11 – p. 124, line 17*

286. Ms. Liczyk testified that there would have been something to indicate to her assistant that it was okay for Ms. Liczyk to sign "whether it was a covering memo or a handwritten little note, something – a phone call perhaps that she would have gotten from the



CMO herself, from Kathy..." However, the only covering memo that appears in the database is from Jim Andrew (signed by Ms. Viinamae) to Ms. Liczyk and Ms. Wong, but it is related to the master lease. There is no similar cover memo for any equipment schedules, including the lease rewrites.

*Testimony of Wanda Liczyk, November 17, 2003, p. 137, line 13 – p. 139, line 12; November 17, 2003, p. 132, line 7 – 15 Exhibit 63, Volume 13, Tab 20, Begdoc 4685*

**(h) Testimony of Dash Domi**

287. Mr. Domi testified that Mr. Wilkinson had discussions with City officials regarding the lease rewrites. He testified that he did not think that Ms. Viinamae was involved in discussions regarding the rewrite of the leases. He testified that he believes that Ms. Liczyk was involved because Mr. Wilkinson told him this.

*Testimony of Dash Domi, January 23, 2003, p. 201, line 11 – 24*

**PART 11 -  
SIGNING AUTHORITY**

288. Up until February 3, 2000, Lana Viinamae was the sole signatory of several of the leasing documents. She executed these documents based on her reasonable belief that she had the authority to do so. After that date, Ms. Viinamae understood that it was also necessary for Ms. Liczyk to execute the documents. Any subsequent instances where documents bore only Ms. Viinamae's, or only Ms. Liczyk's signature, can be explained by deviations from Ms. Liczyk's usual signing procedure, including those caused by the actions of Dash Domi in transporting documents.

289. Ms. Viinamae initially signed all documents, except the Master Lease Agreement and the Program Agreement. Ms. Viinamae signed these documents because the Council report stated that the contract would be "centrally administered" by the Contract Management Office (CMO), and she regarded the signing of documents as part of that function. It was her belief that the Certificate of Incumbency she signed authorized her signing authority.

*Affidavit of Lana Viinamae, paras. 130, 135  
Exhibit 63, Volume 113, Tab 37, Begdoc 03674*

290. It was a logical assumption on Ms. Viinamae's part that the Certificate of Incumbency authorized her signing authority. In it, Ossie Doyle certifies that for "each of the persons named below" (which includes Ms. Viinamae), the signing of the lease documents (including equipment schedules) "are within the purview of their authority as an officer of the City, and within the scope of their designated responsibilities within the City." In his testimony, Mr. Doyle agreed that the Certificate of Incumbency was "broadly worded" and did not indicate that the authority of the persons who signed was limited in any way. He testified that it was perfectly understandable that MFP (who issued the document) would want assurances that the people they were dealing with at the City had the proper authority to sign the lease documents.

*Testimony of Ossie Doyle, April 8, 2003 pp. 75-77*

291. On February 3, 2000, Ms. Viinamae emailed Frank Spizarsky (cc. Jim Andrew, Wanda Liczyk, Lou Pagano, Brendan Power, and Brian Loreto) confirming with him (as a follow-up to a meeting) that she had been signing contract schedules and certificates of

acceptance. The next day, Mr. Pagano replied to Ms. Viinamae's e-mail, indicating that he was not sure that she had the authority to sign the documents. This was the first time that Ms. Viinamae's signing authority was ever questioned (and only since this Inquiry began did Ms. Viinamae become aware that Mr. Loreto and Mr. Spizarsky had been discussing the issue prior to that). Later the same day, Mr. Loreto provided an opinion that the Council report did not authorize Ms. Viinamae to execute the contract or any related agreement or schedules, and consequently that "the Program Agreement and the Equipment Schedules will [need] to be re-executed." Mr. Loreto's opinion made no reference to lease rate factor schedules or certificates of acceptance. Nor did it mention the City Solicitor's Certificate of Incumbency.

*Testimony of Lana Viinamae, October 29, p. 177-83*  
*Affidavit of Lana Viinamae, para. 130-33*  
*Begdocs 04219, 11035, 06264, 12155, 10616, 6249, 6249,*  
*6162, 11035*

292. Ms. Viinamae was never told that it was inappropriate for her to sign documents due to her lack of experience in leasing. Ms. Liczyk, Mr. Andrew, Mr. Power, Mr. Loreto, and Mr. Pagano, among others, were aware that Ms. Viinamae executed documents, yet none of them suggested that due to her inexperience, she did not understand the documents she was signing, and therefore should not sign them.

293. From February 4, 2000 onward, Ms. Viinamae was aware that she was only a co-signatory for the documents she signed. After Ms. Viinamae signed, documents were forwarded to Ms. Liczyk for further execution. Ms. Liczyk's assistant, Guiliana Scarcello, testified that Ms. Liczyk would not sign MFP documents unless Ms. Viinamae signed first, and Ms. Viinamae was aware of this fact. Ms. Scarcello testified that it was her responsibility to ensure that the originating department had initialed the document before Ms. Liczyk signed.

*Begdoc* 19451  
*Begdoc* 19616  
*Begdoc* 12899  
*Testimony of Guiliana Scarcello, September 1, 2004, p. 78*

294. Despite Ms. Scarcello's usual practice of carrying out a preliminary check of documents to see that the originating department had reviewed them, she testified that there were occasions where she did not follow this procedure. She testified that the process was followed

"over 15 percent of the time". This left a significant margin for error or oversight in the execution of documents. For example, the procedure would not have been followed if Ms. Scarcello was absent from her office, or where someone brought documents directly to Ms. Liczyk. Ms. Scarcello agreed that on these occasions, she would not know whether Ms. Viinamae had signed a document prior to Ms. Liczyk signing it. She testified that there were times where Ms. Liczyk signed documents that Ms. Scarcello did not preview because Ms. Scarcello was not in her office.

*Testimony of Guiliana Scarcello, September 1, 2004, pp. 82-84, pp. 93-94*

295. Departures from the "usual practice" can explain why some documents only bear Ms. Viinamae's signature in spite of Ms. Viinamae's knowledge that her signature was supposed to precede Ms. Liczyk's. In an October 30, 2001 email, Paula Leggieri recalled an instance where Dash Domi removed some equipment schedules from her desk without her consent. She noted: "If the schedules were taken directly to MFP and not signed by Wanda we would not catch this until months and months later, due to the signing relationship at the time between the CFO and Dash." Ms. Leggieri testified that although it was her understanding that Mr. Domi took the schedules to Ms. Liczyk for her signature, the documents would have only Ms. Viinamae's signature if Mr. Domi took them straight back to MFP, rather than to Ms. Liczyk for execution. Mr. Domi testified that there might have been occasions where he took documents straight back to MFP that only Ms. Viinamae had signed.

*Testimony of Paula Leggieri, September 2, 2003, p. 138, Line 20, p. 140, Line 14  
Begdoc 30514  
Begdoc 24199  
Begdoc 12899*

296. Similarly, if Mr. Domi took documents straight to Ms. Liczyk's office, and Ms. Liczyk's usual procedure of having Ms. Viinamae sign first was not followed, a document might only bear Ms. Liczyk's signature. Kathryn Bulko testified that instead of schedules first coming to the CMO so they could reconcile them, "Dash quite often took them to City Hall to Wanda's office to get her signature first." She stated that this was a concern "because it didn't allow us the opportunity to reconcile them, and if something was wrong, and shouldn't perhaps have been on

lease, then Wanda would have already signed it." Ms. Bulko testified that she supported the contents of Ms. Leggieri's October 30, 2001 e-mail.

*Testimony of Kathryn Bulko, August 12, 2003, p. 165, line 10*  
– p. 160, line 5  
*Begdoc 10608*

297. In Ms. Leggieri's October 30, 2001 e-mail, she explained that the CMO attempted to remedy these problems:

"We also STOPPED giving schedules to Dash for signature and I also asked Lee Ann to stop sending schedules through Dash and to mail them to me directly."

Ms. Leggieri addressed this issue in a January 17, 2001 e-mail to Mr. Domi:

Dash,

I happened to ask Lee Ann when we would be receiving the above-mentioned document and I understand that you had this signed by Wanda.

We require a copy and supporting documentation. In the future, please let us know beforehand when you will be approaching the CFO for signature on these documents and provide us in the CMO office with copies.

*Begdoc 24199*

298. Ms. Scarcello testified that it is possible that if she did not tab the signature line on a document (eg. this Equipment Schedule), Ms. Liczyk would not have known to sign it. This is another possible explanation for why some documents only have Ms. Viinamae's signature, even after February 2000. For example, as Ms. Leggieri identified in her October 31, 2001 e-mail, both Ms. Viinamae and Ms. Liczyk signed the Bill of Sale for PA1-4, yet only Ms. Viinamae signed the Equipment Schedule for PA1-4. Both documents were presented for signature at the same time.

*Testimony of Guiliana Scarcello, September 1, 2004, p. 97,*  
*Line 4, p. 98, Line 11*  
*Begdoc 3072*  
*Begdoc 2980*  
*Begdoc 39552*

299. According to Ms. Leggieri's March 7, 2001 e-mail to Lee Ann Currie, it appears that prior to that date, MFP executed the equipment schedules after the City. If this was the case, MFP knew that some schedules only bore Ms. Liczyk's signature.

*Begdoc 2811*

300. Mr. Doyle testified that Ms. Viinamae asked him to sign the Certificate of Incumbency when she "rushed into" his office and asked him to sign it on an urgent basis. Ms. Viinamae denies this. She was not responsible for having others sign the Certificate of Incumbency, and only signed it herself when it was brought to her. Since the document is a certification of Mr. Doyle, and reads: "I, H.W. Osmond Doyle ... hereby certifies that ...", it would be likely that someone from the City's legal department coordinated the signing of the document, just as someone in that department (Brian Loreto) drafted the comfort letter to MFP in March 15, 2000. Both documents were related to the legal validity of signatures, among other issues, and were drafted at MFP's request, and Ms. Viinamae would have no reason to be initiating the execution of the Certificate of Incumbency.

*Testimony of Lara Viinamae, October 29, 2003, p. 176, lines 1-101, Final Submissions of Ossie Doyle, para. 42-43*

301. No evidence was led and no suggestion was made that Ms. Viinamae's signing of documents caused any financial loss to the City. The re-execution should have ensured that all documents were properly executed after that date.

**PART 12 -  
\$43 MILLION MAXIMUM EXPENDITURE**

302. Ms. Viinamae testified that it was the common view in both the Information Technology and Finance (including Purchasing) departments that there was no \$43.15 million cap on the value of assets on the MFP lease. Many documents and other witnesses' testimony reflect the understanding other City staff had that the \$43.15 million did not represent a limit on leasing expenditures.

303. At no point was the idea of a \$43 million maximum brought to Ms. Viinamae's attention. On the contrary, other people in more senior positions directed Ms. Viinamae to put additional items on lease. Given that Ms. Viinamae's direct superior, Mr. Andrew, regarded MFP as a vendor of record, and did not consider that there was a limit on the contract of MFP, Ms. Viinamae can in no way be faulted for having the same understanding of the contract.

304. Ms. Viinamae was directed to put software on lease. Beginning in December 1999, she made others (including Ms. Liczyk, Mr. Andrew, and Mr. Brittain) aware that the acquisitions created an operating budget pressure of approximately \$24 million. The fact that this was not reported by Ms. Liczyk until her March 15, 2001 report to the Budget Advisory Committee is not the responsibility of Ms. Viinamae.

**(a) Testimony of Lana Viinamae**

305. Ms. Viinamae testified that it was the common view in both IT and Finance (including Purchasing) that there was no \$43.15 million cap on the value of assets on the MFP lease.

*Testimony of Kathryn Bulko, August 11, 2003, p. 96, line 18 –  
p. 98, line 25  
Affidavit of Line Marks, at para. 52  
Testimony of Paula Leggieri, April 9, 2003, p. 17, line 15 –  
p. 18, line 6  
Testimony of Lana Viinamae, October 16, 2003, p. 121,  
line 11 – p. 125, line 5*

306. Many documents reflect the understanding of City staff had that the \$43.15 million did not represent a limit on leasing expenditures. For example:

- Section 1.1.21 of the RFQ stated that "the City may from time to time negotiate separate corporate licence agreements for major software acquisitions." There was also reference to 4,000 additional desktops. The RFQ contemplated future acquisitions of an unknown amount that would clearly be in addition to the \$43 million.
- The briefing note for the Council report stated that the cost of equipment in excess of \$43.15 was "unknown at this time"

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*Begdoc 14222*

*14221*

- In a July 12, 1999 email from Nadir Rabadi<sup>27</sup> to Wanda Liczyk<sup>28</sup> (cc. Len Brittain<sup>29</sup> and Don Altman<sup>30</sup>), Mr. Rabadi wrote: "This report's analysis deal with \$43.15 of equipment which IT provided us for this RFQ. There will be more leasing proposals commencing in 1999 itself. IT must indicate how much more will be coming..."

*Begdoc 12751*

- The establishment of an ongoing leasing program in the CMO reflected the understanding that this was not a one-time acquisition – the Purchasing division reviewed these leasing program procedures;

*Begdoc 16093*

- Draft procedures for the IT leasing program which referred to the July 1999 Council report referred to MFP as "the approved vendor of record for leasing". There is no reference to a limit of \$43 million. Mr. Pagano reviewed these procedures.

*Exhibit 20, Volume 2, Tab 63, Begdoc 16093*

- A leasing presentation was provided to all departments around January 17, 2000. It cites the July 1999 Council report as authority for the "leasing program". It states "all information and technology hardware and software must be leased". There is no reference at all in this presentation to a cap of \$43 million. Nor would acquisitions be limited to Y2K, since this information went out after December 31, 1999.

*Begdoc 64958*

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<sup>27</sup> Senior Financial Analyst, Treasury and Financial Services Division, Department of Finance

<sup>28</sup> Chief Financial Officer and Treasurer

<sup>29</sup> Director of Treasury and Financial Services Division, Finance Department

<sup>30</sup> Manager of Financial Planning, Treasury and Financial Services Division of the Finance Department



- The draft communication letter for distribution to all Commissioners refers to "a new leasing program for the acquisition of all IT hardware and software" provided by MFP

*Begdoc* 15587,  
*Begdoc* 15588,  
*Begdoc 12817*);

- Budget guidelines (distributed to all departments, with copies to all members of the Budget Committee) for the years 2000 and 2001 (well beyond Y2K) refer to a "leasing program" with no maximum expenditure

*Begdoc 16040*

- A November 6, 1999 email Ms. Viinamae sent to Jim Andrew, Brendan Power, Cindy Draycott, and Karen Graham notifying them that the leasing budget for 2000 was forecast at \$53 million did not raise any concerns

*Begdoc 15752*

- The MFP lease summary indicating that over \$66 million of hardware and software was on lease was sent to Ken Colley on June 14, 2000. This did not raise any concerns. It was sent to Mr. Colley at his request.

*Begdoc* 31677  
*Begdoc 31678*)

- A spreadsheet prepared by Ms. Viinamae (and revised by Mr. Brittain) of operating budget pressures from the Y2K project indicated that budget pressures from software acquisitions that were "not included in [the] original Lease Estimate" of \$43.15 million. Mr. Brittain, Ms. Liczyk, Mr. Andrew, Mr. Colley, Mr. Shultz, and others received the spreadsheet. The software acquisitions totalled over \$24 million.

*Begdoc* 52406, 64007 and  
*Begdoc* 64008,  
*Exhibit 63, Tab 27, Begdoc 31894*

- According to the notes of Len Brittain's<sup>31</sup> KPMG interview, he stated that: "he does not believe that the City was constrained by the \$43 million expenditures... He believed the purpose of the RFQ is to establish a vendor of record for the leasing program [which] would finance all future equipment leases..." This is contrary to his testimony at the inquiry that he knew there was a \$43 million limit on the contract.

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<sup>31</sup> Director of Treasury and Financial Services Division, Finance Department

*Begdoc 12998*

- Don Altman also told KPMG (according to his notes) that he did not view the \$43 million "as a ceiling placed on authorized spending."

*Begdoc 12680*

- In both 2000 and 2001 budget reports from Finance, the leasing program was increased to include \$2.5 million worth of the new leased items.

*Begdoc 31661*

307. At no point was the idea of a \$43.15 million maximum brought to Ms. Viinamae's attention. On the contrary, other people in more senior positions directed Ms. Viinamae to put additional items on lease. For example, on October 16, 2000, Al Shultz asked Ms. Viinamae to put the Councillors' computers on lease. In the spring of 2001, when the City was looking at acquiring photocopiers, Lou Pagano (Director of Purchasing) told Ms. Viinamae, and Wanda Liczyk confirmed, that the photocopiers should be placed on the MFP lease.

*Begdoc*

*16312*

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*15578*

*Begdoc 66634*

308. After Councillor Balkissoon raised concerns about the leasing program at the May 2001 Council meeting, Ms. Viinamae contacted City Auditor Jeff Griffiths to determine if the leasing program should be put on hold pending resolution of Councillor Balkissoon's issues. She was instructed to proceed with "business as usual," and subsequently confirmed this with Acting Executive Director of IT James Ridge. She informed Kathryn Bulko, the manager of the leasing program, of their directive, and copied Joan Anderton<sup>32</sup>, City Solicitor Ossie Doyle, Jeff Griffiths, and James Ridge.

*Begdoc 29326*

309. Ms. Viinamae did not understand \$43.15 million to be the maximum expenditure, but rather the amount to be re-allocated from a capital budget to the operating budget. Mr. Power told Ms. Viinamae that he needed to know how much of the Y2K and other capital-approved I&T projects would be put on lease for 1999. The Y2K project managers provided *an*

estimate of \$36.9 million for the amount of hardware and software and other program managers gave an estimate of \$6.25 million for the capital projects of SAP, IBMS, and PTO. Ms. Viinamae understood that Mr. Power was seeking this information for evaluation purposes for the RFQ. At no point did she consider this to be the total budget for all information and technology for the new City of Toronto.

*Affidavit of Lana Viinamae, paras. 30 – 33*

310. Ms. Viinamae understood that since the leasing provider was being contracted for three years, but the budget figures asked for by Mr. Power were only for 1999 capital projects, it was clear that \$43.15 million was not the maximum amount that would be leased under the program. Finance directed that all future hardware, software, and maintenance for IT would be leased. The \$43.15 million in the Council report was there to ensure that the funds already approved and sitting in capital project cost centres would be transferred to the leasing program along with the debt charges. Ms. Viinamae testified that she was asked how much was going to be spent on Y2K and the other capital I&T projects: "This was not where I was asked, what is the total value of the I&T assets for the corporation."

*Affidavit of Lana Viinamae, at paras. 30 – 33  
Testimony of Lana Viinamae, October 16, p. 102, line 22 –  
p. 108, line 1*

311. Ms. Viinamae testified that the leasing contract was not unlimited because it was based on the approval in the capital and operating budgets of each department. Ms. Viinamae's understanding was that there was reporting back through the budget process on the non-program budget increases, citing the March 15, 2000 and February 22, 2000 reports as examples of reporting back.

*Testimony of Lana Viinamae, October 16, 2003, p. 130, line 9  
– p. 135, line 12; p. 137, line 23 – p. 139, line 12*

**(b) Testimony of Jim Andrew**

312. Given that Ms. Viinamae's direct superior, Jim Andrew, regarded MFP as a vendor of record, and did not consider that there was a limit of \$43 million on the contract with MFP, Ms. Viinamae can in no way be faulted for having the same understanding of the contract.

313. Mr. Andrew testified that he believed MFP was a vendor of record for three years, that there was no cap, and that the \$43 million was an approximate amount. He testified:

"I believed there was a vendor of record with MFP for three years and there was no cap and that the \$43 million dollars that appears in the report was an approximate amount... there was no cap on that and I consider that we didn't overspend... because no one ever told me there was a cap for \$43 million."

314. He testified that he took no responsibility for the spending because there was nothing wrong with the spending that occurred.

*Testimony of Jim Andrew, September 24, 2003, p. 103, lines 2  
- 13*

315. Mr. Andrew testified that the Council report recommended to Council that once a master lease was entered into with MFP (a vendor of record), IT could access the master lease for any amount of IT equipment within the three-year timeframe. He testified that this interpretation would stand true whether the amount was for "\$40 million, \$43 million or \$100 million." He testified that Council was well aware of this from the way the report was written.

*Affidavit of Jim Andrew, at para. 149  
Testimony of Jim Andrew, September 29, 2003, p. 69, line 12 -  
p. 70, line 18*

316. Mr. Andrew agreed that as the senior person for IT in charge of this project, he assumed that as long as MFP was in good standing with the City, the City had a "green light to lease as much as departments had budgets for, for three years and to lease it all from MFP."

*Testimony of Jim Andrew, October 2, 2003, p. 110, lines 8 -  
17*

317. However, Mr. Andrew did not consider IT to have an unlimited budget. He testified that the CMO “became order takers for departments, so as departments needed to have additional equipment, I would have no control over what the departments would spend; they would place an order, it would go on lease, and they would commit to fund the lease.”

*Testimony of Jim Andrew, September 29, 2003, p. 70, line 21 –  
p. 72, line 4*

318. Mr. Andrew agreed in his testimony that City staff – in particular, Finance staff – understood that \$43 million was simply used for analytical purposes and could and would be substantially exceeded. He testified that Don Altman, Len Brittain, Nadir Rabadi all knew that the cost of the acquisitions would exceed \$43.15 million. Mr. Andrew bases his assertion on e-mails, and to his understanding at the time. He cited a July 12, 1999 e-mail from Mr. Rabadi to Mr. Brittain, Mr. Altman, Jim Andrew, and Ms. Viinamae referring to the "Cost of further equipment in excess of \$43.15 million which IT intends to lease with full details."

*Testimony of Jim Andrew, September 29, 2003, p. 62, line 6 –  
p. 64, line 8 – p. 65, line 15  
Affidavit of Jim Andrew, at para. 137  
Volume 8, Tab 10, Begdoc 4232  
Volume 8, Tab 15, Begdoc 12259*

319. Mr. Andrew did agree that the Council report was not very clear. He testified "I certainly think we could have done better, I don't think it's a very... well written report." As the co-signatory of the report, Mr. Andrew had an obligation to ensure that the report properly set out the meaning of the contract with MFP, particularly since he was involved in reviewing the report up to the date he signed.

*Testimony of Jim Andrew, September 29, 2003, p. 72, line 3 –  
p. 73, line 12*

**(c) Kathryn Bulko**

320. Kathryn Bulko<sup>33</sup> testified that it was never her interpretation of the Council report that there was a limit of \$43 million worth of assets being put on lease. If there had been such a limit, she would not have put anything on lease after Y2K. She was well aware that the City had

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<sup>33</sup> Project Manager, Y2K City-Wide Initiatives-Desktops

leased hardware and software in excess of \$43 million and she understood that the authority came from the approval of the leasing program by Council. She understood that as long as a department had an approved, additional acquisitions would come out of its operating or capital budgets.

*Testimony of Kathryn Bulko, August 11, 2003, p. 96, line 18 –  
p. 101, line 1*

321. Ms. Bulko agreed that it was commonly understood in the IT division and Finance that all hardware and software would be leased through MFP during the three-year term of the contract, which was never limited to \$43 million. From her meetings with staff in the Finance department, she was aware that others in the Finance department also had this understanding, including Ken Colley, Ruby Sawh, and Aditya Rupsingh.

*Testimony of Kathryn Bulko, August 11, 2003, p. 96, line 18 –  
p. 101, line 1*

322. Ms. Bulko agreed in her testimony that around December 2000, Mr. Colley "well understood that there was more than \$43 million leased through MFP", but he never raised any concern. An MFP lease summary indicating that over \$66 million of hardware and software was on lease was sent to Mr. Colley on June 14, 2000. The e-mail from Line Marks to which it was attached read "Ken: Please find attached the breakdown you requested." Ms. Bulko testified that this was one of the documents by which Mr. Colley was made aware that the amount of assets on lease exceeded \$43 million.

*Testimony of Kathryn Bulko, August 11, 2003, p. 176, line 8 –  
p. 177, line 2; August 12, 2003, p. 92, line 4 – p. 93, line 12  
Begdoc 31677, 31678*

323. Ms. Bulko testified that a "leasing presentation" dated around January 17, 2000 was provided to all departments. It cites the July 1999 Council report as authority for the leasing program. The "business rules" provide that "all information and technology hardware and software must be leased", and it refers to "new lease agreements". She testified that "this was the message being sent out to everybody. Everything had to be leased. This is what Council approved. We have a leasing program and I see no reference here at all to a \$43 million cap."

*Testimony of Kathryn Bulko, August 11, 2003, p. 101, line 22*  
– p. 102, line 19  
*Exhibit 55, Volume 3, Tab 1, Begdoc 64958*

324. Ms. Bulko testified that she believed that "The City of Toronto 2001 Operating Plan and Budget" was also circulated to all departments. This document states that the leasing program "is in accordance" with the July 1999 Council Report. It sets out the business rules of the program, and also refers to "new lease agreements."

*Testimony of Kathryn Bulko, August 11, 2003, p. 102, line 20*  
– p. 103, line 5  
*Exhibit 55, Volume 3, Tab 2, Begdoc 32171*

**(d) Brendan Power**

325. Brendan Power – the IT lead for leasing – testified that his understanding of the contract was that MFP was the City's vendor of record; he did not understand there to be a cap of \$43 million on the contract.

*Testimony of Brendan Power, March 27, 2003, p. 167, line 14*  
– p. 168, line 19

**(e) Opinion of City's Legal Department**

326. At the Council meeting of May 2, 2001, issues arose from the report to Council recommending MFP as a leasing vendor for photocopier services. At this meeting, Ossie Doyle, the City Solicitor, gave his opinion that in each of the three years of the contract, the City could have agreements with MFP for three to five years. His opinion was that agreements could be entered into in each of the years 1999, 2000 and 2001. However, there was no reference at this meeting to a limit of \$43 million. Mr. Doyle testified that he was not asked about the issue of a cap at that meeting. The meeting and the ensuing debates were about the exclusivity, rather than the monetary limit, of the contract.

*Testimony of Bas Balkissoon, December 12, 2002, p. 94, line 21*  
– p. 95, line 2  
*Testimony of Ossie Doyle, April 7, 2003, p. 186, line 23 – 24*  
*Exhibit 4, Tab 14, Transcript of Council Meeting, p. 17, lines 20 – 22*

327. Following the Council discussion about the MFP contract, Ms. Viinamae sent an e-mail to Kathryn Bulko, copying Joan Anderton, Ossie Doyle, Jeff Griffiths and James Ridge. Ms. Viinamae wrote that at the Council meeting, Mr. Doyle had confirmed that "the City can choose to access leasing services for computer systems and software at any point during the three year contract term." Ms. Viinamae also stated that she had just spoken with Mr. Griffiths "who indicated that as far as he is concerned there is no audit issue with the above and therefore we should proceed with business as usual." The subject of the e-mail was "MFP Contract." There is no evidence that anyone replied to Ms. Viinamae to take issue with any part of her e-mail, and no one qualified Mr. Doyle's opinion by referring to a limit of \$43 million. This supported Ms. Viinamae's understanding of the contract with MFP.

*Begdoc 29326*

328. Ms. Viinamae was copied on the March 24, 2001 opinion of Lorraine Searles-Kelly (a lawyer in the City's legal department), who wrote "It does not appear that a Council authority extends beyond the three years or to leases for other than those projects listed in the clause (*i.e.*, Year 2000, Urban Planning and Development, Parking Tag, SAP, etc. originally contained in the 1999 to 2003 Capital Program)." There is no mention of a particular value of the contract in Ms. Searles-Kelly's e-mail. Further, Ms. Searles-Kelly was asked about the exclusivity of the contract with MFP, rather than the maximum amount on the contract. Her opinion was also copied to James Anderson, Joan Anderton, Len Brittain, Kathryn Bulko, Ossie Doyle, Michael Franey, Jeff Griffiths and Lou Pagano. Not one of the individuals who were copied provided a reply to point out that Ms. Searles-Kelly's opinion varied from Mr. Doyle's, or to qualify the opinion by specifying a \$43 million cap. Nor did Ms. Viinamae receive any direction in light of Ms. Searles-Kelly's e-mail.

*Testimony of Lana Viinamae, October 16, 2003, p. 112, line 4*  
— p. 115, line 11  
*Volume 11, Tab 63, Begdoc 64013*

**(f) Finance Department**

329. Members of the Finance department testified at the Inquiry that their view was that the value of the contract with MFP could exceed \$43 million, but by no more than 10%



(\$4.3 million). Further, they testified that they expected that excesses beyond \$43 million would be reported back to the Policy and Finance Committee under recommendation 4 of the July 1999 Council report. It was recommended that the CFO Treasurer and the Executive Director of IT "report back to the Policy and Finance Committee periodically over new leasing proposals and financial reports for the balance of the equipment and software". However, in all of the thousands of documents in evidence before the Inquiry, not one reflects an articulation by anyone in the Finance department that this was his or her understanding of the contract with MFP.

330. Ms. Viinamae testified that she never heard about additional leasing being reported back under recommendation 4 of the Council Report from anyone in Finance. She said "I have never heard that before, from Mr. Rabadi in all that time... I never heard that at all from Finance before..."

*Testimony of Lana Viinamae, October 16, 2003, p. 121, lines 3  
- 15*

**(g) Testimony of Len Brittain**

331. Len Brittain's testimony that he understood that there was a \$43 million limit on leasing expenditures (as long as it was by no more than 10%) contradicts the information he gave to KPMG during its investigation. According to the notes of Mr. Brittain's interview with KPMG: "He [did] not believe that the City was constrained by the \$43 million expenditures... He believed the purpose of the RFQ was to establish a vendor of record for the leasing program [which] would finance all future equipment leases... The City spent approximately \$20 million in software additions, over and above the \$43 million."

*Begdoc 12998 at p.3*

332. The KPMG notes also indicate that Mr. Brittain "saw the RFQ for Y2K as the beginning of a new leasing program. The vendor, which won this bid, was going to become the vendor of record for leasing over the term of the contract." There is no reference in the KPMG notes to overage limits of 10%, or to Mr. Brittain's reliance on recommendation 4 of the Council report.

*Begdoc 13021 at p.5*

333. Each year, Mr. Brittain or staff in his division had to calculate debt charges as part of the budget process. He would have to know the amount on lease to do this with any accuracy. However, Mr. Brittain did nothing to assure himself that the acquisitions did not exceed 10%. Mr. Brittain could not even recall having had discussions about recommendation 4: "I don't recall specifically a discussion... on that recommendation 4."

*Testimony of Len Brittain, July 29, 2003, p. 29, lines 9 – 19;  
July 30, 2003, p. 86, lines 9 – 18, p. 89, lines 14 - 20  
Affidavit of Len Brittain, para. 27*

334. On December 3, 1999, Mr. Brittain received an e-mail requesting his and Mr. Spizarsky's assistance in "automating the Leasing Program for all Hardware and Software for this City." A draft leasing program document was attached. Mr. Brittain testified that "at this point in time I did see that the work of my group to be complete." Evidently, the CMO did not have the same view, given that they asked for Mr. Brittain's assistance in setting up the leasing program. The draft leasing program document states that all I&T hardware and software may be leased, refers to "new lease agreements," and sets out an eleven-step procedure for acquiring new equipment. Clearly, the CMO was not solely set up to deal with equipment that had already been received, or which was exclusively for Y2K.

*Testimony of Len Brittain, July 29, 2003, p. 91, line 14 – p. 96,  
line 12  
Exhibit 52, Volume 2, Tab 24, Begdoc 13069  
Exhibit 52, Volume 2, Tab 21, Begdoc 13070*

335. Mr. Brittain reviewed a spreadsheet that Ms. Viinamae prepared setting out operating budget pressures from the Y2K project. The January 5, 2000 spreadsheet indicated amounts totalling over \$23 million for "lease costs for items not included" in the "initial lease request" of \$43.15 million. Mr. Brittain updated the spreadsheet, which he may have discussed at a January 6 meeting with Mr. Andrew and Ms. Viinamae, and sent a memo to Ms. Liczyk based on his analysis of the information. Mr. Brittain reported that "new lease costs for leasing other equipment and software/ maintenance adds \$4.7m[illion per year x lease term]." He attached the July 1999 Council report, which he stated "authoriz[ed] the leasing."

*Testimony of Len Brittain, July 30, 2003, p. 227, line 7 –*  
*p. 230, line 18*  
*Begdoc 5240*  
*Begdoc 13539*  
*Begdoc 64007*  
*Begdoc 64008*

336. Mr. Brittain agreed in his testimony that it was clear that the lease costs for the software based on the spreadsheet were in addition to the \$43.15 million from the initial lease request. He also agreed that the acquisition of additional software items would have led to an increase in the annual lease costs, and that this was apparent from the spreadsheet.

*Testimony of Len Brittain, July 29, 2003, p. 78, line 13 – p. 81,*  
*line 24*  
*Begdoc 5240*  
*Begdoc 64008*  
*Begdoc 13539*

337. When asked whether he became familiar with the contents of the spreadsheet while working on it, Mr. Brittain downplayed his involvement. He testified "I guess I didn't have too much involvement or understanding or knowledge of the issues because I knew budget [services] was going to be involved in this... so I did a high level review, I guess, of this document and made the changes as I've noted." Given that he sent a detailed memo to Ms. Liczyk on the spreadsheet, his review was not particularly "high level". Further, although Mr. Brittain thinks he gave a copy of the spreadsheet to Budget Services, it does not appear from the documents that that division addressed the operating budget pressure until the fall of 2000. No witnesses from Budget Services were called to testify at the Inquiry.

*Testimony of Len Brittain, July 29, 2003, p. 69, line 1 – p. 70,*  
*line 12*  
*Begdoc 5240*  
*Begdoc 64008*  
*Begdoc 15561*

338. Finance took no initiative to determine whether any financial analysis was necessary. When asked who he thought would have carried out the financial analysis on the additional equipment, Mr. Brittain testified that it would have been the initiative of the IT department: "they would presumably come to... whoever they thought they could get the analysis done by... We would've considered if we were asked." In fact, IT and the CMO sought

the assistance of Mr. Brittain's division on the leasing program – the fact that his division did not carry out their responsibilities, including proper financial analyses, on their own initiative, is the fault of Mr. Brittain. As he and his division would have been aware, information technology professionals were not in a position to conduct the financial work on the leasing program.

*Testimony of Len Brittain, July 29, 2003, p. 43, line 17 – p. 45,  
line 10*

339. The budget pressures from the software identified by Ms. Viinamae in her spreadsheets (that Mr. Brittain updated himself) were finally addressed in a March 15, 2001 report from the CFO & Treasurer to the Budget Advisory Committee (after being first identified by Ms. Viinamae over a year earlier). The report refers to the acquisition of software products totalling \$24.35 million for software licences that were not included in the 2000 budget, that were "required as part of the Y2K platform." Mr. Brittain was asked whether he looked at the underlying financial documentation to determine how the lease costs in the report became \$18.5 million from \$13.5 million. Mr. Brittain testified that he did not cross-check the March 15, 2001 budget report with the Council report of July, 1999. When asked whether he considered what the Council authority was for adding additional amounts, he testified "No, I didn't. I hadn't been involved in the process for a year and a bit... so I didn't – I didn't cross-link the two."

*Testimony of Len Brittain, July 10, 2003, p. 240, line 20 –  
p. 243, line 4  
Begdoc 13046*

**(h) Testimony of Nadir Rabadi**

340. Nadir Rabadi knew the amount of assets on lease with MFP could exceed \$43 million even before the Council meeting at the end of July 1999. In a July 12, 1999 e-mail, he wrote to Wanda Liczyk (cc. Len Brittain and Don Altman): "This report's analysis deal with \$43.15m of equipment which IT provided to us for this RFQ. There will be more leasing proposals commencing in 1999 itself. IT must indicate how much more will be coming and [from] which capital projects."

341. Mr. Rabadi testified, as did Mr. Brittain and Don Altman, that it was his belief that any additional equipment could be no more than 10% of \$43 million. However, there is no

reference to or confirmation of this understanding in any correspondence to or from Mr. Rabadi. Further, Mr. Rabadi referred to recommendation 4 of the Council report. There is no mention in this or other correspondence where Mr. Rabadi indicates that he is seeking the information about additional leasing proposals for the purposes of recommendation 4. Nor is there anything about a 10% limit or recommendation 4 in the notes from his KPMG interview.

*Exhibit 46, Volume 1, Tab 19, Begdoc 12751*  
*Testimony of Nadir Rabadi, June 26, 2003, p. 134, line 18 –*  
*p. 136, line 12*  
*Begdoc 16496*

342. In addition, Mr. Rabadi received a briefing note (with questions and answers) from Mr. Power that was drafted in July 1999. The question "Costs of further equipment in excess of \$43 million which IT tends to lease with full details" was answered "Unknown at this time, but any funds in operating for IT equipment/software it's a possibility." There is no evidence that Mr. Rabadi sought confirmation that additional equipment would not exceed \$43 million by greater than 10%. In fact, the note seems to indicate that operating budgets may provide a source of funds for additional equipment in the future. He does not appear to have made any inquiries as to what the amount would be.

*Exhibit 46, Volume 2, Tab 45, Begdoc 14221*  
*Testimony of Nadir Rabadi, June 26, 2003, p. 139, line 3 –*  
*p. 140, line 16*

343. The RFQ – a document which Mr. Rabadi was very familiar with – also contemplated acquisitions beyond \$43 million. Section 1.1.21 of the RFQ states "The City may from time to time negotiate separate corporate licence agreements for *major software acquisitions* and expects the Respondents to incorporate these costs into a lease agreement" (emphasis added). Mr. Rabadi testified that he "did not have any indication" that major software acquisitions would be in addition to the \$43 million: "The word, major, may mean anything." Mr. Rabadi's evidence on this point was highly evasive. He did nothing to satisfy himself that what obviously could be a significant amount of software would not cause the value of the contract to exceed \$43 million by greater than 10%.

*Exhibit 46, Volume 1, Tab 66, Begdoc 06104*  
*Testimony of Nadir Rabadi, June 26, 2003, p. 143, line 7 –*  
*p. 144, line 23*

344. Mr. Rabadi even made a handwritten notation beside section 1.1.21 of the RFQ: "Is this clause necessary? They certainly won't lease at the same rate plus operating expenses." Mr. Rabadi obviously identified a problem with the uncertainty of future lease rates, but when cross-examined, he just stated that he did not expect the software acquisitions "to be significant in any respect," though he acknowledged that acquiring the major software acquisitions within the 90 days of the RFQ letter which the lease rate would change was not likely to happen.

*Exhibit 46, Tab 2, Volume 2  
Testimony of Nadir Rabadi, June 25, 2003, p. 23, line 3 –  
p. 24, line 9*

**(i) Testimony of Don Altman**

345. Like Mr. Brittain and Mr. Rabadi, Mr. Altman testified that the amount of assets on lease with MFP could only exceed \$43 million if the excess was by no more than 10%. It should be noted, however, that Mr. Altman initially told KPMG that he did not view the \$43 million "as a ceiling placed on authorized spending." Mr. Altman testified "I would have thought that \$50 million would be the top side of this, at most" (\$50 million is greater than 110% of \$43 million.) The notes from his KPMG interview contain no reference to a limit of 10% beyond \$43 million.

*Testimony of Don Altman, July 8, 2003, p. 69, line 1 – p. 70,  
line 14  
Begdoc 12680*

346. The notes from Mr. Altman's KPMG interview also state "It is Mr. Altman's understanding that it was a program to finance all IT purchases over the term of the contract." When cross-examined, Mr. Altman's response was that "The first interviews were done totally and completely from memory" without him having done any research. He suggested that the remark in the KPMG notes was inaccurate.

*Testimony of Don Altman, July 8, 2003, p. 72, line 10 – p. 73,  
line 20*

347. Mr. Altman testified that he was "hanging [his] hat on the financial control bar that allows programs to overspend their capital budgets by 10%." He was not sure if that guideline was in place at the time, however. He said it was "sort of a practice." It was certainly

not a "practice" that IT was made aware of, and there is no reference to it in any of the correspondence about the assets on lease. Mr. Altman did not discuss with anyone in IT his understanding that it was acceptable to exceed \$43 million as long as it was by not more than 10%.

*Testimony of Don Altman, July 8, 2003, p. 149, line 24 –  
p. 150, line 12*

**(j) Al Shultz and Ken Colley**

348. Ms. Viinamae testified that she discussed a February 2, 2000 version of her spreadsheet setting out the software acquisitions with Ken Colley and Al Shultz. Neither of them expressed concern with the amount of assets on lease at that time.

*Exhibit 63, Volume 7, Tab 9, Begdoc 30576  
Exhibit 63, Volume 8, Tab 8, Begdoc 31648  
Begdoc 31648, 31649  
Begdoc 31648  
Begdoc 31649*

349. Ms. Viinamae was directed by Al Shultz to put the Councillors' computers on lease, in even though the renewal of these 1997 leases was clearly not contemplated in the Council report, and were beyond any \$43 million limit. The e-mail correspondence about the renewal of the Councillors' computer lease indicates that there were no discussions among those communicating on the issues about a \$43 million maximum (Novina Wong, Kathryn Bulko, Al Shultz, Jim Andrew).

*Testimony of Al Shultz, September 5, 2003, p. 86, line 23 –  
p. 89, line 9  
Begdoc 16312  
Begdoc 66634  
Begdoc 15704*

350. On February 16, 2001, Ken Colley was sent the "2001 Budget Briefing Note". The e-mail attaching the Briefing Note says "Ken as requested". It shows a total of over \$73 million of assets on lease. Al Shultz did not recall Mr. Colley informing him of the total of the assets on lease at that date, and no "alarm bells" went off at this point, despite the amount of assets exceeding \$43 million by \$30 million.

*Testimony of Al Shultz, September 5, 2003, p. 105, lines 4 – 18*  
*Exhibit 58, Tab 39, Begdoc 30208*

**(k) Testimony of Lou Pagano**

351. The fact that the CMO was establishing leasing procedures with the Purchasing division supported Ms. Viinamae's understanding that there was no \$43 million limit. The discussions about the leasing program were taking place in December of 1999, and the Y2K Program, in terms of major expenditures, was going to be substantially complete within that month. Ms. Viinamae testified that Mr. Pagano's assistance with the leasing program demonstrates that, contrary to Mr. Pagano's testimony, he did not believe there was a \$43 million cap on expenditures.

*Affidavit of Lana Viinamae, at para. 34*  
*Testimony of Lana Viinamae, October 16, 2003, p. 125, line 9*  
*– p. 129, line 22*

352. On December 13, 1999 Lou Pagano sent a memo to Ms. Viinamae after having reviewed the draft procedures for the IT leasing program. He also copied his feedback to his staff (Mr. Spizarsky and Mr. Beattie). The draft refers to the Council report of July 1999 and states that "based on this report," the CMO has been created "to implement the Council's approval for all computer hardware and software to be leased through MFP Financial Services, the approved vendor of record for leasing." Mr. Pagano did not contradict the description of MFP being a "vendor of record," and he did not insert a limit of \$43 million. On page 3, "Vendor Selection Process", Mr. Pagano wrote "Under Vendor of Record - Purchase Order only Y2K Purchase: Is this reference still accurate?" Evidently, Mr. Pagano recognized that the leasing program was not just for Y2K purchases.

*Testimony of Lana Viinamae, October 30, 2003, p. 43, line 2 –*  
*p. 49, line 22*  
*Exhibit 20, Volume 2, Tab 63, Begdoc 16093*  
*Exhibit 20, Volume 2, Tab 62, Begdoc 36620*  
*Exhibit 20, Volume 2, Tab 60, Begdoc 13069*  
*Exhibit 63, Volume 10, Tab 18, Begdoc 64048*  
*Begdoc 36620*  
*Exhibit 63, Volume 3, Tab 1, Begdoc 13045*

353. Mr. Pagano and his staff assisted the CMO in setting up the procedures for the leasing program beyond 1999. He agreed that it appeared that there was going to be a continuing



leasing program over a period of time and into the future as of February 2000. Mr. Pagano does not recall anyone from the Purchasing division suggesting that the Council report should have been reviewed because it contemplated reporting back to the Policy and Finance Committee.

*Testimony of Lou Pagano, March 4, 2003, p. 31, line 4 –  
p. 40, line 12, p. 59, line 14 – p. 70, line 18  
Exhibit 20, Vol. 3, Tab 14, Begdoc 4219*

354. Mr. Pagano had also approved the Project Charter for the photocopier replacement, which stated that the photocopiers "will be acquired through the successful Vendor and financed through the City's leasing program."

*Begdoc 09362*

355. Ms. Viinamae also noted that Mr. Pagano informed her that there was no need to issue an RFP for the photocopier acquisition in May 2001. Mr. Pagano confirmed that as long as Ms. Liczyk was in agreement, the photocopiers could be treated as part of the existing contract and there was no need to do an RFQ.

*Testimony of Lana Viinamae, October 16, 2003, p. 125, line 9  
– p. 129, line 22*

356. Mr. Pagano was also a contact on the March 17, 2001 Administration Committee report on photocopiers. The report stated that "our current technology lease provider will provide for the cost to be charged to Departmental budgets, at an annual cost estimated to be \$1.3 million". Mr. Pagano testified that he knew that "our current technology lease provider" was MFP, and that it was determined that the photocopiers could be put on the MFP lease without a competitive process, such as an RFP or an RFQ.

*Testimony of Lou Pagano, March 4, 2003, p 136, line 7 – p.  
141, line 21  
Exhibit 4, Tab 3, Begdoc 9581*

**(I) Testimony of Wanda Liczyk**

**(i) Photocopiers**

357. On July 14, 2000, Ms. Viinamae e-mailed Ms. Liczyk and asked her to confirm the information that she received from Lou Pagano – that photocopiers should be placed on the

MFP lease. She replied later the same day: "I agree that they should be treated as an extension of our pc's and printers and therefore fall under our leasing program as peripherals".

*Affidavit of Lana Viinamae  
Begdoc 15578*

358. Ms. Liczyk agreed that her e-mailed reply to Ms. Viinamae asking about the photocopiers "may not have been the most considered response in the world." She relied on Mr. Pagano being a member of the Steering Committee for the photocopiers and that he was "a Director of mine who was very particular about following the procurement by-law." Therefore, she agreed "no alarm bells" went off when she read the photocopier report. She testified that around the date of that report she was in the middle of the budget debates "and I think I didn't pay as much attention to this as I could have, in hindsight." From the responses of both Mr. Pagano and Ms. Liczyk, it is apparent that neither believed there was a cap of \$43 million on the MFP lease expenditures.

*Testimony of Wanda Liczyk, November 18, 2003, p. 155, line  
19 – p. 158, line 22  
Testimony of Wanda Liczyk, November 18, 2003, p. 147, line 6  
– p. 155, line 7*

**(ii) Software Acquisitions**

359. Ms. Viinamae testified that Ms. Liczyk instructed her to acquire the software at a meeting of the Y2K Steering Committee around October 1999. Ms. Viinamae stated in her affidavit: "it was clear that \$43.15 million was not the maximum amount that would be leased under the program because Finance directed that all future hardware, software, and maintenance for IT would be leased."

*Affidavit of Lana Viinamae, para. 32  
Testimony of Lana Viinamae, October 23, 2003, p. 73, line 16  
– p. 178, line 5*

360. Although Ms. Liczyk received versions of Ms. Viinamae's spreadsheet setting out operating budget pressures arising from the software acquisitions as early as November 26, 1999, Ms. Liczyk testified that she thought it was not until mid-December 2000 (nearly a year later) when she became aware that \$24 million worth of software had been added to the lease.

*Testimony of Wanda Liczyk, November 4, 2003, p. 127, line 18 – p. 142, line 4*

361. Ms. Liczyk also reviewed the version of the spreadsheet that Mr. Brittain sent her on January 6, 2000, and his memo analysing the contents. Ms. Liczyk testified that she would have read the memo and spreadsheet, but did not recall "doing any searching review of it" until she received the December 15, 2000 version. Only at that point did it occur to her that there were annual payments exceeding the \$43 million. She would have quickly read it, but passed it over to budget staff. She didn't recall reading the spreadsheet, because at the time she was "in the threw of the budget." The fact that Ms. Liczyk did not appreciate the information she was given by Ms. Viinamae is not Ms. Viinamae's responsibility.

*Volume 8, Tab 12, Begdoc 64007, 64008  
Testimony of Wanda Liczyk, November 19, 2003, p. 186,  
line 19 – p. 190, line 23*

*Exhibit 63, Volume 14, Tab 4, Begdoc 31766, 31767  
Testimony of Wanda Liczyk, November 13, 2003 p. 151,  
line 16 – p. 155, line 5*

362. Ms. Liczyk testified that it was not apparent from the spreadsheet that the software items listed under the heading "Lease Costs for Items Not Included in the Original Lease Estimate" referred to funds that had already been spent rather than budgeted. One of the items listed is Oracle, and Ms. Liczyk had signed the delegated approval form and the Master Lease Agreement for Oracle within a week before reviewing this spreadsheet. It is difficult to believe that she would not have recalled Oracle as a recent acquisition.

*Exhibit 63, Volume 8, Tab 12, Begdoc 64007, 64008  
Testimony of Wanda Liczyk, November 13, 2003, p. 158, line 6  
– p. 163, line 10*

363. Line Marks' handwritten notes from the December 9, 1999 Y2K Steering Committee meeting list Microsoft, Computer Associates, Kanatek, and Veritas with amounts, lease terms, and "P.O. have been issued" written in the margin. Since a purchase order had been issued, it is obvious that the software had already been purchased, rather than merely budgeted for, as Ms. Liczyk suggests. These notes are also consistent with Ms. Viinamae having been directed to acquire the software for the City in December 1999.

*Exhibit 63, Volume 17, Tab 2, Begdoc 78206 at 78210  
Testimony of Lana Viinamae, October 17, 2003, p. 174,  
line 21 – p. 180, line 10; October 30, 2003, p. 97, line 24 –  
p. 99, line 9*

364. Ms. Liczyk testified that her March 15, 2001 report finally disclosed to Council that the software was added to the lease. Ms. Liczyk testified that the section of that report on computer leases disclosed the software acquisition to Council. At the time she felt this was adequate disclosure, but agreed that in hindsight it could have been better. She testified that the expenditures were within the Y2K budget of \$160 million.

*Exhibit 63, Volume 8, Tab 27, Begdoc 31894  
Testimony of Wanda Liczyk, November 4, 2003, p. 127,  
line 18 – p. 142, line 4*

**(iii) January 17, 2001 Meeting**

365. Ms. Liczyk testified that she chaired a meeting on January 17, 2001 where Dash Domi, Rob Wilkinson, Kathryn Bulko, Lana Viinamae, and Ken Colley were present. She told them that she was not happy with the extra amounts that had been added to the lease and that nothing more should be added to the lease.

*Testimony of Wanda Liczyk, November 4, 2003, p. 142, line 5  
– p. 144, line 5*

366. When asked why she did not issue such a significant directive in writing, she stated "It wasn't my style to be e-mailing to file or e-mailing all the time," and that the budget pressures were reported in the March 15, 2001 report (two months later). Ms. Liczyk did not write to other staff or to Councillors to alert them to what had happened, nor did she speak to Purchasing about what she stated were her strong views at the meeting that nothing more should be put on lease.

*Testimony of Wanda Liczyk, November 13, 2003, p. 181, line 1  
– p. 181, line 14; November 18, 2003, p. 141, line 25 – p. 142,  
line 12*

367. Ms. Liczyk's affidavit does not contain any statement that she told those in attendance at the January 17 meeting to stop putting things on lease, and no other witness testified that that was the direction she gave at the meeting.

368. Nor did Ms. Liczyk speak with Joan Anderton about the \$24 million software expenditure. She replied "All the activity around the budget process, this is in the – heat of the whole debate that I missed speaking to her about that."

*Testimony of Wanda Liczyk, November 18, 2003, p. 146,  
lines 2 – 15*

369. If Ms. Liczyk found out about the operating budget pressure related to software in mid-December 2000, it seems unusual that she would wait until January 17 to give a message to stop putting items on lease, particularly given it was a pre-planned meeting. A January 8, 2001 e-mail from Kathryn Bulko to Pino Fuoco, Paula Leggieri, and Line Marks states "Lana is scheduled to meet with Wanda on January 17 to discuss the budget with a strong emphasis on the lease portion of the budget." Ms. Bulko testified that she recalled discussing the non-funded software programs "that were Y2K funded for the first year," and that "the most important thing that I remember is that Wanda had then charged Ken and Louisa with managing the finance-related tasks of the leasing program." That was the most important thing Ms. Bulko recalled, rather than any direction from Ms. Liczyk to stop putting items on lease.

*Begdoc* 6650  
*Begdoc* 15707  
*Testimony of Kathryn Bulko, August 11, 2003 p. 167, line 8 –  
p. 170, line 3*

**PART 13 -  
ORACLE ACQUISITION**

**(a) Introduction**

370. The Oracle Enterprise Licence Agreement (ELA) was approved by the Y2K Steering Committee at its December 30, 1999 meeting. Ms. Liczyk executed the master lease agreement, and CAO Mike Garrett, Ms. Liczyk, Purchasing Director Lou Pagano, and Ms. Viinamae all signed the Y2K delegated approval form. In doing so, they approved the Oracle acquisition, and confirmed that it was an appropriate Y2K purchase on a sole-source basis.

371. There was considerable IT experience on the Y2K Steering Committee, which was comprised of Ms. Liczyk, Mr. Andrew, and Councillor Dick O'Brien. By the time the Committee considered Oracle's November 1999 proposal for an ELA, the concept and pricing of an ELA was very familiar to them (particularly to Mr. Andrew and Ms. Liczyk). Ms. Liczyk, Mr. Andrew, and Stephen Wong had considered other ELA proposals prior to 1999. In the process they all gained an understanding of ELAs and their benefits.

372. The Oracle proposal in 1999 was an attractive offer. Prior to amalgamation in 1998, the ELA had been identified as something that would benefit the City and complement its IT strategy, and the pricing offered in 1999 was considerably improved from earlier proposals.

373. The 1999 Oracle ELA proposal did not come out of the blue. The City had considered earlier proposals that were more expensive. Further, there were a number of Y2K Steering Committee meetings in the fall of 1999 leading up to the signing of the agreement on where the need for an ELA, or the fact that an ELA was pending, was discussed.

374. By the fall of 1999, a significant number of program areas were asking the Y2K Project Management Office (PMO) for Oracle software as part of their business cases for "business as usual on January 1, 2000". The Y2K Steering Committee approved several requests, and at least 2000 additional seats were required for Y2K. A number of applications were internally developed and could not be accessed through run-time licences. Therefore, the Y2K solution for those applications required an ELA. Mr. Andrew and Ms. Liczyk also told Ms. Viinamae there was a need for 2000 licences for SAP.

375. Ms. Viinamae made a presentation to the Y2K Steering Committee at the December 9, 1999 meeting after receiving a proposal from Oracle in November 1999 with the pricing and details of the ELA. She had already discussed the proposal with Mr. Andrew. Ms. Viinamae presented a cost comparison of two scenarios, both of which had to be in place by December 31, 1999: either adding 2000 network (enterprise) licences to satisfy the Y2K needs of priority one business cases (\$13.1 million), or acquiring 10,000 enterprise network licences (\$11.3 million). The Committee gave approval in principle to negotiate the latter agreement.

376. Had the City purchased 2000 network licences (with none of the benefits of an ELA), the price per licence would have been \$1,745. Under the ELA entered into by the City, the price per licence was \$434.

377. By negotiating with Larry Griffith from Oracle in November and December 1999, Ms. Viinamae obtained several improvements in the offer, including a \$2 million price reduction.

378. The Oracle ELA was also needed for Y2K because it upgraded the City's previous maintenance agreement from bronze level to silver level. Bronze support did not include after-hours, weekends or holidays, including New Year's Day. Had the City faced database problems on January 1, 2000 (the key date) and had not upgraded the maintenance, it would have had no recourse until the next business day (January 3, 2000).

379. By entering into the ELA with Oracle, the City also resolved the problem that in the amalgamated City, software was being used contrary to agreements, due to unorganized records from previous municipalities on software acquisitions and usage. If a Y2K breakdown related to licences being used illegally had occurred, the City would not have had any recourse against Oracle.

380. An inventory of existing licences, plus projections of increased use, confirmed that 10,000 users was reasonable. The hasty conclusion in the February 6, 2002 Auditor's report on Oracle that it was "highly unlikely the City would need ... (10,000) licences in the foreseeable future" had no basis, and was contrary to information provided by City staff as well

as earlier reports and estimates. The IT strategy for the City also supported the evidence that the number of Oracle users was expected to increase.

381. The City did not produce its own charts of monthly usage of Oracle licences until March 2002. Many of these charts (particularly the earlier ones) underreported the number of users. Overall, the actual figures averaged at least 80 to 90 percent of the 10,000 licences.

382. Mr. Power worked with lawyer Mark Fecenko from Faskens on negotiating the Master Software Licence and Services Agreement with Oracle. Mr. Fecenko was a specialized IT lawyer with extensive experience in dealing with Oracle. Mr. Fecenko tailored Oracle's standard form agreement to meet the City's needs.

383. Ms. Viinamae set out the business case for Oracle verbally at the December 9, 1999. The Committee was very familiar with the ELA and its benefits. None of the Committee members asked Ms. Viinamae to prepare a written business case, or to provide them with more information, as they did on other matters. There was no written by-law or policy of the City at the time dictating that a written business case was required.

384. Ms. Viinamae notified all IT Directors of the Oracle acquisition. Once Ms. Viinamae told the Directors about the ELA, it was their responsibility to communicate the fact that the City had entered into an ELA and to explain its effect on each business area. As indicated in the network order form under the Oracle Agreement, Michael Franey was responsible for the administration of the contract.

**(b) Stephen Wong's Concerns About the Oracle Agreement**

385. Stephen Wong's affidavit sets out his concerns arising from his review of the Oracle agreement in early 2000. Mr. Wong was concerned that the City had not followed its "usual practices and procedures" in entering the agreement because:

- He could not locate a written business case in support of the decision to acquire Oracle licences;
- There did not appear to be a competitive process for selecting Oracle as the vendor (such as an RFP or RFQ);



- There did not appear to be any discrete authority from City Council resulting from the City's usual process of reporting to a Standing Committee and Council for an acquisition of such magnitude without direct authority from City Council,
- The agreement was signed using the Y2K delegated authority where it was not clear why the acquisition was a Y2K issue;
- The Oracle Agreement was a "standard-form" agreement, prepared by the vendor.

Further, he stated that the administration of the agreement after its execution had not proceeded appropriately because:

- He could not find any written communication to departmental computer application owners explaining the impact of the ELA;
- At the time, there was no clear city-wide control of the distribution and management of the licences acquired pursuant to the ELA.

*Affidavit of Stephen Wong, para. 10*

The submissions that follow will address each of Mr. Wong's criticisms, and demonstrate that they are unfounded, contrary to the evidence, and the result of an insufficient investigation.

**(c) Earlier Oracle Proposals**

386. Wanda Liczyk, Jim Andrew, and Stephen Wong considered other Oracle Enterprise Licence Agreements ("ELA") proposals prior to 1999. In the process, they all gained an understanding of ELAs and their benefits. Consequently, by the time the Y2K Steering Committee considered Oracle's 1999 proposal, the concept and pricing of an ELA was very familiar to them (particularly to Mr. Andrew and Ms. Liczyk). It was not necessary for Ms. Viinamae to educate the Committee on that which they already understood. Not only was the Oracle ELA already regarded as something that would benefit the City, but the pricing offer in 1999 was considerably improved from early proposals.

*Testimony of Wanda Liczyk, November 13, 2003, p. 207*  
*Testimony of Stephen Wong, August 5, 2003, p. 117, line 23 –*  
*p. 118, line 7*  
*Testimony of Jim Andrew, October 17, 2003, p. 55, line 20 –*  
*p. 56, line 22*

**(i) 1995 Proposal**

387. Mr. Andrew was aware of the relative advantages and cost considerations relating to Oracle ELAs by virtue of his dealings with Oracle over the previous years. He was approached by Oracle around 1995 when he was implementing a corporate administration work plan involving the replacement of the payroll, finance, and human resource system on behalf of Metro. The City did not go ahead with an ELA at that time because the agreement was considered too expensive to be justified for only one initiative. However, the City continued to purchase full-use licences.

*Affidavit of Lana Viinamae, para. 98  
Testimony of Jim Andrew, September 30, 2003, p. 31, line 4 –  
p. 32, line 15; October 17, 2003, p. 55, line 20 – p. 56, line 22*

**(ii) 1997 Proposal**

388. In December 1997, Oracle put forward a proposal to the IT Service Review Team. Ms. Liczyk, Mr. Andrew and Mr. Wong, among others, were part of the team. The team was led by Ms. Liczyk, and comprised the seven CIOs in the former municipalities. They prepared a report for the amalgamation transition team.

*Testimony of Wanda Liczyk, November 13, 2003, p. 201, line  
16 – p. 202, line 8  
Testimony of Stephen Wong, August 5, 2003, p. 111, line 19  
Begdoc 5466  
Exhibit 54, Volume 2, Tab 41, Begdoc 72615  
Exhibit 54, Volume 2, Tab 33, Begdoc 59687*

389. The 1997 proposal involved a sale of 3,000 network licences for approximately \$9.9 million (about \$3,300 per licence). The education and on-site technical support was \$4 million, and the total cost was \$15.6 million. In contrast the 1999 Oracle agreement entered into by the City was for 10,000 network licences for \$4.3 million (\$434 per licence).

*Testimony of Jim Andrew, September 30, 2003, p. 32, line 16 –  
p. 34, line 13  
Testimony of Larry Griffith, August 7, 2003, p. 47, line 1 –  
p. 8, line 19  
Exhibit 54, Volume 1, Tab 3, Begdoc 5466 at 5489*

**(iii) Report Recommending Acceptance of Oracle ELA Proposal**

390. Out of the 1997 Oracle proposal, a Council report recommending the acquisition of the Oracle ELA was drafted by John Birss in February 1998 under then Commissioner of Corporate Services, Margaret Rodrigues. The report referred to the expanding number of users, the consolidation of existing business applications, and the acquisition of new business applications creating demand for Oracle licences. The report emphasized that the ELA was more cost-effective than buying individual licences, and concluded: "While the investment cannot be avoided, the total cost of the investment can be minimized through the acceptance of the proposal for an ORACLE Enterprise Agreement..."

*Exhibit 54, Volume 2, Tab 1, Begdoc 40456*

391. Ms. Rodrigues believes that she reviewed the February 4, 1998 draft report. She testified that she was aware at the time of the drafting of the report that the IT Service Review Team was working to facilitate the amalgamation of information technology for the new City. She also knew that there were discussions about consolidating the Oracle licences "to save the new city a considerable amount of money." Ms. Rodrigues testified that she was aware at the time of the cost savings that could be derived from an ELA with Oracle, and knew that the IT Service Review Team (including Ms. Liczyk, Mr. Andrew and Mr. Wong) supported the City having an ELA. However, the City did not proceed with the agreement at that time for budgetary reasons.

*Testimony of Margaret Rodrigues, November 20, 2003, p. 49,  
line 14 – p. 52, line 3; p. 50, line 15 – p. 51, line 22*

**(iv) 1998 Proposal**

392. Mr. Andrew executed a software licensing agreement with Oracle on behalf of the City in July 1998.

*Testimony of Jim Andrew, September 29, 2003, p.p. 128 –  
131; September 30, pp. 30 – 36  
Exhibit 54, Vol. 2, Tab 2, Begdoc 5538*

393. Mr. Andrew was also involved in extensive negotiations in the fall of 1998 about acquiring licences from Oracle for SAP. An ELA was considered at that time. He participated

in a number of meetings with Stephen Wong, Al Shultz, Larry Griffith, Brian Loreto, and Duncan Card (a lawyer from Davies, Ward & Beck who represented the City).

*Testimony of Jim Andrew, September 30, 2003, p. 35, line 1 – p. 36, line 25; September 29, 2003, p. 130, line 15 – p. 131, line 11*  
*Testimony of Brian Loreto, April 1, 2003, p. 244, line 16 – p. 249, line 24; April 2, 2003, p. 71, line 18 – p. 101, line 18*  
*Testimony of Stephen Wong, August 5, 2003, pp. 166 – 173*  
*Testimony of Al Shultz, September 5, 2003, p. 74, line 16 – p. 77, line 3*  
*Exhibit 26, Volume 1, Tab 6, Begdoc 5642*  
*Exhibit 26, Volume 2, Tab 9, Begdoc 5641*  
*Exhibit 26, Volume 1, Tab 7, Begdoc 5637*  
*Exhibit 26, Volume 2, Tab 6, Begdoc 5636*  
*Exhibit 26, Volume 2, Tab 2, Begdoc 5625*

394. Mr. Andrew and Ms. Liczyk were two of five members on the SAP Steering Committee.

*Testimony of Wanda Liczyk, November 13, 2003, p. 205, lines 21 – 22*  
*Testimony of Jim Andrew, September 30, 2003, p. 35, line 1 – p. 36, line 25*

395. The 1998 ELA proposal was for 6,433 licences for about \$8 million (about \$1,300 per licence, not including maintenance).

*Exhibit 54, Volume 1, Tab 6, Begdoc 40460*  
*Testimony of Larry Griffith, August 7, 2003, p. 48, line 21 – p. 49, line 25*

396. The 1998 Oracle ELA offer was not pursued by the City at that time, in part because of the significant cost, which unlike the 1999 agreement, did not include maintenance.

*Testimony of Stephen Wong, August 5, 2003, p. 176, line 11 – p. 178, line 22*  
*Testimony of Larry Griffith, August 6, 2003, p. 142, line 12 – p. 143, line 18*  
*Testimony of Jim Andrew, September 29, 2003, p. 130, line 23 – p. 131, line 4*

397. When asked about corporate knowledge of Oracle and ELAs, Mr. Wong testified that the focus of his review was on 1999. He did not go back to background material or justifications given in 1997 and 1998. These justifications are contained in the 1997 Oracle

report and in documents related to the negotiations in the fall of 1998 (which he was involved in). Clearly these were relevant to providing a context for the agreement reached in 1999.

*Testimony of Stephen Wong, August 5, 2003, p. 161, line 6 –  
p. 171, line 7  
Exhibit 54, Volume 2, Tab 10, Begdoc 52016  
Exhibit 54, Volume 2, Tab 11, Begdoc 05642*

**(d) Discussions Prior to Reaching Agreement in December 1999**

398. Clearly, the 1999 Oracle ELA proposal did not come out of the blue. Not only had the City considered earlier proposals (which were more expensive), but there were a number of Y2K Steering Committee meetings in the fall of 1999 leading up to the signing of the agreement on December 31, 1999, at which the need for an ELA, or the fact that an ELA was pending, was discussed.

399. Obviously, there was considerable IT experience on the Y2K Steering Committee. Ms. Liczyk had been the CAO of North York, with the CIO reporting to her, and she was the CAO responsible for the IT Service Review Team on amalgamation. In her position as CFO & Treasurer of the new City of Toronto, technology was very significant for her Department (Finance). Mr. Andrew was the Executive Director of IT, and had been in government IT positions for over 35 years. As stated above, he had considered earlier Oracle ELA proposals and executed a licensing agreement with Oracle in July 1998. Councillor Dick O'Brien represented City Council on the Y2K Steering Committee, so that the Council would have a seat on the Committee and a decision-making role. Mr. O'Brien had been the Chair of the Administration Committee of Metro for about three years before amalgamation. IT reported to that Committee at Metro, so Councillor O'Brien had dealt with various IT-related issues.

*Testimony of Wanda Liczyk, November 13, 2003, p.210, line 6  
– p. 213, line 22.  
Affidavit of Jim Andrew, para 3 – 10  
Testimony of Stephen Wong, August 5, 2003, p. 119, lines 6 –  
23;*

**(i) September 1999**

400. On September 22, 1999, there were discussions about the City entering into an Oracle ELA at a meeting attended by Len Brittain, Don Altman, Glenn Vollebregt, Lana

Viinamae, and Line Marks. There is reference in the minutes to "5 years is acquisition and maintenance. May need to ask for how much for maintenance over 5 years, *i.e.* Oracle and CA." Ms. Viinamae testified that this reference reflects the discussion that took place about the need to fund new software acquisitions (such as Oracle) beyond the first year, to cover support costs.

*Testimony of Lana Viinamae, October 17, 2003, p. 65, line 12*  
– p. 75, line 17  
*Affidavit of Lana Viinamae, para. 99*  
*Exhibit 54, Volume 2, Tab 36, Begdoc 2779*  
*Exhibit 54, Volume 2, Tab 38, Begdoc 64006*

401. Again, Mr. Wong was unaware of this background. He testified that at the time he was investigating the Oracle acquisition, he was not aware that both Finance and IT officials were discussing the possibility of an Oracle lease as early as September 1999.

*Testimony of Stephen Wong, August 6, 2003, p. 17, line 3 –*  
*p. 19, line 15*

**(ii) October 1999**

402. Ms. Viinamae testified that at the October 7, 1999 Y2K Steering Committee meeting, she was directed to speak to Oracle about entering into an ELA. This led to the November 1999 proposal from Oracle. Oracle did not give unsolicited proposals.

*Testimony of Lana Viinamae, October 17, 2003, p. 89, line 7 –*  
*p.90, line 22*  
*Affidavit of Lana Viinamae, para. 101*

403. Ms. Liczyk agreed that the Y2K Steering Committee gave Ms. Viinamae direction to speak to Oracle about pursuing an ELA at the October 7, 1999 meeting. Ms. Liczyk testified: "She'd advised us that this would be a good thing for the City and I think we all concurred... She wasn't asking for specific approval from us... We just sort of said 'go, do'. The concept of the ELA was "reasonable" and "would have good implications for the City if the price was right and if it lowered administrative costs, great." Ms. Liczyk recalls discussing the concept that Oracle was "something that it would be good to get a City-wide licence agreement for." She testified that her perception in October 1999 was that the acquisition would be for the following year, but that "I think that changed as we got closer to the end of the year".

*Affidavit of Wanda Liczyk, para. 189  
Testimony of Wanda Liczyk, November 6, 2003, p. 152, line 18  
– p.167, line 22, p. 157, line 12– p. 163, line 22*

404. Mr. Andrew testified that he was aware that Ms. Viinamae was having discussions with Mr. Griffith of Oracle during the fall of 1999.

*Testimony of Jim Andrew, September 30, 2003, p. 52, line 11 –  
p. 54, line 20*

405. Ms. Viinamae testified that there was discussion of a number of matters at the October 7, 1999 meeting, including: the number of additional licences that would be required for Y2K business cases, the prevalence of unlicensed usage, the use of licences that had not been paid for, the lack of clarity about usage because of incomplete and disparate record-keeping in the previous municipalities, and the failure of some municipalities to keep up their maintenance fees before amalgamation. There was discussion of leasing as a method of lowering annual costs.

*Affidavit of Lana Viinamae, para. 101*

406. There are a number of references to Oracle in the October 7 minutes. For example, under "matters arising from the minutes," it states:

A question was asked on what [is] being done Corporate Wide regarding Oracle licences. This is being looked at and will be part of the capital budget for next year. Now that the City is leasing, the possibility of getting multi-use licences is being investigated. Generic platform prices are being obtained. Using schedule with the Master Contract is also being looked at.

*Exhibit 54, Volume 2, Tab 7, Begdoc 15210*

407. Further on, business case #28 (Integrated Disability Management System) in the October 7 minutes refers to a request for additional funds due to an "insufficient number" of licences. It anticipated up to 600 users of that system:

The original proposal assumed that Oracle, as a City standard, would be available for common use. Discussions with Computer Operations and Telecommunications began in May re the need/process of acquiring Oracle as licensing issues were then

under review. *It appears that insufficient licenses are available for our use at this time and that it would be prudent to acquire additional licences.* We are asking for 60 full concurrent licenses. Our current projected user base is 80-85 HR users, with a possible 500-600 supervisors being added some time after implementation...

*Exhibit 54, Volume 2, Tab 7, Begdoc 15210 at 15212  
[emphasis added]  
Testimony of Lana Viinamae, October 30, 2003, p. 81, line 10  
– p. 82, line 24*

408. There were more requests from program areas making applications for Oracle licences in other minutes of the Y2K Steering Committee (October 14, 1999 and October 28, 1999). Mr. Wong did not review these minutes during his investigation, even though he agreed in his testimony that the above reference articulated a departmental need for Oracle licences. He only reviewed Y2K Steering Committee minutes for the December 9, 1999, December 30, 1999, and January 6, 2000 meetings.

*Y2K Steering Committee Minutes, October 14, 1999, (Exhibit 54, Volume 2, Tab 5, Begdoc 15225 - BC No. 124)  
Y2K Steering Committee Minutes, October 28, 1999, (Exhibit 54, Volume 2, Tab 16, Begdoc 15216 - BC No. 35 & BC No. 94)  
Testimony of Stephen Wong, August 6, 2003, p. 13, lines 14 –  
p. 21, line 25*

**(iii) December 1999**

409. After receiving a proposal from Oracle in November 1999 with the pricing and details of the ELA, Ms. Viinamae discussed it with Mr. Andrew. Ms. Viinamae then made a presentation to the Y2K Steering Committee at the December 9, 1999 meeting. Her notes from the meeting have not been found. She had the proposal from Oracle with her at the meeting, and she discussed the calculation of the cost per desktop with the Committee. She had notes on the 2,000 licences needed for Y2K (for IBMS, water and property taxes, CLASS, IDMS, and other systems), the calculation of the cost comparison between the ELA and the GTA pricing, and the five-year cost summary. Ms. Viinamae presented a cost comparison of the two scenarios, both of which had to be in place by December 31, 1999: either adding 2,000 network (enterprise) licences to satisfy the Y2K needs of priority one business cases (\$13.1 million) or acquiring



10,000 enterprise network licences (\$11.3 million). The Committee gave approval in principle to negotiate the latter agreement.

*Testimony of Lana Viinamae, October 17, 2003, p. 115, line 19 – p. 119, line 15*  
*Affidavit of Lana Viinamae, para. 104*

410. At the meeting, Ms. Viinamae reviewed the contents of the proposal, but did not distribute it to every member of the Committee because it was not finalized. In hindsight, Ms. Viinamae agreed that "a lot more documentation would have been definitely worthwhile." However, the Committee did not ask Ms. Viinamae to produce any further information, as they had on other occasions when they felt they did not have enough information. (For example, business case #100 in the minutes is a "resubmission to answer Steering Committee questions".) Ms. Liczyk and Mr. Andrew were already familiar with the benefits of the Oracle ELA. Mr. Andrew in particular had received and considered a very similar form of written proposal from Oracle in 1997. Mr. Andrew, Mr. Power and Mr. Franey saw the actual proposal some time after the December 9 meeting.

*Testimony of Lana Viinamae, October 22, 2003, p. 46, line 19 – p. 50, line 18; October 29, 2003, p. 163, line 8 – p. 165, line 2*

411. Kathryn Bulko testified that she understood that Ms. Viinamae had made a presentation to the Y2K Steering Committee, and that a contract with Oracle was negotiated between October and December 1999. The notes from Ms. Bulko's KPMG interview support this understanding and contain the following comments, with arrows connecting them: "Lana negotiated with Oracle late 99," "Maybe Brendan Power," "Y2K Steering Committee," "Lana presented to them," "business case in minutes."

*Testimony of Kathryn Bulko, August 12, 2003, p. 88, line 16 – p. 91, line 3*  
*Exhibit 54, Volume 2, Tab 113, Begdoc 12195*

412. The minutes from the December 9, 1999 contain references to Oracle:

"The Y2K pressure on operations:

- The Project included the acquisition and first year maintenance
- Legalise software usage will save the City from future lawsuits
- Oracle enterprise License Agreement..."

413. Further, the change request related to the Y2K business case for "Fleet Management" states: "Deferred. Reassessment to be made. Oracle Licence may reduce the cost." This is consistent with approval in principle being given at the December 9 meeting to negotiate an ELA.

*Exhibit 56, Volume 2, Tab 4, Begdoc 00298 at 000303  
Testimony of Lana Viinamae, October 30, 2003, p. 96, lines 9  
- 18*

414. Ms. Viinamae sent a version of the Y2K operating budget pressure spreadsheet to Mr. Andrew and Ms. Liczyk on November 26, 1999. It sets out "Oracle Licensing (x5)" as an operating pressure. Ms. Viinamae testified that she likely reviewed the spreadsheet with the Committee at the December 9 meeting, and this is consistent with reference in the minutes to "Y2K pressure on operations" arising from the Oracle ELA having been discussed. Because the members of the Committee were already familiar with the Oracle ELA and its benefits, the discussions focussed more on the budget aspects of the deal. There would have been no reason to discuss an operating pressure arising for the Oracle acquisition had there not been a decision made by the Y2K Steering Committee to proceed with it.

*Testimony of Lana Viinamae, October 30, 2003, p. 94, line 19  
- p. 96, line 8, p. 98, lines 17 - 24  
Exhibit 63, Volume 15, Tab 4, Begdoc 31767*

415. Line Marks testified that she recalled discussions at the December 9 meeting about the City entering into the Oracle ELA, and the operating pressure it would create. Her handwritten notes from the December 9 meeting refer to CLASS, Amanda (IBMS), SAP, and ESCOM, which are all applications that required Oracle licences.

*Testimony of Line Marks, August 14, 2003, p. 185, line 15 -  
p. 188, line 22  
Testimony of Lana Viinamae, October 17, 2003, p. 174,  
line 21 - p. 180, line 10; October 30, 2003, p. 97, line 24 -  
p. 99, line 9  
Exhibit 63, Volume 17, Tab 2, Begdoc 78206 at 78210*

416. Ms. Marks testified that there was several meetings where the Oracle Licence agreement was discussed. Mr. Andrew, Ms. Liczyk, and other members of the Steering Committee were involved in these discussions. There was active questioning from the members.

*Testimony of Line Marks, August 14, 2003, p. 190, lines 2 – 21*

417. Ms. Viinamae was cross-examined about the lack of a specific reference in the December 9 minutes instructing her to negotiate a deal with Oracle. She testified that the minutes were not intended to be a transcript of the meeting, and that the focus of the minutes was on the change requests: "It was more as a reminder as opposed to a complete record keeping of everything that was discussed at the meeting." She testified that each meeting was over one hour long, and if every detail of the discussion had been recorded, the minutes would have been huge packages.

*Testimony of Lana Viinamae, October 17, 2003, p. 111, line 22 – p. 114, line 10, p. 75, line 18 – p. 86, line 11  
Exhibit 54, Volume 2, Tab 7, Begdoc 15210*

418. Although Ms. Liczyk testified that she did not recall a discussion of the actual pricing of the Oracle proposal, she did recall Ms. Viinamae informing the Y2K Steering Committee that not every former municipality had licences in good standing. Ms. Viinamae had expressed concern about ensuring that all Oracle licences were duly paid for since amalgamating municipalities had not continued to pay maintenance costs. Ms. Liczyk testified that the Committee agreed that all licences needed to be in good standing.

*Testimony of Wanda Liczyk, November 6, 2003, p. 167, line 20  
– p. 173, line 2*

419. Mr. Andrew also testified that around the time of the December 9 meeting, the issue of software being used in contravention of agreements was being discussed.

*Testimony of Jim Andrew, September 30, 2003, pp. 47 - 51*

420. The discussions about legalizing software are consistent with the reference in the December 16, 1999 minutes to Councillor Jane Pitfield having raised concerns: "Is maintenance to be covered by Y2K or Operating" and "Provide more details on legalise software."

*Exhibit 56, Volume 2, Tab 1, Begdoc 69341  
Testimony of Line Marks, August 14, 2003, p. 194, line 16 –  
p. 196, line 7*

**(e) The Offer (1999 Oracle Proposal)**

421. Ms. Viinamae knew that it would be more expensive for the City to purchase 2,000 network licences under the GTA pricing (\$13.1 million) than it would be to enter into the ELA with Oracle (\$11.3 million):

2,000 Network Licences (GTA pricing): \$1,745 per licence =	\$ 3.5 million
Maintenance: \$1.2 million x 5 years	6.0 million
Maintenance cost on existing licences	3.6 million
TOTAL	\$13.1 million

*Affidavit of Lana Viinamae para. 103 - 105  
Testimony of Lana Viinamae, October 17, 2003, p. 135,  
line 10 – p. 148, line 11  
Exhibit 54, Volume 2, Tab 8, Begdoc 11239  
Exhibit 54, Vol. 1, Tab 67, Begdoc 11255 at 11256*

422. Under the ELA entered into by the City, the price per license was \$434; had the City purchased 2,000 network licences (with none of the benefits of an ELA), the price per license would have been \$1,745.

*Testimony of Larry Griffith, August 7, 2003, p. 38, line 10 –  
p. 39, line 3  
Tab 71, Begdoc 40501*

423. The ultimate Oracle agreement was anything but a standard form. Ms. Viinamae obtained several improvements in the initial 1999 Oracle offer by negotiating with Larry Griffith in November and December 1999. The November 1999 proposal from Oracle was for \$13.5 million, whereas the December 1999 proposal was for approximately \$2 million less. Mr. Griffith testified that Ms. Viinamae approached him and told him she needed to find some savings to make the agreement cost-effective for the City. The elimination of education and on-site technical support lowered the proposal price by about \$2 million. Through her negotiation,

Ms. Viinamae was able to obtain for the City: a reduction in the purchase price, an increase in the number of server operating systems from five to eight, a cap on support fees, and a concession by Oracle that they would be the recommended, rather than the exclusive, database.

*Testimony of Larry Griffith, August 6, 2003, p. 151, line 11 –  
p. 154, line 1;  
August 7, 2003, pp. 27 – 29, pp. 45 – 50  
Affidavit of Lana Viinamae, para. 109  
Testimony of Stephen Wong, August 5, 2003, p. 175, line 19 –  
p. 176, line 7; August 6, 2003, p. 64, line 7 – p. 67, line 19  
Exhibit 54, Volume 1, Tab 71, Begdoc 40501  
Exhibit 54, Volume 2, Tab 8, Begdoc 11236 at 11239*

424. Mr. Griffith testified that Ms. Viinamae pressed him to allow the use of programs on eight rather than five server operating systems. If she had not pushed for this amendment to the standard-form agreement, the City would have had to pay for additional operating systems. The City clearly needed these additional operating systems because by the time the agreement came into effect, the City was using all of the eight server operating systems.

*Testimony of Larry Griffith, August 7, 2003, p. 28, line 6 –  
p. 29, line 21  
Testimony of Clem Chan, August 7, 2002, p. 90, line 16 –  
p. 92, line 11*

**(f) A Good Deal For the City of Toronto and Consistent with the City's IT Strategy**

425. Jim Andrew stated in his affidavit:

"I strongly believed at the time, and still do believe, this was an excellent result and price for the City. I am also of the view that the number of Oracle Enterprise Network Licences (10,000) based on the then existing IT philosophy, strategy and plans, was reasonable and appropriate."

426. The philosophy, strategy and plans that he referred to included providing SAP to every information worker: "we had a vision that more and more people would be accessing technology." He testified that SAP required the Oracle platform, and Oracle, which many applications were already built on, was the de facto database standard.

*Affidavit of Jim Andrew, para. 185  
Testimony of Jim Andrew, September 29, 2003, p. 125, line 24  
- p. 127, line 13*

427. Mr. Andrew testified that the acquisition was a "good deal" for the City based on his IT vision for the City. He knew that there were many departments using Oracle, that there were new applications being developed with it, and that there was a plan for self-service with the SAP system using Oracle. Further, with the number of information workers in the City being 15,000 or 16,000, "not everyone would have Oracle, but 10,000 was a reasonable assumption that you would put on people's desks to have access to Oracle-based applications."

*Testimony of Jim Andrew, October 14, 2003, p. 68, line 16 –  
p. 69, line 8*

428. Kathryn Bulko testified that the Oracle ELA was regarded as a "good deal" by others in the IT industry. She testified that individuals involved in MISA (Municipal Information Systems Association) publicly discussed how the City of Toronto had obtained a good deal.

*Testimony of Kathryn Bulko, August 11, 2003, p. 192, line 8 –  
p. 193, line 13*

429. The City of Toronto obtained better pricing than the practice's Management Board Secretariat did around the same time. Mr. Power communicated this to Ms. Viinamae, who expressed her pleasure about this in an October 3, 2000 e-mail.

*Testimony of Larry Griffith, August 7, 2003, p. 42, line 10 – p.  
45, line 21  
Begdoc 16283  
Volume 1, Tab 71, Begdoc 40501*

430. Mr. Griffith told Ms. Viinamae in the last part of November or early part of December 1999 that contract negotiations were in process between MBS and Oracle. He testified that he would have assured her that the terms and conditions of the City's agreement would be in sync with the Province's agreement.

*Testimony of Larry Griffith, August 7, 2003, p. 19, line 10 –  
p. 20, line 12*

431. Staff reports issued after the City reached the Oracle ELA referred to the benefits derived from the agreement. A July 12, 2000 report to the Budget Advisory Committee from the CFO & Treasurer set out the "substantial collateral benefits" that the Y2K program provided to the City. These included:

- Upgrading of all technology and implementing maintenance programs to ensure the continued availability of the technology.
- *Implementation of enterprise licensing agreements* to ensure legal compliance and simplified administration of Information Technology contracts.
- Implementation of standards to facilitate the effective sharing of information across the Corporation."

*Testimony of Lana Viinamae, October 30, 2003, p. 71, line 22*  
– p. 73, line 6  
*Exhibit 54, Volume 18, Tab 4, Begdoc 34333*

432. A February 8, 2001 draft report to the Policy and Finance Committee from the CFO & Treasurer (which Ms. Liczyk did not sign) on the Year 2000 Project wrap up emphasized cost savings enjoyed by the City from entering the ELA. Ms. Viinamae testified that she believes that Mike Franey, Brendan Power and Line Marks worked on this report. It stated: "*Enterprise Licence Agreements (ELA) were purchased for the entire city providing savings to the city. As a result of the increase in licences this resulted in an operating pressure.*" The report states that before amalgamation, only a few Oracle Licences were required, but "we were able to purchase 10,000 licences for the price of 5,000 again creating savings for the city. Oracle is used for all SAP users, *moving forward, more and more staff will be accessing SAP, therefore the need for the 10,000 licences.* (Ms. Viinamae did not describe the Oracle deal to Mr. Franey as being 10,000 licences for the price of 5,000, although Mr. Franey's affidavit refers to this calculation).

*Testimony of Lana Viinamae, October 30, 2003, p. 73, line 7 –*  
*p. 76, line 8*  
*p. 101, line 22 – p. 103, line 2*  
*Exhibit 63, Volume 10, Tab 12, Begdoc 76511*  
*Exhibit 63, Volume 11, Tab 29, Begdoc 61150 at 61154*

**(g) Oracle ELA Necessary for Y2K**

**(i) Number of Seats Needed**

433. The Oracle ELA was required for Y2K. By the fall of 1999, a number of program areas were asking the Y2K Project Management Office (PMO) for Oracle software as part of their business case for "business as usual" on January 1, 2000. The Y2K Steering Committee approved several of these requests, and at least 2,000 additional seats were required for Y2K. A number of applications were internally developed and could not be accessed through run-time licences. Therefore, the Y2K solution for those applications necessitated an ELA. For example, run-time licences would not be available for applications such as property tax and water, the capital budget system, the Integrated Disability Management System, the Toronto maintenance management system, and RACS. Many of these program areas had not budgeted for Oracle licences within their business case for Y2K because they thought Oracle would be supplied city-wide by the Y2K Office.

*Affidavit of Lana Viinamae, para. 97  
Testimony of Lana Viinamae, October 30, 2003, p. 76, line 21  
– p. 80, line 8  
Exhibit 54, Volume 1, Tab 3, Begdoc 5466 p. 9*

434. Mr. Andrew was aware that in the middle of 1999, a number of program areas were asking the PMO for Oracle software as part of their business cases for business as usual on January 1, 2000. Mr. Andrew testified that "pretty well all of the departments had Oracle-based systems," and so it was "entirely possible" that at least 2000 additional Oracle seats would be required for Y2K. When it was put to Mr. Andrew that Ms. Viinamae was expected to testify that Ms. Liczyk and Mr. Andrew informed her that Finance and IT would require 2,000 and 3,000 seats respectively in 2000 and 2001, he testified "I think that would be a reasonable estimate at that point in time."

*Testimony of Jim Andrew, September 29, 2003, p. 132, line 25  
– p. 134, line 15; p.37, line 12 – p. 40, line 7  
Testimony of Lana Viinamae, October 17, 2003, p. 91, line 24  
– p. 9, line 24*

435. Ms. Viinamae testified that Mr. Andrew and Ms. Liczyk told her that there was a need for 2,000 licences for SAP.



*Testimony of Lana Viinamae, October 17, 2003, p. 149,  
line 19 – p. 153, line 9*

436. Mr. Griffith testified that he did not know why the Oracle acquisition was a Y2K issue. Nonetheless, he agreed that as a representative of an arms-length corporation, he would not necessarily have known whether the City required new licences for users of applications being rolled out as part of their departments' Y2K solution.

*Testimony of Larry Griffith, August 7, 2003, p. 29, line 25 -  
p. 32, lines 25*

437. Ms. Viinamae did not ask Mr. Griffith for a proposal for 2,000 licences and Oracle never proposed one. When Ms. Viinamae informed him that the City needed 2,000 licences for Y2K, Mr. Griffith indicated it was a good time for the City to consider an ELA because of the cost justification. Ms. Viinamae did the "quick math" on the difference between 2,000 seats under GTA pricing and an ELA, and knew that the ELA was a better deal. For the same reason, it was not necessary to assess the need for 10,000 licences, when it was clear that the need for 2000 licences justified the ELA in terms of price. The ELA for 10,000 licences was based on a volume discount for a site licence.

*Testimony of Lana Viinamae, October 17, 2003, p. 93, lines 7  
– 23, p. 95 line 25 – p. 96, line 1; October 30, 2003, p. 92,  
line 6 – p. 93, line 4*

438. There were other requests from program areas for Oracle applications in other minutes of the Y2K Steering Committee. Again, Mr. Wong did not review them.

*Y2K Steering Committee Minutes, October 14, 1999, Oracle,  
Volume 2, Tab 5, Begdoc 15225, BC No. 124  
Y2K Steering Committee Minutes, October 28, 1999, Oracle,  
Volume 2, Tab 16, Begdoc 15216, BC No. 35 & BC No. 94  
Testimony of Stephen Wong, August 6, 2003, p. 13, lines 14 –  
22*

439. Mr. Wong testified that he "probably heard" in the fall of 1999 that during the spring and summer 1999, many programs across the City were asking the Y2K PMO for Oracle software as part of their business case for "business as usual" on January 1, 2000. His conclusion that the Oracle agreement was not a Y2K acquisition is unfounded.

*Testimony of Stephen Wong, August 6, 2003, p. 5, line 13–  
p. 8, line 19*

**(ii) Maintenance and Licence Non-Compliance**

440. The Oracle ELA upgraded the maintenance agreement the City previously had with Oracle from bronze to silver. Bronze support did not include after-hours, weekends, or holidays, including New Year's day. Had the City faced database problems on January 1, 2000 (the key date) and had not upgraded the maintenance, it would have had no recourse until the next business day (January 3, 2000).

*Affidavit of Lana Viinamae, para. 107*

441. Ms. Viinamae's testimony that the City required an upgrading of maintenance support from bronze to silver is confirmed by other evidence. An April 17, 2002 staff report to City Council warned that the City needed the upgraded maintenance agreement with Oracle:

"The city requires access to 24/7 technical support for the licences currently supporting city business applications... eliminating the support service, on a going forward basis, for the licences that are not being used, even if it were theoretically possible, renders the licences virtually valueless. Effectively the city would be rendering valueless licences that it has paid for in full."

442. The report was signed by the CAO (Shirley Hoy), Joan Anderton (Commissioner of Corporate Services), and the City Solicitor (Anna Kinastowski). Ms. Anderton testified that James Ridge would have briefed her on the technical pieces of the report.

*Testimony of Joan Anderton, November 25, 2003, p. 99,  
line 16 – p. 101, line 13  
Exhibit 66, Begdoc 42879*

443. Mr. Andrew's testimony was consistent with Ms. Viinamae's that one of the issues around the time of the December 9, 1999 Y2K Steering Committee meeting was that Oracle and other software was being used contrary to agreements, due to unorganized records on software usage from various previous municipalities. Mr. Andrew confirmed that if a Y2K breakdown on January 1, 2000 related to licences being used illegally had occurred, the City might not have had any recourse with Oracle. He testified: "We were very concerned about [having valid licences in place]. ... These kind of software non-compliance lawsuits... we understand it can be very, very

expensive lawsuits." Mr. Andrew agreed that it was "entirely possible" that there were licences being implemented pursuant to the priority 1 business cases which had not yet been paid for pending the determination of the Oracle network licence.

*Testimony of Jim Andrew, September 30, 2003, p. 47, line 16 –  
p. 51, line 14  
Exhibit 63, Volume 14, Tab 5, Begdoc 79585  
Exhibit 54, Volume 2, Tab 4, Begdoc 39679*

444. Mr. Andrew knew that North York had dropped maintenance on its IBM mainframe. He testified that there was great uncertainty about whether valid licences with maintenance would be in place, and that this was a matter of great concern as Y2K was approaching.

*Testimony of Jim Andrew, September 30, 2003, p. 51, line 15 –  
p. 52, line 7*

445. Mr. Griffith testified that he believed all the licenses that the City were using at the time were under current and valid support agreements which would allow them to have the latest software version and therefore access to the Y2K compliant product. However, he agreed that he would not necessarily have had information as to whether licences were being used on a basis that went beyond the agreed terms of the contract. Evidently, he did not have all of this information.

*Testimony of Larry Griffith, August 6, 2003, p. 162, line 2 –  
p. 164, line 11;  
August 7, 2003, p. 32, line 14 – p. 33, line 14*

446. Although Larry Griffith testified that he was not aware of any licence non-compliance, it would not have been prudent, as Ms. Viinamae testified, for the city to "go around to all the vendors" telling them the City was non-compliant.

*Testimony of Lana Viinamae, October 20, 2003, p. 12, line 16  
– p. 13, line 15*

447. Ms. Viinamae was informed by Mr. Griffith that maintenance was to be paid upfront, rather than annually. She did not know until either her interview with Commission counsel or when she saw a letter from MFP for Mr. Griffith in the database, that in fact Oracle

billed MFP in stages. In the letter from MFP to Mr. Griffith from Oracle, MFP asked Oracle to send them an invoice for \$11,336,651. Oracle billed MFP in stages, and maintenance was paid on an annual basis. However, that was not clear in the letter or the purchase order. Ms. Viinamae's understanding was that Oracle required the City to pay the complete cost of the acquisition and five years of maintenance up front. Ms. Viinamae was never informed that maintenance was to be paid on an annual basis rather than up front.

*Testimony of Lana Viinamae, October 17, 2003, p. 167, line 1*  
– p. 168, line 4  
*Begdoc 21059*  
*Testimony of Rob Wilkinson, September 18, 2003, p. 28,*  
*line 18 – p. 30, line 12*

448. Mr. Wong testified that he had no information that maintenance had not been kept up to date. However, he believes he heard that North York had dropped maintenance on its IBM mainframe in anticipation of amalgamation. A more thorough investigation would have revealed that software maintenance was a problem for the new City that was resolved by the Oracle ELA.

*Testimony of Stephen Wong, August 6, 2003, p. 71, line 14 –*  
*p. 74, line 1*

449. Mr. Wong also testified that he found no evidence that licences were being used that had not been paid for. Nonetheless, he did not ask anyone about this issue. If he had, he would have seen that there was evidence of non-compliance. For example, an August 19, 1999 memo from Manny Tenadero to Mandy Rattner states:

"The list of users increased to 115 from the original 40 users and the information therein was not accurate/complete as it related to systems, location and users. *There is an ethical issue here in that we only have 40 Oracle licences.*" (emphasis added)

*Testimony of Stephen Wong, August 6, 2003, p. 74, line 14 –*  
*p. 79, line 7*  
*Begdoc 75747*

**(iii) *Timing of Executing the Agreement***

450. Ms. Viinamae testified that the first Oracle proposal in November 1999 stated that the offer had to be accepted by December 31, 1999, and that Mr. Griffith "was very clear on the fact that this was a Y2K initiative" (although the letter from Oracle accompanying the December

proposal stated that the prices were valid for 30 days from December 17). Further, Oracle was asked to give a forewarning if there were any failures resulting from the databases elsewhere in the world where the clock turned over sooner.

*Testimony of Lana Viinamae, October 20, 2003, p. 16, line 24  
– p. 17, line 18; p. 23, line 7 – p. 25, line 12  
Exhibit 54, Tab 18, Begdoc 16021  
Tab 70, Begdoc 40500  
Affidavit of Larry Griffith, para. 17  
Testimony of Larry Griffith, August 6, 2003, p. 160, line 20 –  
p. 161, line 9*

451. A December 20, 1999 e-mail from Mr. Griffith to Mr. Power states "I suggest you consider directing your lawyer to relax his position, if we want to have a Thursday signing. Our lawyer has dealt with Mark in the past and he knows what Oracle's stance is on these points. His position is going to drag things out to the point where we miss the deadline." On December 13, 1999, Mr. Griffith e-mailed the Oracle agreement to Mr. Power, and wrote "Once you've had a chance to look at these, we can discuss how to move this along as quickly as possible". This correspondence suggests that Mr. Griffith was eager to have the City sign the agreement.

*Exhibit 54, Volume 2, Tab 30, Begdoc 16183  
Testimony of Lana Viinamae, October 30, 2003, p. 89, line 17  
– p. 92, line 2  
Exhibit 54, Volume 2, Tab 28, Begdoc 11258  
Exhibit 54, Volume 2, Tab 63, Begdoc 40502*

**(h) Number of Seats in Use**

**(i) IT Strategy and Expected Use**

452. Contrary to Mr. Wong's testimony, the City's current and future Oracle licence needs were considered before entering into the agreement. After amalgamation, the number of Oracle users was expected to increase considerably.

453. Brendan Power worked with Larry Griffith to determine the City's usage of Oracle seats, and to calculate the credit for existing licences that was included in the ELA. The City did not have the information itself to determine how many Oracle seats it was using, and so it had to obtain that information from Oracle. Ms. Viinamae believes she had directed Mr. Power to work on this around October 1999, prior to receiving the proposal from Oracle. The

City was able to validate Oracle's number to see that it was reasonable, but could not do a detailed determination itself.

*Affidavit of Lana Viinamae, para. 102*  
*Testimony of Lana Viinamae, October 17, 2003, p. 97, line 1 –*  
*p. 103, line 6*  
*Testimony of Brendan Power, March 25, 2003, p. 71, line 11 –*  
*19*  
*Testimony of Stephen Wong, August 6, 2003, p. 54, line 7 –*  
*p. 56, line 22*  
*Exhibit 54, Volume 2, Tab 18, Begdoc 16021*  
*Exhibit 54, Volume 2, Tab 27, Begdoc 16181*

454. The inventory of the Oracle licenses from the amalgamating municipalities indicated that there were 7,000 users. Mr. Power also testified that Ms. Viinamae started looking at other big projects in the future such as SAP. Including future requirements, the number of users was 10,000-11,000. That number came from a combination of Mr. Griffith's and Mr. Power's work, as well as input from other project managers or department managers on the possible size of future systems.

*Testimony of Brendan Power, March 25, 2003, p. 64, line 16*

455. Mr. Wong testified that he was not aware at the time he swore his affidavit, that after the October 7 meeting, Mr. Power and Mr. Griffith had had communications regarding the agreement. Only after he reviewed Inquiry documents did he become aware that Mr. Power then engaged in a lengthy process of finalizing figures for the credits for existing licences.

*Testimony of Stephen Wong, August 6, 2003, p. 22, lines 1 –*  
*12, p. 24, line 13*

456. The hasty conclusion in the February 6, 2002 Auditor's report on Oracle that it was "highly unlikely the City would need ... (10,000) licences in the foreseeable future" was irresponsible in light of previous and unanticipated events. Previous reports predicted the need for well in excess of 10,000 seats. For example, the February 4, 1998 report drafted under Ms. Rodrigues stated:

"Based on the known demand for consolidated or new systems, it is estimated that the number of licences will increase from the current 504 to over 2500 in 1998 and increase to almost 6000 in 1999 and that all City staff with access to a computer

(approximately 15000) will require access to an Oracle-based application by 2001."

*Exhibit 54, Volume 2, Tab 1, Begdoc 40456*  
*Exhibit 54, Volume 2, Tab 26, Begdoc 06349*

457. Mike Garrett's testimony about the IT strategy for the City in the fall of 1999 is consistent with the evidence that the number of Oracle users was expected to increase. He testified that the City was moving in a direction with new financial information and human resource information software that was intended to reduce the paper process. He testified: "it seemed reasonable that there were going to be somewhere in the vicinity of ten thousand (10,000) access points across the City, for people to access financial, human resource and ... all that kind of information." He stated that there was a strategy while they had the opportunity of upgrading to "take advantage of looking ahead five or ten years and make sure that we could be operating as a progressive organization and use technology to the fullest." The City was also looking for "room to grow, we wanted technology that had room to grow as well."

*Testimony of Mike Garrett, December 6, 2003, p. 83, line 25 –*  
*p. 85, line 7*

458. A chart entitled "Named User Database License Requirements By Application" (contained in the 1997 Oracle proposal) indicated that the total named user licences required over five years would be 17,320. Mr. Griffith testified that this projection of numbers came from a series of meetings and discussions he had with John Birss from the City of Toronto, and Graham Kemp from the City of Scarborough, who were part of an IT service rationalization team on amalgamation. Mr. Griffith testified that figure was "John and... Graham's collective best guess at each of the user communities that would be using the various applications." The figure was an attempt to identify individuals, regardless of whether they were concurrent users, who would be granted access to the various applications. The "rule of thumb" is that the concurrency rate is 40% of the total user population (which would have been 8,700).

*Testimony of Larry Griffith, August 6, 2003, p. 133, line 18 –*  
*p. 138, line 14*  
*Exhibit 54, Volume 1, Tab 3, Begdoc 5466 at 5483*

459. Mr. Andrew also testified that based on the existing IT philosophy, strategy and plans, 10,000 Oracle network licences "was reasonable and appropriate."

*Testimony of Jim Andrew, September 29, 2003, p. 125, line 24 – p. 127, line 13; October 14, 2003, p. 68, line 16 – p. 69, line 8*  
*Affidavit of Jim Andrew, para. 185*

460. Ms. Bulko testified: "I think the plan was that everybody in the City would be, eventually, an SAP user, and 10,000 [users] was normal."

*Testimony of Kathryn Bulko, August 12, 2003, p. 91, lines 9 – 25*  
*Exhibit 54, Volume 2, Tab 22, Begdoc 12195*

**(ii) City's Oracle User Charts**

461. The figures from the City's charts of monthly usage of Oracle enterprise (network licences) from March 2002 to May 2003 are significantly understated. They do not include several programs that existed during the period, and the figures were adjusted by the arbitrary deletion of certain licence usage from consideration through an exercise in judgment by the persons reporting the data. Overall the figures would average at least 80 – 90% of the 10,000 licences.

*Testimony of Clem Chan, August 7, 2003, pp. 92 – 117*  
*Testimony of Kathryn Bulko, August 12, 2003, p. 75*  
*Affidavit of Lana Viinamae, para. 119*

462. As an example of under-reporting, the number of users for Works and Emergency Services was reported as 156 in March and April of 2002. However, in May 2002, the number was 986 registered users. Clem Chan testified that the databases were clearly in use before May 2003 but had not been reported. Therefore, the columns in the chart were adjusted to include new application systems and databases that did not appear on prior charts. They were adjusted manually.

*Testimony of Clem Chan, August 7, 2003, p. 97, line 15 – p. 99, line 22*  
*Exhibit 54, Volume 1, Tab 35, Begdoc 60526 at 60531*  
*Exhibit 54, Volume 1, Tab 36, Begdoc 57876 at 57877*  
*Exhibit 54, Volume 1, Tab 38, Begdoc 60534 at 60540*

463. Mr. Chan testified he was more comfortable with the accuracy of the counts in 2003 than in 2002 (the 2003 user counts are higher).



*Testimony of Clem Chan, August 7, 2003, p.17*

464. Mr. Chan testified that the number of users that were not reported totalled close to 3,000. The number of users identified in the chart for April 2002 is 6,997. If approximately 3,000 users were added, Mr. Chan agreed that the actual figure would be close to 10,000, yet that total figure was not put in the April 2002 Auditor's report to Council. Mr. Chan was never asked to give information to the Auditor or anyone else for the purposes of reporting to Council.

*Testimony of Clem Chan, August 7, 2003, p.17  
Exhibit 54, Volume 1, Tab 36, Begdoc 57876*

465. Mr. Chan testified that the decision of whether to include CLASS or SAP "was more or less a judgment call." They were not included on the charts.

*Testimony of Clem Chan, August 7, 2003, p. 93, line 14 –  
p. 95, line 10  
Exhibit 54, Volume 1, Tab 35, Begdoc 60526*

466. The ELA is a site licence, and because it was more cost-effective, there was no reason to determine an exact need for 10,000 licences. In its proposal, Oracle tries to determine how many people would potentially use Oracle within the corporation. There were approximately 15,000 desktops at the City, and at least 2/3 of the people in the City would use information-based applications. The 1999 proposal had a named user licence requirement in the chart at 17,320. There were 15,000 desktop PCs, approximately 3,000 of these would never access Oracle based applications, and 2,000 desktops were provided by the Province for other systems supplied by them. This would leave 10,000 desktops.

*Testimony of Larry Griffith, August 6, 2003, p. 154, line 24 –  
p. 157, line 1  
Testimony of Lana Viinamae, October 17, 2003, p. 91, line 24  
– p. 92, line 24*

467. Mr. Wong, testified that according to the City's Oracle user charts only slightly more than 600 users access more than one Oracle-based application, and consequently, most users would be adequately served with runtime or concurrent licences.

*Affidavit of Stephen Wong, paras. 72 & 73*

468. Ms. Viinamae testified that she disagreed with Mr. Wong's conclusion that only a small number of people actually accessed more than one Oracle based application. The same user can identify himself or herself by different names for different applications, for example, by "LANAV" or "LVIINAM". Therefore, the Oracle registered name "is not reflective of the user, it is reflective of the name that the user call[s] themselves for that application."

*Testimony of Lana Viinamae, October 20, 2003, p. 63, line 16*  
– p. 74, line 8  
*Exhibit 54, Volume 1, Tab 34, Begdoc 60513*

469. Mr. Wong testified that he was not able to find a document articulating the total need for the City presented to the Y2K Steering Committee. In fact, the minutes reflect the fact that there were numerous discussions. Mr. Wong did not speak to any Committee members about the issue.

*Testimony of Stephen Wong, August 6, 2003, p. 14, line 10 –*  
*p. 17, line 2*

470. Mr. Wong did not review the communications between the Y2K PMO and the program areas, and so he did not know what justification was given to them as part of what was summarized very briefly in the Y2K Steering Committee minutes. Mr. Wong testified that if the 600 seats for IDMS were counted as part of the 2,000, a further review should have been undertaken.

*Testimony of Stephen Wong, August 6, 2003, p. 42, lines 4 –*  
*17*

**(i) Involvement of External Legal Counsel**

471. Brendan Power worked with Mark Fecenko from Faskens in negotiating the Master Software Licence and Services Agreement with Oracle. This process began in mid-December 1999. Clearly there was a mandate for them to proceed with negotiations at this time, which is consistent with Mr. Viinamae's evidence that she was told to proceed with the ELA at the December 9, 1999 meeting.

472. Mr. Fecenko had extensive experience in dealing with Oracle. Mr. Fecenko stated in an e-mail to Mr. Power "I have had a lot of dealings with Oracle in the last year."

*Testimony of Stephen Wong, August 6, 2003, p. 55, line 3 –  
p. 56, line 14  
Exhibit 54, Volume 2, Tab 17, Begdoc 11314  
Exhibit 54, Volume 2, Tab 29, Begdoc 16182*

473. There were extensive negotiations back and forth during the month of December, 1999.

*Exhibit 54, Volume 2, Tab 27, Begdoc 11258  
Exhibit 54, Volume 2, Tab 28, Begdoc 16181  
Exhibit 54, Volume 1, Tab 17, Begdoc 11314  
Exhibit 54, Volume 1, Tab 29, Begdoc 16182  
Exhibit 54, Volume 2, Tab 18, Begdoc 16021  
Exhibit 54, Volume 1, Tab 30, Begdoc 16183  
Exhibit 27, Tab 61, Begdoc 5457  
Exhibit 27, Tab 62, Begdoc 5452  
Exhibit 54, Volume 2, Tab 19, Begdoc 5415*

474. Mr. Power gave Mr. Fecenko instructions on an ongoing basis under the terms of the retainer agreement. Mr. Power was the primary contact at the City for Mr. Fecenko and other Faskens lawyers.

*Testimony of Brendan Power, March 25, 2003, p. 79, line 1 –  
p. 87, line 21, March 27, 2003, p. 8, line 15 – p. 9, line 15  
Exhibit 23, Tab 10, Begdoc 541  
Exhibit 23, Volume 1, Tab 116, Begdoc 38993  
Exhibit 23, Volume 4, Tab 71, Begdoc 11314  
Exhibit 23, Volume 1, Tab 97, Begdoc 16189*

475. Ms. Viinamae was not involved in the conversations and discussions Mr. Power had with Mr. Fecenko, and she was not copied on the correspondence between them.

*Testimony of Lana Viinamae, October 21, 2003, p. 103, line  
18 – p. 106, line 16*

476. Mr. Fecenko reviewed the draft agreements with Oracle. However, he did not receive a copy of the final contract or receive confirmation from the City that an agreement had been reached until after the contract had been executed.

*Testimony of Mark Fecenko, April 3, 2003, p. 111, line 24 –  
p. 120, line 20  
Affidavit of Brian Loreto, para. 39  
Exhibit 26, Tab 15, Begdoc 38993  
Exhibit 26, Tab 4, Begdoc 5457  
Exhibit 26, Tab 3, Begdoc 5452*

*Exhibit 26, Tab 18, Begdoc 16239*  
*Exhibit 26, Tab 19, Begdoc 16179*  
*Exhibit 26, Tab 12, Begdoc 16187*  
*Exhibit 26, Tab 13, Begdoc 16189*

477. Mr. Loreto never saw the Master Software Licence and Services Agreement between Oracle and the City. City legal staff did not review the document before it was signed, and never followed up to get a copy before or after it was executed.

*Testimony of Brian Loreto, April 1, 2003, p. 258, line 1 –*  
*p. 260, line 24*  
*Exhibit 26, Tab 21, Begdoc 40503*

478. Mr. Wong testified that standard form agreements "tend to be very one-sided," and that although the City usually ha[s] an opportunity to ensure that agreements are negotiated in a form that adequately addresses the City's needs", the acquisition occurred in "an unusually short time frame" with little opportunity for the City's legal department and outside counsel to review the documents and conduct negotiations. Mr. Wong's conclusions are entirely unfounded, in light of the extensive correspondence between Mr. Power, Mr. Fecenko, Carole Stewart (in-house counsel for Oracle), and Larry Griffith, Mr. Wong admitted that he did not review any of this. Mr. Wong agreed in his testimony the Faskens lawyers *were* involved in tailoring the agreement to the City's needs in the compressed timeframe, and that the addendum to the agreement had changed the standard form. Most of Mr. Fecenko's proposed changes were incorporated in the amended agreement. Mr. Fecenko was aware that the drafts, being standard-forms were "notably one-sided," and he negotiated accordingly with a company he had experience dealing with.

*Testimony of Stephen Wong, August 6, 2003, p. 55, line 3 –*  
*p. 63, line 7*  
*Affidavit of Stephen Wong, paras. 42 - 43*  
*Exhibit 54, Volume 2, Tab 30, Begdoc 16183*  
*Exhibit 54, Volume 2, Tab 19, Begdoc 05415*  
*Exhibit 54, Volume 1, Tab 10, Begdoc 40503*

**(j) Delegated Approval Form**

479. Mike Garrett, Wanda Liczyk, Lou Pagano, and Lana Viinamae all signed the Y2K delegated approval form. In doing so, they approved the Oracle acquisition, and confirmed that it was an appropriate Y2K purchase on a sole-source basis.

480. Ms. Viinamae believes the delegated approval form was prepared by Mr. Power. She testified that Ms. Liczyk signed the form at the December 30, 1999 Y2K Steering Committee meeting. Later that day, after Ms. Liczyk signed, Ms. Viinamae mentioned to Mr. Andrew that she was taking the document to Mr. Garrett to have him sign it. Mr. Andrew volunteered to come along because he knew Mr. Garrett from having worked with him at the Province. Ms. Viinamae has a clear recollection of meeting in the doorway of Mr. Garrett's office at Metro Hall. Mr. Garrett spoke to Mr. Andrew rather than to Ms. Viinamae. He asked Mr. Andrew if the Oracle ELA was a good deal for the City, and Mr. Andrew told him it was. Mr. Garrett signed the document, and there was no further discussion.

*Testimony of Lana Viinamae, October 17, 2003, p. 181,  
line 13 – p. 184, line 15  
Exhibit 54, Volume 1, Tab 21, Begdoc 16151*

481. Mr. Garrett personally signed the delegated approval form for Oracle. He testified that the acquisition (including the number of seats) appears reasonable to him:

"We had been talking about... our IT strategy for the entire city, and it seemed reasonable that there were going to be somewhere in the vicinity of 10,000 access points across the city, for people to access financial, human resource and so on all that kind of information. We had 25,000 staff, 10,000 licences, probably in the vicinity of 10,000 outlets. And as I understood it... each of the outlets needed to be licenced."

Mr. Garrett relied on the fact that these numbers [10,000 seats] "seemed to be in the ballpark". Ms. Liczyk testified that Mr. Garrett's comments were also in keeping with her own understanding of the City's IT strategy around the time of Y2K and following amalgamation.

*Testimony of Mike Garrett, December 6, 2002, p. 80, line 1 –  
p. 83, line 24  
Testimony of Wanda Liczyk, November 13, 2003, p. 213,  
line 8-23  
Exhibit 3, Tab 6, Begdoc 30456*

482. Mr. Garrett testified that he "would have relied on the signatures of the experts" when he signed the form. Ms. Liczyk testified that Mr. Garrett would have first and foremost thought of Mr. Andrew and Ms. Viinamae as the experts, but believes he knew that Ms. Liczyk had "an appreciation for technology, because of how significant it was for my department."

When Mr. Garrett signed the form, he would have seen Ms. Liczyk's and Ms. Viinamae's signatures on the document.

*Testimony of Wanda Liczyk, November 13, 2003, p. 210, line 6*  
– p. 213, line 22  
*Testimony of Mike Garrett, December 6, 2003, p. 83, lines 22*  
– 24

483. Mr. Garrett testified that although he does not recall actually signing the delegated approval form, he presumes that whoever brought it up to him for signing had positive words about the Oracle acquisition.

*Testimony of Mike Garrett, December 6, 2002, p. 165, line 15*  
– p. 167, line 8

484. If Ms. Liczyk did not understand the details of the acquisition or the purpose of the deal, she could have either refused to sign the delegated approval form, or asked questions of Ms. Viinamae to assure herself it was prudent to sign. However, Ms. Liczyk testified that when Ms. Viinamae asked her to sign the form, she did not ask Ms. Viinamae at which meeting the acquisition had been approved; nor did she ask to be briefed with respect to what occurred at the meeting, or ask for copies of the documentation or a business case.

*Testimony of Wanda Liczyk, November 12, 2003, p. 102,*  
*line 20 – p. 108, line 15*  
*Exhibit 54, Volume 1, Tab 21, Begdoc 16151*

485. The delegated approval form stated that the agreement was a "consolidation of licences previously held by third party vendors". Ms. Viinamae agreed in cross-examination that the delegated approval form could have contained more information, such as the fact that the transaction included new licences and maintenance. However, she did not agree in cross-examination that the form "is a significant misrepresentation of the transaction", but rather, that the form was "incomplete, but accurate." In fact, the agreement was much more substantial than a mere consolidation of previously held licences, and the City acquired a great deal more than what was described on the form. Ms. Liczyk, who signed the form, was certainly aware that the Oracle proposal entailed an acquisition in addition to a consolidation. Further, according to Mr. Garrett's evidence (above), he also knew that the Oracle deal was for an acquisition of the licences.

*Testimony of Lana Viinamae, October 29, 2003, p. 165, line  
24 – p. 173, line 22; October 30, 2003, p. 113, line 14 –  
p. 114, line 7  
Testimony of Mike Garrett, December 6, 2002, p. 80, lines 1 –  
p. 83, line 24*

486. Mr. Pagano signed the delegated approval form on behalf of the Purchasing department. He testified that there was nothing unusual about a Y2K acquisition request of the magnitude of \$11 million over five years. It was the role of Purchasing to determine whether a sole source acquisition was "identified and justified", and whether the information provided on the form was "enough to decide whether it was the sole source or whether we had to go out for a quotation call or a proposal call." Evidently, Purchasing determined that a sole source acquisition was justified and the information provided was sufficient. Mr. Pagano testified that there was nothing unusual about using that form for a sole source, Y2K - related acquisition. He also testified that the form being dated December 29 (just two days before the expiry of Y2K) did not make it unique: "We had a lot of purchases that we had to make at the last minute."

*Testimony of Lou Pagano, February 25, 2003, p. 159, line 4 –  
p. 170, line 14*

487. Mr. Loreto sent an e-mail to Mr. Power and Mr. Fecenko on December 23, 1999, asking Mr. Power, "Brendan, if this is an Enterprise Agreement and is not part of the Council approved Y2K budget, then is there a separate Council approval for it?" Mr. Loreto does not recall receiving a response to this question, and he did not follow up on it. Therefore, the City's legal department had the opportunity to consider the issue of whether the Oracle acquisition was appropriately related to Y2K, and whether approval was in place. The legal department did nothing to contradict the understanding that it was for Y2K.

*Testimony of Brian Loreto, April 1, 2003, p. 255 line 15–  
p. 258 line 18  
Begdoc 05412*

488. The spreadsheet entitled "Operating Pressures from Year 2000" listed Oracle as a Y2K acquisition. It was revised by Len Brittain, and eventually reviewed by many people including Ms. Liczyk, Mr. Andrew, Al Shultz, and Ken Colley. It was never suggested the Oracle was inappropriately purchased for Y2K. Further, when the operating pressures resulting

from software acquisitions were reported to the Budget Advisory Committee by Ms. Liczyk, the licences were referred to as being "required as part of the Y2K platform".

*Exhibit 54, Vol. 2, Tab 3, Begdoc 64008  
Begdoc 13046*

**(k) Sole Source/ Competitive Process**

489. Mr. Wong's contention that there should have been further justification given for a sole source acquisition, or an RFP issued, is entirely without merit. Oracle was the de facto standard for the City. Purchasing made a determination on the delegated approval form that a sole source acquisition was appropriate. Ms. Viinamae spoke to either Dave Beattie or Frank Spizarsky, and Mr. Pagano signed the form. If Purchasing did not have sufficient evidence that the acquisition should have been a sole source, they could have asked Ms. Viinamae for written information. Evidently, Purchasing determined that the sole source acquisition was justified.

*Affidavit of Stephen Wong, para. 34-35  
Testimony of Lana Viinamae, October 20, 2003, p. 17, line 25  
– p. 22, line 25  
Testimony of Lou Pagano, February 25, 2003, p. 159, line 4 –  
p. 170, line 14*

490. Ms. Viinamae testified that someone in Purchasing (perhaps Mr. Spizarsky) filled in the statement "As per Lana Viinamae, Oracle is the only provider of these licenses."

*Testimony of Lana Viinamae, October 17, 2003, p. 181,  
line 13 – p. 184, line 15*

491. The 1997 report drafted for Margaret Rodrigues states that "Oracle is the acknowledged world leader in the field of database management systems." Mr. Wong testified that he agreed with that statement, and that Oracle is "one of the leading suppliers." The report states that Oracle's market share is 46%, while their nearest competitor has 16% market share.

*Testimony of Stephen Wong, August 5, 2003, p. 160, line 18 –  
p. 161, line 2  
Volume 1, Tab 4, Begdoc 05623*

492. The 1997 Oracle report stated: "the former municipalities had each established Oracle as the standard database management system... upon which all business applications



would be implemented," and further that the standard was "established over a period of time based on competitive evaluations carried out in each municipality." Mr. Wong agreed that Oracle had become a de facto standard. Mr. Wong testified that when he was preparing his review, he did not come across the 1997 Oracle report because he was only looking for "official documents."

*Testimony of Stephen Wong, August 5, 2003, p. 144, lines 17 – 25;*  
*p. 147, line 17 – p. 159, line 2*  
*Exhibit 54, Volume 1, Tab 3, Begdoc 05466*  
*Exhibit 54, Volume 2, Tab 1, Begdoc 40456*

493. Mr. Andrew's belief was that Oracle was the only provider of enterprise licences.

*Testimony of Jim Andrew, September 29, 2003, p. 144, lines 8 – 20*

494. A March 8, 2002 report from the City Auditor to Audit Committee states that at the time of the writing of the report, and of the acquisition, the City "was committed to an Oracle database platform", and that a "complete migration from an Oracle data base platform to a data base platform provided by another supplier would have required significant resources, both in terms of time, staff and additional funding."

*Exhibit 54, Volume 2, Tab 47, Begdoc 75340*  
*Testimony of Stephen Wong, August 6, 2003, p. 89, line 9 – p. 91, line 4*

**(I) December 30 Y2K Steering Committee Meeting**

**(i) Minutes of the Meeting**

495. Ms. Viinamae recalls Ms. Liczyk and Mr. Andrew being at the December 30, 1999 Y2K Steering Committee meeting. She briefed the Committee on the events since the December 9 meeting and received their approval for the Oracle acquisition. Ms. Viinamae recalls having the Y2K delegated approval form signed by Ms. Liczyk at that meeting. The outstanding issue discussed at the meeting was about Oracle being the recommended database standard for the City.

*Testimony of Lana Viinamae, October 17, 2003, p. 159,  
line 21 – p. 163, line 12  
Affidavit of Lana Viinamae, para. 111*

496. The fact that the Committee approved the transaction at the December 30, 1999 meeting does not appear in the minutes. Ms. Viinamae testified that when participants noticed that the item was not in the December 30 minutes at the next meeting (January 6, 2000), she, Mr. Andrew, and Ms. Liczyk agreed to add it to the minutes.

*Testimony of Lana Viinamae, October 23, 2003, p. 65 line 22  
– p. 66 line 19*

497. The January 6 minutes state: "The Steering Committee approved the leasing of the Oracle Enterprise Licences for 5 years at a cost of \$11,000,000." These minutes were reviewed and "approved as written" at the subsequent meeting (February 3, 2000). The minutes do not indicate who was present, but there would have been quorum. No one at the February 3 meeting took issue with the minutes of January 6 and the reference to Oracle having been approved. Ms. Liczyk and Mr. Andrew are not marked as present at the January 6 meeting. Ms. Viinamae testified that no one at that meeting suggested that in fact there had been no meeting on December 30, 1999.

*Testimony of Lana Viinamae, October 30, 2003, p. 115,  
line 23 – p. 123, line 6  
Testimony of Lana Viinamae, October 30, 2003, p. 123, lines 7  
– 16  
Exhibit 35, Tab 78, Begdoc 00363  
Exhibit 35, Tab 74, Begdoc 00340  
Exhibit 35, Tab 75, Begdoc 00362  
Exhibit 35, Tab 76, Begdoc 10902*

498. Regardless of the omission in the December 30 minutes, the fact is that the transaction was approved by virtue of the delegated approval form and the contract having been signed by Ms. Liczyk. As she herself testified: "it was properly approved based on the procedure of the Y2K program, by my signature on those documents."

*Testimony of Wanda Liczyk, November 13, 2003, p. 240,  
lines 3 – 7*

499. Line Marks testified that based on her handwritten notes from the December 30, 1999 meeting, there was a meeting on that day. She recalls the Oracle agreement being

approved. Further, Mr. Marks testified that she was at the February 3, 2000 Y2K Steering Committee Meeting. No one who attended the meeting disagreed with Item No. 1, which was the approval of the January 6 minutes. Mr. O'Brien attended the February 3, meeting.

*Testimony of Line Marks, August 14, 2003, p. 92, line 22 –  
p. 94, line 22  
p. 193, line 8 – p. 194, line 12, Testimony of Line Marks,  
August 14, 2003,  
p. 96, line 22 – p. 99, line 14  
Exhibit 35, Tab 78, Begdoc 00363  
Exhibit 35, Volume 1, Tab 9, Begdoc 000340*

500. Prior to Ms. Liczyk's testimony, counsel for Ms. Liczyk made the extraordinary suggestion that there was "something a little off about the minutes with respect to the attendees, I believe, and what was discussed." He said: "I believe the evidence is going to be that there may very well not have been a meeting at all on December the 30<sup>th</sup>." At that point, counsel for Mr. Andrew added "If I might add on to that please? Mr. Andrew, from his motor vehicle records, indicates that he wasn't at the City of Toronto on the 30<sup>th</sup> of December.... he had a meeting out of the office and was elsewhere on that day and didn't attend... and has no recollection of a meeting... of the 30<sup>th</sup> of December." Yet from the testimony of Ms. Liczyk and Mr. Andrew, it was apparent that indeed there was a meeting on December 30, and they both attended it.

*Testimony of Stephen Wong, August 5, 2003, pp. 27 – 28*

501. Rather than having been some sort of "phantom" meeting concocted by Ms. Viinamae for the purposes of the Inquiry, it is now clear that the December 30 meeting occurred. Ms. Marks did not fabricate five pages of handwritten minutes with details about business approvals and other matters. Given that the Y2K rollover was imminent, it would have been logical and indeed responsible for the Steering Committee to have had a meeting the day before December 31 to ensure all items were in order for Y2K. Ms. Marks testified that she never "made up" minutes from Y2K Steering Committee minutes.

*Testimony of Lana Viinamae, October 30, 2003, p. 125,  
line 24 – p. 127, line 5  
Testimony of Line Marks, August 14, 2003, p. 89, lines 20-23  
Exhibit 54, Tab 74, Begdoc 00340*

(ii) *Testimony of Jim Andrew*

502. The minutes for the December 30, 1999 Y2K Steering Committee meeting show Mr. Andrew being present, but he testified that he was not at the meeting.

"I believe I was not in Metro Hall or even in City hall that day, on the 30<sup>th</sup>. I have asked the City to produce my entry and exit the parking lot on the day, through Council... and that hasn't – apparently has not been produced. I checked a car log and that car log indicates that I was not at Metro Hall or City Hall on that day."

*Testimony of Jim Andrew, September 29, 2003, p. 139, line 25*  
– p. 142, line 7  
*Exhibit 54, Volume 1, Tab 9, Begdoc 00340*  
*Exhibit 63, Tab 14, Begdoc 79588*

503. Mr. Andrew initially testified "I am certain I was not there at that meeting [December 30, 1999]," and suggested that Ms. Marks made a mistake in her minute taking. Similarly, he claimed that a mistake was made with respect to his presence at the January 6, 2000 meeting. However, there is a great deal of evidence that Mr. Andrew was in fact present at the December 30, 1999 meeting.

*Testimony of Jim Andrew, September 30, 2003, p. 69, lines 4 – 15*

504. From his cross-examination and the documentary evidence, it became clear that Mr. Andrew's assertion that he was not at the meeting was incorrect. Mr. Andrew agreed that he was relying on his memory in recalling that he was not at the December 30, 1999 meeting, and he testified "my memory could always be wrong." Mr. Andrew agreed that his motor vehicle record for December 30, 1999 refers to 58 kilometres, and that this is the approximate distance from his home in Whitby to downtown Toronto. He agreed that it appears that he went from his home to downtown Toronto on December 30. He also travelled to Markham and perhaps elsewhere. The parking records indicate that Mr. Andrew was in fact at Metro Hall on December 30 from 7:00 am until 4:10 pm.

*Testimony of Jim Andrew, September 30, 2003, p. 69, line 16 –*  
*p. 74, line 14*  
*Parking Journals for Metro Hall, December 2-31, 1999*  
*Exhibit 63, Volume 17, Tab 2, Begdoc 78206 at 78210*

505. Further, Mr. Andrew's handwriting appears on a copy of the Y2K Steering Committee minutes from January 6, 2000. The word "ORACLE" is in handwriting beside Item No. 2 "Matters arising from minutes." When faced with this evidence, Mr. Andrew agreed that it reflects the fact that he was at that meeting.

*Testimony of Jim Andrew, October 8, 2003, p. 125, line 3 –  
p. 127, line 1  
Exhibit 35, Tab 75, Begdoc 00362*

506. Mr. Andrew stated in his affidavit that he was "quite certain" the handwriting and the checkmarks on the agenda for the December 30 meeting, which Ms. Viinamae testified were Mr. Andrew's, were not his writing, with the exception of the word "file" at the top right of the page. However, the handwriting expert has concluded that it is "highly probable" that the marking on the minutes are Mr. Andrew's.

*Supplementary Affidavit of Jim Andrew  
Exhibit 81 – Report of Diane Kruger*

507. Mr. Andrew's affidavit states that he did not drive to City Hall (where Mike Garrett's office is) because there is no parking record to this effect. This obviously does not prove that Mr. Andrew did not accompany Ms. Viinamae to have Mr. Garrett sign the delegated approval form. Ms. Viinamae testified that the form was signed at Mr. Garrett's Metro Hall office. Even if they had gone to his City Hall office, they could have travelled in Ms. Viinamae's car; or, given the short distance, they could have walked, and therefore Mr. Andrew's records would not track his entry. Mr. Andrew stated in his affidavit that the parking/entry record "appears to confirm" that he did not attend with Ms. Viinamae at Mr. Garrett's office. There is no entry record from Mr. Garrett's floor. Again, he may have used Ms. Viinamae's entry card. The building entry records indicate that Mr. Andrew spent most of the day on the 15<sup>th</sup> floor of Metro Hall, where the Y2K Steering Committee Meeting took place. It is not likely that Mr. Andrew spent the whole day on a floor where the meeting took place without attending it.

*Begdoc 00340*

**(iii) Testimony of Wanda Liczyk**

508. Ms. Liczyk testified that she was "not sure" if she was at the December 30 meeting. Despite the earlier suggestion by her counsel that the December 30 meeting did not occur, Ms. Liczyk testified that she was not suggesting the December 30 meeting did not take place, but she did not have a specific recollection of the meeting.

*Testimony of Wanda Liczyk, November 6, 2003, p. 173, line 9  
– p. 176, line 15, November 13, 2003, p. 223, line 18 – p.224,  
line 19*

509. Ms. Liczyk speculated that as December 31 approached, Ms. Viinamae "realized that she didn't have proper approvals and maybe panicked a bit and wanted to make sure she got the proper agreement signed off for December 31...[Perhaps on January 6] "there was like a backdated approval, to take us back to December 30, so that it looked like it was approved before December 31, but I don't know..."

*Testimony of Wanda Liczyk, November 13, 2003, p. 226,  
line 20 – p. 230, line 8*

510. There was no "back dated" approval on January 6, Ms. Liczyk signed the delegated approval form on December 30. She testified that Ms. Viinamae told her that the Y2K Steering Committee had approved the acquisition at one of the previous meetings. Ms. Liczyk "didn't have a personal sense that I'd gone to every meeting and so I relied and trusted her briefing of me in that regard and I signed it given the impending urgency of December 31." Ms. Liczyk relied on Ms. Viinamae's briefing as she had demonstrated through the course of the Y2K Steering Committee meeting a "diligence to detail." In hindsight, she should have asked to see the minutes, or "I should have asked to see the business case or the documentation that surrounded it, but I relied on her – her briefing of me." Ms. Liczyk testified that she signed the form "without doing a lot of due diligence".

*Testimony of Wanda Liczyk, November 6, 2003, p. 176, line 16  
– p. 178, line 24  
Exhibit 54, Tab 21, Begdoc 1615*

511. It was put to Ms. Liczyk in cross-examination that it would make sense she would have been even more on her guard if, when she signed the delegated approval form, she could

not remember the meeting where it was approved. She stated: "I didn't have any reason to mistrust Ms. Viinamae."

*Testimony of Wanda Liczyk, November 13, 2003, p. 235,  
line 15 – p. 236, line 8*

512. Ms. Liczyk testified that she was not at the February 3 Steering Committee meeting, and so she would not have seen the corrected January 6 minutes. Ms. Marks testified that if a member of the committee missed a meeting, she would still receive the minutes. All members received minutes and agenda prior to the meetings via e-mail attachments.

*Testimony of Wanda Liczyk, November 6, 2003, p. 178, line 25  
– p. 181, line 22; November 13, 2003, p. 239, lines 7 – 18  
p. 34-35  
Testimony of Line Marks, August 14, 2003, p. 197, lines 18-21  
Begdoc 06645  
Begdoc 19904*

**(iv) Testimony of Dick O'Brien**

513. Mr. O'Brien testified although he did not attend the December 30 meeting when the Committee approved the Oracle acquisition, had he been in attendance, he "would likely have agreed that the recommended purchase of Oracle Enterprise licences was reasonable." The ELA had been recommended by staff, and he relied on the recommendations of senior staff whom he respected and trusted.

*Affidavit of Dick O'Brien, paras. 29 and 30  
Testimony of Dick O'Brien, September 8, 2003, p. 90, lines 16  
– 2; p. 144, line 23 – p. 146, line 18*

514. Mr. Andrew and Ms. Liczyk attempted to use Mr. O'Brien's absence on December 30 to bolster their suggestion that the meeting did not occur. Ms. Liczyk stated in her affidavit that her understanding was that if Mr. O'Brien was not at Y2K Steering Committee meetings, that meetings did not occur. However, Mr. O'Brien was marked absent for the December 23, 1999, December 30, 1999, January 6, 2000, and March 24, 1999 meetings, yet according to the minutes, those meetings took place. When cross-examined on this point, Ms. Liczyk testified: "I can see that now, but that wasn't my sense at the time."

*Affidavit of Wanda Liczyk, para. 95  
Testimony of Wanda Liczyk, November 13, 2003, p. 214, line 7  
– p. 218, line 16*

515. Mr. Andrew testified he did not recall a meeting where Mr. O'Brien was not in attendance. "If it was it wouldn't have been a decision making meeting, it would be an information meeting." Clearly, the minutes for the meetings Mr. O'Brien did not attend indicate that decisions were made despite his absence.

*Testimony of Jim Andrew, October 14, 2003, p. 66, line 12 –  
p. 67, line 1*

516. Mr. O'Brien testified that he was not at the December 30 meeting and that he was on vacation. He is not marked as being present at the meeting. Ms. Liczyk agreed because there is a need for quorum, Ms. Liczyk and Mr. Andrew would have had to have been present at the December 30 meeting.

*Testimony of Wanda Liczyk, November 13, 2003, p. 223,  
line 18 – p. 224, line 19*

**(m) Business Case**

517. Mr. Wong testified that Ms. Viinamae should have prepared a written business case for the Oracle acquisition. At the time the City made the agreement, however, and even to this day, there is no policy requiring written business cases; a contentious issue remains unresolved. In a February 4, 2002 e-mail, Jeff Griffith suggested to James Ridge that the Oracle report should recommend such a requirement.

"From my perspective there should be recommendations in this report re: the obvious need for detailed business cases approved by senior staff. I know that this has been an issue in other reports but we need to emphasize this again."

518. No such recommendation was put in the report.

*Testimony of Jeff Griffiths, September 10, 2003, p. 217, line 19  
– p. 218, line 6  
Exhibit 54, Volume 2, Tab 56, Begdoc 72581*



519. Mr. Griffiths could not identify any written City guideline, policy, or by-law relating to the content or dollar threshold for a written business case.

*Testimony of Jeff Griffiths, September 10, 2003, p. 218, line 7  
– p. 219, line 18*

520. Ms. Viinamae testified that the business case that Mr. Wong outlined in his affidavit is so detailed that it would have taken more than a year to complete. It would have involved extensive interviews with all the business areas, and could not have been done in time for Y2K.

*Testimony of Lana Viinamae, October 27, 2003, p. 16, lines 8  
– 14  
Affidavit of Stephen Wong, para. 30*

521. Mr. Wong could not point to any written by-law or policy of the City that dictates that a written business case is required. He testified it was "normal practice within the City that it is undertaken." If it was in fact a "normal practice" to provide a written business case, there would have been no reason for the Auditor to recommend "the obvious need for written business cases" since it had "been an issue in other reports".

*Testimony of Stephen Wong, August 5, 2003, p. 99, lines 4 –  
13  
Exhibit 54, Volume 2, Tab 56, Begdoc 72581*

522. Ms. Liczyk signed the delegated approval form without having seen a business case. She did not ask Ms. Viinamae to prepare one. Nor is she aware of any member of the Committee asking Ms. Viinamae for a written business case. Ms. Liczyk testified that Ms. Viinamae should have prepared a written business case, when neither Ms. Liczyk nor anyone else on the Committee asked her to do so at the time.

*Testimony of Wanda Liczyk, November 13, 2003;  
November 12, 2003, p. 96, line 2 – p. 100, line 4, p. 221,  
line 13 – p. 222, line 6 p. 222, line 7 – p. 223, line 7*

523. Mr. Andrew testified that if the Y2K Steering Committee did not think there was enough detail about an item, they would send it back. The Committee never asked Ms. Viinamae to provide a written business case.

*Testimony of Jim Andrew, September 29, 2003, p. 159,  
lines 10 – 22  
Testimony of Lana Viinamae, October 30, 2003, p. 111,  
line 21 – p. 113, line 2*

524. Mr. Andrew testified that he recalled that with "all other major Y2K decisions" there was a business case associated with them. However, when asked whether the Committee would have voted retroactively to purchase the Oracle licences without a business case, he agreed that "it may have been done without a business case". Evidently, the acquisition went ahead without a written business case, and Ms. Viinamae was never asked to produce one.

*Testimony of Jim Andrew, September 29, 2003, p. 157, line 25  
– p. 159, line 4*

525. Ms. Viinamae testified that she agreed more documentation would have been valuable. However, Oracle fit under the 84 priority 1 business cases "as opposed to being a standalone problem and solution, it really was being used by the 84 business cases... it was seen as a licensing exercise as opposed to... an issue on its own."

*Testimony of Lana Viinamae, October 21, 2003, p. 205, lines 1  
– 17*

526. Ms. Viinamae testified that it is her belief that there was no business case written for Novell and Microsoft NT, which are both enterprise agreements. She testified that when the acquisition is part of an overall solution, there may not be a business case done for the individual component of the solution. For example, Novell was used by the majority of the former municipalities, and so as a de facto standard, it was accepted. Her understanding was that Microsoft NT and Novell formed part of the desktop standard, and so the issue went to the CAO and the senior management team for approval, but may not have gone to a committee of Council.

*Testimony of Lana Viinamae, October 27, 2003, p. 153*

527. When asked whether he was troubled by the fact that there was no written documentation to support the acquisition, Mr. Andrew testified:

I thought that the Oracle deal would be a good deal for the City. I think Lana had explained what they were looking at, to legalize the software, as part of Y2K and that was the cost of doing that and it

was within the Y2K budget, then I was comfortable with that decision that was being made.

He agreed that his agreement with the decision was based on "gut instinct" and previous knowledge he had about Oracle, as well as Ms. Viinamae's contention that it was a good deal.

*Testimony of Jim Andrew, September 29, 2003, p. 148,  
lines 13-17, October 7, 2003, p. 45, line 9 – p. 49, line 16*

**(n) Communication About the Acquisition**

528. As indicated in the network order form under the Oracle agreement, Michael Franey, the Acting Director of Computer Operations and Telecommunications, was responsible for the administration of the contract. Notification of the Oracle Agreement was given to all IT staff and was given to Nicki Camarda, Manager of Communications for IT, on November 25, 2000. Mr. Franey was aware of the negotiation of the Oracle Agreement during the Fall of 1999.

*Testimony of Stephen Wong, August 6, 2003, p. 68, line 16 –  
p. 71, line 13  
Affidavit of Lana Viinamae, para. 114  
Testimony of Larry Griffith, August 7, 2003, p. 12, line 24 –  
p. 14, line 16;  
Exhibit 54, Volume 2, Tab 39, Begdoc 16293  
Exhibit 54, Volume 1, Tab 10, Begdoc 40503 at 40516  
Exhibit 54, Volume 2, Tab 41, Begdoc 16241*

529. Mr. Franey was aware of the pricing for an ELA, and he provided input. He attended meetings with Oracle in the fall of 1999. In his affidavit, Mr. Franey describes having had three meetings with Oracle. Other documents demonstrate that Mr. Franey had knowledge of the ELA with Oracle. On November 20, 2000, Mr. Griffith wrote to Mr. Franey: "I would like you to provide the inventory of all departments who utilized Oracle products prior to the Enterprise Licence Agreement."

*Testimony of Lana Viinamae, October 17, 2003, p. 157,  
line 18 – p. 158, line 2  
Affidavit of Mike Franey, para. 15-16  
Testimony of Larry Griffith, August 7, 2003, p. 23, line 14 –  
p. 26, line 7  
Begdoc 16304, 16279, 75166, 16293, 16291*

530. Ms. Viinamae testified that the draft announcement written by Mr. Power went to Ms. Camarda, to put it on the internet. Mr. Franey was responsible for communicating the fact that the City had commenced on ELA. The client service directors who worked with the operating departments, would be in communication with Mr. Franey, and these directors had primary responsibility for communicating the ELA. Once Ms. Viinamae told the Directors about the agreement, it was no longer her responsibility to make sure everyone understood the impact on his or her business area.

*Affidavit of Lana Viinamae, para. 114  
Testimony of Lana Viinamae, October 17, 2003, p. 198,  
line 18 – p. 210, line 5  
Exhibit 54, Volume 2, Tab 40  
Exhibit 54, Volume 2, Tab 39, Begdoc 16293*

531. The fact that the City had entered into an ELA was also in the Budget Guidelines from January 2000, which were part of the City's 2000 Budget Guidelines sent to all departments to assist in the budget process.

*Exhibit 54, Vol 1, Tab 69, Begdoc 16172*

532. According to Mr. Wong's affidavit, there was no clear and timely communication to all departments, explaining the implications of the agreement on their business applications, and "the result is that even to this day, there remains some confusion in some business units regarding the status of their Oracle licenses." Surely if confusion exists today, Mr. Wong, or other city employees, could resolve that problem. There is no logic in blaming Ms. Viinamae, who has not worked for the City for three years, for a current problem.

*Affidavit of Stephen Wong, para. 59*

**(o) Consultation With Others**

533. Ms. Viinamae was cross-examined on why she did not personally sit down and consult with Mr. Wong about the Oracle acquisition. Mr. Wong knew that an ELA was being considered because he was a member of the IT Directors' team, and all the directors were aware of the acquisition. Mr. Wong never volunteered any input. Ms. Viinamae worked with Ms. Rattner on the SAP initiative, as well as with other program managers such as Sandra Crutcher

and Mr. Smith. In the fall of 1999, Mr. Wong had just returned from phase 1 of SAP implementation and was aware of the negotiations that were under way. He had been working off-site in the North York location and may not have been as informed as a result. Ms. Viinamae had no need to consult with him about the Oracle licence needs for SAP, because she did so with Ms. Rattner and Ms. Liczyk. Further, Ms. Viinamae discussed the ELA with Mr. Andrew and other members of the Y2K Steering committee. Mr. Andrew and Ms. Liczyk were also members of the SAP Steering Committee.

*Testimony of Lana Viinamae, October 29, 2003, p. 155,  
line 14 – p. 158, line 25*

534. Ms. Viinamae does not agree that she did not adequately consult with her peers in the IT Department. She testified that she spoke to all IT directors about the Oracle ELA. She had such a discussion with Mr. Wong as a member of the IT Directors' Team. She testified that starting in October "when we had...got the green light to look at the Oracle licence agreement, all of the I&T Directors were aware we were looking at this.". All the people Ms. Viinamae spoke with understood what an ELA was, and indicated that it was something they needed for their program.

*Testimony of Lana Viinamae, October 29, 2003, p. 156, line 1  
– p. 163, line 7*

**(p) Oracle Report**

535. The February 6, 2000 Oracle report from the City Auditor and the CAO was based on an evident attempt to blame Ms. Viinamae, publicize conclusions which sprang from a completely deficient investigation, and persuade City Council of the need to appoint this Inquiry. The report claimed that the City using less than 1,000 Oracle enterprise licences. The report stated:

"In retrospect, the decision to purchase 10,000 seats of software was a serious miscalculation. At no time since 1999 has the City needed more than a fraction of the 10,000 enterprise licences purchased. It is highly unlikely the City will need that number of licences in the foreseeable future".

536. Further, it stated "it is clear that the City needs and is using only a small number of Oracle enterprise licences, possibly less than 1000". Given that Ms. Viinamae was terminated on the basis of the report, this error is disturbing. The term "serious miscalculation" is found in the terms of reference for the Inquiry.

*Exhibit 54, Volume 2, Tab 26, Begdoc 06349, pp. 3-4*

537. James Ridge was the contact on the report. Given that Mr. Ridge knew that there were 9,251 licences in use by Ms. Bulko, it is not at all clear why the report went forward stating that the City was using "possibly less than 1,000". On January 2, 2002, Mr. Ridge asked Ms. Bulko "for a reliable count of the number of Oracle licences we own by type and under what umbrella they fall (the big purchase of 2000, IBMS, SAP) ... I've heard numbers of licences in use ranging from 900, to 3,000 to 7,000." Ms. Bulko surveyed the database administrators (via e-mail) for the number of Oracle users. She then summarized the total and informed Mr. Ridge and Mr. Wong that as of October 30, 2001, the number was 9,251.

*Exhibit 55, Volume 2, Tabs 91-101  
Exhibit 55, Volume 2, Tab 103, Begdoc 72585*

538. Mr. Bulko testified that the number of SAP users was underreported in her response from database administrators. Her e-mail to Mr. Ridge and Mr. Wong referred to thirteen SAP users, yet she testified that in fact there would have been about 2,000 SAP users. Although she was aware the SAP figure was underreported at the time, Ms. Bulko took no action to correct these figures.

*Testimony of Kathryn Bulko, August 12, 2003, p. 73, line 24 –  
p. 76, line 11*

539. Ms. Bulko testified that at the time Ms. Bulko sent the information to Mr. Wong and Mr. Ridge (January 2, 2002), she did not know why they were asking for the information. At the time of her testimony, she was aware that the Auditor's report stated that "only a small number of Oracle enterprise licences possibly less than 1,000" were in use, and agreed that was not the figure that she reported to Mr. Wong and Mr. Ridge. Ms. Bulko received a draft Auditor's report on February 4, 2002 with the incorrect number of seats in use (at which point

she was aware that Mr. Ridge and Mr. Wong were assisting the Auditor with a report), yet she did not do anything to correct the draft.

*Testimony of Kathryn Bulko, August 12, 2003, p. 77, line 3 –  
p. 80, line 22  
Exhibit 54, Vol. 2, Tab 49, Begdoc 75338*

540. Mr. Franey's affidavit states that "At the time of the release of [the report] I heard that the City was using less than 1,000 Oracle enterprise licences. This information was incorrect. I decided we should count and begin to track the City's use of Oracle licences corporately." Mr. Franey knew the Oracle report was incorrect, yet there is no evidence that he did anything to alert others of this fact, even after Ms. Viinamae's termination. Since the City did not count licences until March 2002, it had no basis for concluding that the decision to purchase was "a serious miscalculation".

*Affidavit of Mike Franey, para. 22  
Affidavit of Clem Chan, para. 5  
Exhibit 54, Vol. 1, Tab 1-029, Begdoc 30594*

541. A possible origin of the reference to less than 1,000 seats being in use is the information given to KPMG by Ms. Bulko or Mr. Wong. The notes from Ms. Bulko's KPMG interview contain a reference to "897 users – Oracle users (not SAP)". Mr. Wong's KPMG notes refers to a discussion with Kathryn Bulko where the number of non-SAP Oracle users was estimated to be less than 1,000.

*Testimony of Kathryn Bulko, August 12, 2003, p. 83, line 12 –  
p. 88, line 15  
Exhibit 55, Volume 2, Tab 113, Begdoc 12195  
Exhibit 55, Volume 2, Tab 114, Begdoc 16544*

**(q) Wong's Investigation**

542. Mr. Wong was not given direction in any written form from Mr. Ridge to review the Oracle agreement. There were no terms of reference for the investigation, he was simply asked to review the document itself, and to determine whether the City was using all of its licences effectively. However, Mr. Wong testified that even to the date of his testimony, the City has not concluded an analysis of all its existing needs, or a projection of future Oracle needs.

*Testimony of Stephen Wong, August 5, 2003, p. 90, line 6 –  
p. 92, line 5*

543. In conducting his investigation, Mr. Wong did not interview Ms. Viinamae, even though she was still employed at the City at that time. The only people Mr. Wong interviewed were Kathryn Bulko, Clem Chan, Mike Franey, James Ridge, and Larry Griffith. He testified that by the time he "recognized the matters" (middle to end of February), Ms. Viinamae already was no longer an employee of the City. Considering that Mr. Wong's report was issued the day before Ms. Viinamae was terminated by the City, it is disconcerting that he did not "recognize the matters" he was investigating.

*Testimony of Stephen Wong, August 5, 2003, p. 92, lines 8 –  
15, p. 95,  
lines 6 - 24*

544. Mr. Wong did not take notes (other than what was recorded in e-mails to James Ridge) during his investigation. We have no "business case" to back up his investigation or his conclusions, which became the City's conclusions in firing Ms. Viinamae.

545. The Oracle report recommended that the City Auditor "further investigate this contract, including interviews with key participants as required." Mr. Wong is not aware if that was ever carried out. Ms. Viinamae (obviously a key participant) was never contacted by Mr. Wong, Mr. Ridge, or anyone else to interview her in accordance with the report's recommendation. It also recommended that "further interviews are required, as well as a detailed examination of the City's Oracle licence holdings and needs." Neither Ms. Viinamae, Ms. Liczyk, Mr. Andrew, nor Mr. O'Brien was interviewed, despite this recommendation. Although the report was referred to as an "Interim Report," and a "preliminary assessment," the recommendation was never carried out.

*Affidavit of Lana Viinamae, Para. 116  
Testimony of Jeff Griffiths, September 10, 2003, p. 202, line 14  
– p. 201, line 22*

546. Mr. Wong testified that he was asked to look at the Oracle agreement in February of 2002 and that the issues were crystallized for him in the middle to the end of February. However, he testified that he had "some early observations," which he communicated to James



Ridge via e-mail. Mr. Wong testified that he gave James Ridge "some early indication of certain questions and issues," yet these comments were provided a day or two before the issuance of the Auditor's Report on Oracle, and formed the basis for the report's conclusion that there was a "serious miscalculation" of the licences needed.

*Testimony of Stephen Wong, August 5, 2003, p. 95, line 22 –  
p. 98, line 21*

547. Mr. Wong's review of Y2K Steering Committee minutes was completely insufficient. He did not seek access to any minutes of the Y2K Steering Committee other than December 30, 1999 and January 6, 2000. He could not recall whether he noticed change requests in the December 9, 1999 minutes. He testified "I wasn't specifically looking for the various details. I was looking for a relevant description about Oracle." As set out elsewhere in these submissions, the December 9, 1999 minutes contained references to Oracle. Mr. Wong said he could not understand from the references in the minutes what the Committee was discussing. Surely Mr. Wong could have asked Ms. Viinamae or someone else on the Y2K Steering Committee to clear up his confusion. Mr. Wong testified that he had no access to any member of the Committee at that time, but there is no evidence he attempted to gain such access and there is no reason he could not have contacted members of the Committee who had left the City. Mr. Wong testified that in hindsight, the reference to Oracle having an on-going cost is of interest, yet he did not pursue this at the time.

*Testimony of Stephen Wong, August 5, 2003, p. 121 – p. 126,  
line 6  
Testimony of Stephen Wong, August 5, 2003, p. 90, lines 17 –  
21  
Exhibit 54, Volume 2, Tab 4, Begdoc 39679 at 39681 and  
39684*

548. Ms. Viinamae had nothing but the best interests of the City in mind when she was negotiating the Oracle deal. She had no reason to pursue an acquisition that the Y2K Steering Committee did not endorse and approve. Yet an e-mail to Mr. Griffith, Mr. Ridge stated: "It looked like there would be some Y2K money left over and this was a last minute spending spree," Mr. Wong testified that this same idea "crossed his mind". Mr. Ridge's comment was completely unjustified and was made in bad faith, without any attempt to verify it with Ms. Viinamae or anyone else.

*Exhibit 54, Volume 2, Tab 56, Begdoc 75318*  
*Testimony of Lana Viinamae, October 30, 2003, p. 127, line 6*  
*– p. 128, line 16*  
*Testimony of Stephen Wong, August 6, 2003, p. 139*

**PART 14 -  
CONFLICT OF INTEREST**

549. Between the time of amalgamation (January 1, 1998) and communication of the City of Toronto's Conflict of Interest Policy (April 2001), Ms. Viinamae accepted invitations to several events from suppliers of the City of Toronto. These included industry awards shows, charity and fundraising events, product launches, sporting and entertainment events, and conferences. She attended these events with the knowledge of her superiors, who encouraged senior staff to attend. Invitations to these activities were extended to Ms. Viinamae through her superiors directly, or accepted by her with the approval of her superiors – in most cases, Jim Andrew. At some of these events, she (along with other City of Toronto attendees) was given promotional items such as hats, T-shirts, bags, books, mugs, pins, and jackets.

*Affidavit of Lana Viinamae, para. 150  
Testimony of Lana Viinamae, October 15, 2003, p. 227,  
line 17 – p. 232, line 10*

550. Ms. Viinamae saw other senior staff, as well as politicians, at these events. She was never informed at events where her superiors were in attendance that her presence was inappropriate. On the contrary, Ms. Viinamae's superiors told her she should have been there, and by virtue of their own attendance, confirmed that it was acceptable. Consequently, Ms. Viinamae should not be criticized for attending promotional and other such events.

**(a) Approval and Encouragement by Superiors**

551. Ms. Viinamae does not recall Mr. Andrew ever disapproving of her attendance at an event. On the contrary, Mr. Andrew was liberal in his attitudes toward entertainment (as the evidence has shown). Ms. Viinamae testified: "Jim would normally encourage a lot of socializing from a standpoint of networking, actually learning about the new vendor products, meeting peers in the industry and so forth." Either Mr. Andrew's secretary or Mr. Andrew himself would invite Ms. Viinamae on the electronic calendar, or Ms. Viinamae's assistant would be contacted and it would be put on her calendar. On some occasions, Mr. Andrew would offer to pick Ms. Viinamae up and take her to the event.

*Affidavit of Lana Viinamae, para. 150  
Testimony of Lana Viinamae, October 15, 2003, p. 209,  
line 13 – p. 203, line 9*

552. Not only was Ms. Viinamae expected to attend such events, but there would be negative repercussions for her if she did not. Ms. Viinamae testified: "Jim had always said to me that one of the things that I had to do if I was looking at a more senior job at the City is to get out there and network... the sense was if you're not out there seen to be networking with the decision makers, then basically you're not going to be considered to be part of the team."

*Testimony of Lana Viinamae, October 15, 2003, p. 150,  
line 19 – p. 151, line 2*

553. An example of an event Ms. Viinamae was expected to attend was the Mayor's annual golf tournament. She recalled being contacted by Harvey Mooradian in the Mayor's office and informed that she was required to play for two days, and told who she was playing with. Ms. Viinamae had never even told Mr. Mooradian that she was interested in playing in the tournament. Ms. Viinamae did not consider herself a golfer, and felt sorry for those who were set up to play with her. However, her impression was that attending this golf tournament was part of her job. Vendors requested to play with a City staff person, and Ms. Viinamae testified that it "caused quite a kaffuffle" when she did not attend the event in 2001. Someone else had to be assigned to play with the vendors that year.

*Testimony of Lana Viinamae, October 15, 2003, p. 230 line 1  
– p.231, line 12*

554. After the communication of the new Conflict of Interest Policy, Ms. Viinamae did not attend any events described except for a luncheon hosted by EDS Canada at which several Councillors were also in attendance. In addition, she had occasional meals paid for by suppliers. Ms. Viinamae recalls James Ridge (then Executive Director of IT) being asked whether City employees could still have meals paid for by suppliers of the City under the Conflict of Interest Policy. Mr. Ridge stated that it was permitted by the Policy if the cost of the meal was not excessive, and he recommended reciprocity (that City employees also treat the suppliers in return).

*Affidavit of Lana Viinamae, para. 152  
Testimony of Lana Viinamae, October 15, 2003, p. 202,  
line 22 – p. 204, line 13*

**(b) Meetings with Suppliers**

555. Many vendors demanded access to Ms. Viinamae because of her positions as Y2K Director, and Director, Capital I&T Projects. She testified that if vendors' calls were not returned or they were not provided with an opportunity to meet, they would escalate the issue up the ladder of the bureaucracy or may even go to the politicians. She testified: "If [the vendors] wanted to see you, you had to provide an opportunity for them to come and meet with you."

*Testimony of Lana Viinamae, October 15, 2003, p. 207, lines 3  
– 21*

556. A lunch meeting with a supplier was regarded as work, rather than a perq by Ms. Viinamae, even though the supplier usually paid for the meal. Because Ms. Viinamae regularly worked twelve or more hours per day, she did not consider lunch meetings to be a break from work. Ms. Viinamae testified that since the purpose of the meeting was to deal with suppliers' issues and City employees did not have "huge expense budgets," she felt it was appropriate for the supplier to pay for the meal. It was generally accepted by Mr. Andrew and senior management that the suppliers should pay for the meals.

*Testimony of Lana Viinamae, October 15, 2003, p. 204,  
line 14 – p. 206, line 16*

557. Ms. Viinamae testified that she gained a lot of valuable information from lunch meetings with vendors that was of benefit to the City: "This was one of the ways that we were able to actually achieve education with a very limited education budget." If she was given promotional material that would be valuable to one of her managers or to another area, she would provide it to them. Vendors also gave Ms. Viinamae contacts at other organizations that had faced and solved similar situations as the City of Toronto.

*Testimony of Lana Viinamae, October 15, 2003, p. 207,  
line 22 – p. 209, line 21*

(c) **Attendance at Conferences**

558. Ms. Viinamae attended an annual international user group conference hosted by Novell (a supplier to the City of Toronto) in Salt Lake City in early 2001. Representatives from the City of Toronto had been attending the conference on a regular basis for a number of years. Novell invited Ms. Viinamae and Michael Franey, then Acting Director of Computer Operations and Telecommunications. Ms. Viinamae believes that the air travel, accommodation, and conference fees were paid for by Novell, and that the City reimbursed her for expenses such as meals on a per diem basis. Mr. Andrew initially approved their attendance, and after he left the City, James Ridge confirmed the attendance. Ms. Viinamae spoke to Mr. Ridge and he told her to "double check" with Commissioner of Corporate Services, Joan Anderton. Ms. Anderton also approved the attendance. Ms. Viinamae testified that the approval procedure "was fairly informal."

*Affidavit of Lana Viinamae, para. 153  
Testimony of Lana Viinamae, October 15, 2003, p. 212, line 4  
- p. 214, line 17*

559. Ms. Viinamae also went to the Microsoft CIO conferences in Seattle, Washington, and a Computer Associates conference in New Orleans in 1999 or 2000. She was invited to these conferences by Mr. Andrew who could not attend because of conflicts in his schedule. Stephen Wong, Kathryn Bulko, and a number of technical staff from the City of Toronto also attended the Computer Associates conference.

*Affidavit of Lana Viinamae, para. 154  
Testimony of Lana Viinamae, October 15, 2003, p. 217,  
line 25 - p. 218, line 7*

560. Usually the conference sponsors would put on a welcoming party or event, but the rest of the conference entailed attending sessions from 8:00 am to 4:30 or 5:00 pm in the evening. The conferences were another means of obtaining extremely valuable information. Ms. Viinamae would receive handouts, make contracts, and hear from individuals from other institutions who had implemented similar solutions. She would collect as much of the handout material as she could and take it back to staff. However, there was no formal kind of reporting system or debriefing for those who attended the conferences.

*Testimony of Lana Viinamae, October 15, 2003, p. 218, line 8  
– p. 221, line 4*

**(d) MFP Testimonial**

561. Given that Ms. Viinamae's superiors thought it was appropriate to provide a testimonial to MFP for their annual report – and in Mr. Andrew's case, encouraged her participation – Ms. Viinamae cannot be criticized for her involvement.

562. Ms. Viinamae was informed by Mr. Andrew that MFP would be interviewing her for their annual report. Mr. Andrew told Ms. Viinamae that he and Wanda Liczyk were also being interviewed. Ms. Viinamae was subsequently interviewed and photographed by MFP. Ms. Viinamae's sense was that Mr. Andrew believed that it was "a good thing for us." When asked whether she could have elected not to participate, she testified that she believes so but "I was being told by my boss to do this and I saw no reason why I shouldn't."

*Affidavit of Lana Viinamae, para. 149  
Testimony of Lana Viinamae, October 15, 2003, p. 236,  
line 20 – p. 237, line 21*

563. In an e-mail to Wanda Liczyk, Janis Cowie of MFP stated that Mr. Domi indicated Ms. Liczyk would be willing to help with the customer testimonial for the MFP Annual Report. Further, she wrote: "We will be interviewing Jim Andrew and would like to get input from yourself and Lana Viinamae as well." Mr. Andrew agreed that the e-mail suggests that MFP made the first contact with Mr. Andrew. He believes that Mr. Domi approached him about the testimonial. Mr. Andrew testified that he told Mr. Domi that he did not think there was a problem with participating.

*Exhibit 63, Volume 9, Tab 65, Begdoc 67873  
Testimony of Jim Andrew, September 30, 2003, p.103, line 4 –  
p. 104, line 19*

564. Ms. Liczyk testified that she recalled Mr. Domi calling her to ask if she would participate in the testimonial, in which they would be highlighting their government clients. Before she accepted, she did not check with Mike Garrett or the Communications Department to see if there were guidelines for giving testimonials to a supplier. Ms. Liczyk testified that she agreed to do the testimonial "Only because I felt that it was accepted practice at the City." She

testified that she had been advised by a former Metro Finance staff that he had given testimonials for a vendor. She believes the person was Al Shultz (Director of Accounting Services).

*Affidavit of Wanda Liczyk, para. 78  
Testimony of Wanda Liczyk, November 6, 2003, p. 42, line 11  
– p. 56, line 25*

565. When Ms. Viinamae reviewed the section of the testimonial that included quotes from her, she also saw the sections where Mr. Andrew and Ms. Liczyk were quoted. It was therefore confirmed for Ms. Viinamae that Mr. Andrew and Ms. Liczyk had participated.

*Volume 1, Tab 7, Begdoc 29127 at 29166  
Testimony of Lana Viinamae, October 15, 2003, p. 247, line 3  
– p. 254, line 4*

566. Ms. Viinamae sent a response on July 5, 2000 regarding the MFP testimonial. She corrected her title, but nothing else.

*Exhibit 63, Volume 10, Tab 4, Begdoc #29093  
Testimony of Lana Viinamae, October 22, 2003, p. 105, line 1  
– p. 106, line 5*

567. Mr. Andrew received a fax from Janis Cowie enclosing the draft MFP testimony and requesting Mr. Andrew's approval in writing. Ms. Viinamae's requested changes were not made in the final document. Mr. Andrew agreed that it was possible that he, rather than MFP, requested Ms. Viinamae's participation.

*Testimony of Jim Andrew, September 30, 2003, p. 103, line 4  
– p. 110, line 8  
Exhibit 63, Volume 9, Tab 65, Begdoc 67873; Volume 10,  
Tab 4, Begdoc 29092, 29094, 29095*

**(e) Hockey Games**

568. Ms. Viinamae attended about four or five hockey games at the MFP box in the Air Canada Centre during the 1999 and 2000 seasons. She was invited either by Dash Domi directly, or indirectly through Mr. Andrew. On one occasion, Mr. Andrew came and picked Ms. Viinamae up at her house and took her to the game.



*Affidavit of Lana Viinamae, para. 155  
Testimony of Lana Viinamae, October 15, 2003, p. 221,  
line 23 – p. 223, line 15*

569. Ms. Viinamae is “not a big hockey fan.” However, she agreed to attend these hockey games because she was invited to, and because she regarded them as an opportunity to network with politicians and employees from the City of Toronto, people from other municipal governments, and suppliers.

*Testimony of Lana Viinamae, October 15, 2003, p. 223,  
line 21 – p. 225, line 20*

570. Mr. Andrew was in the MFP box at most of the hockey games Ms. Viinamae attended. She also saw Ms. Liczyk in attendance at about three of the games.

*Testimony of Lana Viinamae, October 15, 2003, p. 233, line 2  
– p. 234, line 5*

571. Ms. Viinamae had no illusions about why Mr. Domi invited her to hockey games. When asked whether she trusted Mr. Domi, Ms. Viinamae testified:

I trusted that he wanted to do business with the City. I trusted that he wanted to have a good relationship with the City, but I always felt that MFP would be looking out for MFP.

Her attendance at these hockey games or other invitations from Mr. Domi did not affect her judgment or compromise her independence.

*Testimony of Lana Viinamae, October 15, 2003, p. 224,  
line 23 – p. 227, line 14*

**PART 15 -  
INTERACTION WITH JEFF LYONS**

572. Ms. Viinamae knew Jeff Lyons as a lobbyist who represented a number of IT suppliers to the City. In that capacity, she had occasional meetings with him. Mr. Lyons testified that he did not remember "getting much, if anything, from Lana Viinamae" in the way of "intelligence" from the IT Department. At no time did Ms. Viinamae improperly convey any information to Mr. Lyons about City business.

573. Mr. Lyons supported Ms. Viinamae for the acting Executive Director of IT position after Mr. Andrew resigned in early 2001. Mr. Lyons called the Mayor's office to express his support because he believed Ms. Viinamae was very well-qualified to fill the position. That was also the view of Mr. Lyons' IT clients and others within the IT industry.

574. Ms. Viinamae never asked Mr. Lyons to assist her in getting the position. Any calls made by Mr. Lyons were on his own initiative. Ms. Viinamae never asked Mr. Lyons to do favours of any kind for her.

**(a) Acting Executive Director Position**

575. Jeff Lyons testified that he supported Ms. Viinamae for the acting Executive Director of IT position after Jim Andrew resigned. However, any calls made by Mr. Lyons were on his own initiative. Ms. Viinamae never asked Mr. Lyons to assist her in getting the position. Ms. Viinamae is not the IT official identified in two of Mr. Lyons' memos to file regarding Dell computer or Dell Financial Services. Further, Ms. Viinamae did not provide a copy of the July 1999 Council report to Mr. Lyons, or anyone outside the City of Toronto.

576. When Mr. Andrew resigned as Executive Director of I&T and the City was looking for someone to replace him on an acting basis, he spoke to Commissioner Joan Anderton because he thought "the best choice at that time would have been Lana." Mr. Andrew testified: "I always thought that if I left the City that Lana would be an ideal candidate to replace me."

577. Mr. Lyons testified that Ms. Viinamae was "very highly regarded" within the IT industry. Mr. Lyons stated that Ms. Viinamae was well-qualified to fill the position of Executive Director of IT after Mr. Andrew left. That was also the view of Mr. Lyons' IT clients and others within the IT industry. Ms. Viinamae took from a discussion with Mr. Lyons that he supported her for the acting Executive Director position.

*Testimony of Jeff Lyons, May 13, 2003, p. 40 lines 3-5; p. 64,  
line 25 - p. 65, line 7  
Testimony of Lana Viinamae, October 15, 2003, p. 126,  
line 17 - p. 127, line 8*

578. Mr. Lyons testified that he called the Mayor's Office about Ms. Viinamae. He may also have called Councillors Miller and Berardinetti. He wanted them to "take on" Commissioner Anderton to persuade her that she should promote Ms. Viinamae rather than James Ridge to the acting Executive Director position. Mr. Lyons testified that any calls he made to people at the City about Ms. Viinamae were on his own initiative. Ms. Viinamae never asked him to help her get the acting or permanent Executive Director position. Mr. Lyons testified that Ms. Viinamae has never asked Mr. Lyons to do any favours for her and she probably did not even know that he made these calls. Mr. Lyons never told Ms. Viinamae that he could get her a position at the City, and he could never promise or guarantee anyone such a thing.

*Testimony of Jeff Lyons, May 13, 2003, p. 65, line 8 - p. 66,  
line 25; line 12 - p. 87, line 14*

579. Ms. Viinamae never asked Mr. Lyons to help her get the position. She testified that if she had known Mr. Lyons was actually going to make a phone call on her behalf she would have asked him not to. Ms. Viinamae knew that Commissioner Anderton "was not overly enamored with lobbyists" or the interaction with politicians, such that a phone call made by Jeff Lyons on her behalf would not be of assistance to her.

*Affidavit of Lana Viinamae, para. 147  
Testimony of Lana Viinamae, October 15, 2003, p. 130,  
line 12 - p. 131, lines 2 - 7*

580. During cross-examination, counsel for the City asked Mr. Lyons whether he know why Ms. Viinamae told Margaret Dougherty, the Coordinator of the City's Communications

Department, that Mr. Lyons had promised Ms. Viinamae that he would get her the job. Mr. Lyons stated that he did not know who Margaret Dougherty was, and denied ever promising Ms. Viinamae he would get her any position. Ms. Viinamae was never cross-examined on this alleged comment by Margaret Dougherty, and no evidence was ever adduced that such a comment was in fact made.

*Testimony of Jeff Lyons, May 13, 2003, p. 90, line 20 - p. 91, line 4*

581. Jim Andrew testified that after he left the City, he heard that Mr. Lyons was lobbying for Ms. Viinamae to get the acting Executive Director position. As for whether Mr. Andrew had a discussion with Ms. Viinamae about such lobbying, Mr. Andrew initially testified "I think even Lana told me" that Mr. Lyons was lobbying. Mr. Andrew also testified "I think she asked him... to see if he – she could get some political help to overrule" Ms. Anderton.

*Testimony of Jim Andrew, September 24, 2003, p. 205, lines 23 – p. 206, line 9, p. 209, lines 6 – p. 210, line 2; October 8, 2003, p. 163, lines 13 – p. 164, line 1*

582. On cross-examination, Mr. Andrew admitted that Ms. Viinamae did not tell him that she had asked Mr. Lyons to make calls on her behalf. He was less certain about his recollection than his previous testimony: "I had heard from people that Mr. Lyons was – maybe going around the second floor, supporting her." Mr. Andrew testified that he met with Ms. Viinamae after he left the City, but that most of the conversation with her centered on the fact that she was upset about not getting the acting position. They did not meet for the purpose of discussing any interaction with Mr. Lyons.

*Testimony of Jim Andrew, October 9, 2003, p. 6, lines 13 – p. 7, line 8*

583. Ms. Viinamae testified that she thinks Mr. Andrew mentioned to her that Mr. Lyons was in support of her getting the position. Ms. Viinamae testified that it was only that "casual mention" on Mr. Andrew's part – he never warned her against having Mr. Lyons support her or tell her that it was not a good idea to do so.

*Testimony of Lana Viinamae, October 15, 2003, p. 130, line 11 – p. 132, line 25*

**(b) IT “Intelligence”**

584. When asked whom he had obtained intelligence from in the IT Department, Mr. Lyons testified that he did not remember "getting much, if anything, from Lana Viinamae." He agreed that Ms. Viinamae was certainly not at any meetings he attended about the bid. Ms. Viinamae is not the "senior official in IT" that Mr. Lyons refers to as having had a conversation with on March 29, 1999 in an April 1, 1999 memo to file re: Dell Financial Services. Ms. Viinamae testified that she is “definitely not” the "official at the City of Toronto" identified in a June 10, 1999 memo to file by Jeff Lyons re: Dell Computer Corporation.

*Testimony of Jeff Lyons, May 13, 2003, p. 152, line 16 -  
p. 163, line 4  
Testimony of Lana Viinamae, October 15, 2003, p. 143;  
p. 156; p. 167, lines 12 – 24; October 28, 2003, p. 83, line 23  
– p. 84, line 13  
Exhibit 63, Vol. 7, Tab 19, Begdoc 75439  
Exhibit 63, Vol. 7, Tab 35, Begdoc 75418*

**(c) Council Report**

585. After Ms. Viinamae answered questions from Councillor Bas Balkissoon at the Council meeting on May 2, 2001, Mr. Lyons approached her in the committee-level section of the Council chamber and asked what had occurred. She told him that Councillor Balkissoon had a lot of questions about leasing. She was not aware at the time that Mr. Lyons was acting as a lobbyist for MFP. It is possible that the copy of the July 1999 Council report that has Ms. Viinamae’s file stamp on it is the copy of the report she gave to Councillor Balkissoon after the Council meetings. She did not give a copy of the report to Mr. Domi, Mr. Lyons, or anyone outside of the City of Toronto.

*Testimony of Lana Viinamae, October 29, 2003, p. 135, line 2  
– p. 140, line 16*

**(d) Entertainment**

586. Ms. Viinamae attended a luncheon and book signing for Maureen McTeer at the invitation of Mr. Lyons. Commissioner Joan Anderton also attended this event. Ms. Viinamae attended the "Brother Jeff" Golf Tournament for prostate cancer, but she paid her own way. Ms.

Viinamae also attended a Symphony of Fire Concert at the invitation of Mr. Lyons. Councillor Dick O'Brien was also at that event.

*Affidavit of Lana Viinamae, para. 151,  
Testimony of Lana Viinamae, October 15, 2003, p. 134,  
line 17 – p. 135, line 6; p. 135, lines 8 -15; p. 136, lines 4 – 11*

**PART 16 -  
ROLE OF THE CITY AUDITOR**

587. At all times, Ms. Viinamae understood that the City Auditor, Jeff Griffiths and his staff would have a financial governance role in the Y2K project. Ms. Viinamae also had the assurance that there was an external auditor (Ernst & Young).

588. During the summer of 1998, Ms. Viinamae had several meetings and conversations with the Mr. Griffiths, about the role that Audit would play in ensuring due diligence on the Y2K Project. Ms. Viinamae met with Mr. Griffiths on July 3, 1998 to discuss a number of issues, including Audit's role for the Year 2000 project.

*Exhibit 63, Volume 13, Tab 43, Begdoc 01881  
Affidavit of Lana Viinamae, para. 137*

589. In a September 8, 1998 e-mail, Ms. Viinamae met with the external auditors Ernst & Young, at the request of Mr. Griffiths, to discuss the City's Y2K Program. Jim Andrew and Margaret Rodrigues may also have attended the meeting with Henry Grunberg from Ernst & Young. Ms. Viinamae provided information to Mr. Grunberg as a result of that meeting. Ernst & Young told Ms. Viinamae that in their view, the City would not have enough time to complete its program. Ernst & Young offered assistance from their Y2K practice, but it was declined.

*Affidavit of Lana Viinamae, para. 138  
Testimony of Jeff Griffiths, September 10, 2003, p. 180, line 3  
- p. 182 line 1  
Exhibit 63, Volume 13, Tab 44, Begdoc 1707  
Exhibit 63, Volume 13, Tab 45, Begdoc 1441*

590. Mr. Griffiths agreed in his testimony that from the standpoint of Ms. Viinamae, who was neither an accountant nor an auditor, there would be some assurance from the fact that there was both an internal and an external auditor for the Y2K Project.

*Testimony of Jeff Griffiths, September 10, 2003, p. 182*

591. At the request of the Y2K PMO, Audit prepared its guidelines for the Y2K Project in October, 1998. Audit issued its Workplan in October, 1998. Ms. Viinamae relied on Audit's oversight of the Y2K Program Office in drafting the "Year 2000 Business Continuity

Plan, which received Mr. Griffiths' comments, and ultimately Council approval, in November, 1998.

*Testimony of Jeff Griffiths, September 10, 2003, p. 184, line 19*  
– p. 191, p. 14  
*Affidavit of Lana Viinamae, para. 139*  
*Exhibit 63, Volume 13, Tab 46, Begdoc 39104*  
*Exhibit 63, Volume 6, Tab 3, Begdoc 39105,*  
*Exhibit 63, Volume 6, Tab 3, Begdoc 39106*  
*Exhibit 63, Volume 13, Tab 47, Begdoc 29608*  
*Exhibit 63, Volume 13, Tab(10), Begdoc 15898*  
*Exhibit 63, Volume 13, Tab 5, Begdoc 30607*

592. After it was drafted, Ms. Viinamae and the CAO had to defend the report as part of the budget process. An excerpt from the Capital Budget Review on November 11, 1998 included a request that "the Auditor and Chief Financial Officer ensure due diligence, adequate spending controls and appropriate checks and balances are in place in the administration of the Year 2000 Project Office." Ms. Viinamae understood this request to mean that the Audit Services Division would play a financial governance role in the Project, particularly after seeing the same words reproduced in Mr. Griffiths' report to Council of February, 1999. However, the Auditor mistakenly stated that the request came from the CAO and Ms. Viinamae, whereas Ms. Viinamae believes it came from the Budget Advisory Committee. The persons to whom the page of the Capital Budget Review is directed (Jerry, Ben and Gifford) appear to be Jerry Shaubel, Gifford Chu, and Ben Smid of the Audit Services Division.

*Affidavit of Lana Viinamae, para. 140*  
*Exhibit 63, Volume 13, Tab 48, Begdoc 39114*  
*Exhibit 63, Volume 7, Tab 9 (a), Begdoc 1294*

593. Ben Smid of Audit was appointed by Jerry Shaubel to work on the former Y2K Committee, and he continued in this role after the Y2K Program Office was initiated. Mr. Smid had greater access to data in the Program Office than anyone else other than Ms. Viinamae and Line Marks. He worked closely with what became the Y2K PMO, and often participated in the Monday "Lunch & Learn" sessions. Audit made recommendations and requested information when they felt it necessary.

*Affidavit of Lana Viinamae, para. 141*  
*Exhibit 63, Volume 13, Tab 49, Begdoc 41007*



*Exhibit 63, Volume 13, Tab 50, Begdoc 32623*