1. Overview

1. The administration of the leasing program following Council approval in July 1999 fell squarely to I&T, and in particular to Viinamae. At the time, getting computers onto peoples' desks with minimal disruption was paramount. Longer-term asset management issues, such as keeping track of serial numbers and asset locations, were not. This led to the loss of critical information necessary to track computer assets as they moved around the organization over time. This later became a significant problem for the City in considering end of lease issues. It also led to significant difficulties in reconciling the sale leaseback transaction, subsequently requiring enormous effort from City staff, and the assistance of Currie from MFP.

2. It was a very busy time. Nevertheless, Viinamae, as the Director, Year 2000 Project, and in her longer term role as Director, Computer Operations and Telecommunications, should have ensured that adequate planning and thought went into the desktop roll-out process so that longer-term asset management issues were identified and addressed up front. Some of the later mess could have been avoided if sufficient thought had gone into the process up front.

3. The CMO was established in late 1999 by Viinamae, not to sort out the lingering Year 2000 administration issues, but rather to deal with the City's future computer hardware and software acquisitions. The CMO staff were hired by I&T on the misunderstanding that all future acquisitions would be leased with MFP, and that there was no monetary limit to the amount of assets which could be placed on lease. The CMO therefore set about establishing a leasing program based on I&T's ill-conceived vendor of record vision. They had no reason to question what they had been told by Viinamae and Power, and no reason to raise any alarms that there was no Council authority for such a leasing program.

4. The CMO worked to develop a process to be followed whenever a department wished to acquire computer hardware or software. They sought input from PMMD.

PMMD's response was to refer them to established procurement policies. PMMD did not delve into the process sufficiently to recognize that the CMO's fundamental premise - that MFP was an open-ended vendor of record - was inconsistent with these policies.

2. I&T's efforts to develop a leasing program and the evolution of the CMO

a) Development of the City's leasing process in the fall of 1999

5. The P&F Report as approved by Council in July 1999 directed I&T to "centrally manage the contract administration".[1] It did not expressly address the mechanics of administering the MFP leasing program. Viinamae could not pinpoint a date on which she took responsibility for the leasing program, but agreed that by the fall of 1999, she was clearly in charge of it.[2] Viinamae relied on Power to assist her, as she had no prior technology leasing experience.[3]

6. Viinamae began to consider how to administer the leasing program in August, 1999 when she met with Domi and Wilkinson to discuss the development of a leasing program.[4] In late August she circulated an action plan 're the MFP leasing program'.[5] This action plan described the proposed steps needed to:

a. finalize the MLA;[6]

b. complete the sale leaseback transaction;

c. put equipment on lease with MFP; and

d. establish leasing guidelines for City user departments.

b) Sale leaseback transaction and the fall-out from the Year 2000 project

7. At the same time that Viinamae began to consider how to fulfill the lease contract management role given to I&T by the P&F Report, she continued to be responsible for

[1] COT003924 at COT003928, 48:1:9.
[2] Viinamae 10/28/2003 at 136-137.
[3] Viinamae Affidavit, para. 49, 10/15/2003 at 25; Viinamae 10/15/2003 at 193.
[4] Viinamae 10/23/2003 at 165-166.
[5] COT015642, 55:2:17.

the Year 2000 project. Bulko was still working on the desktop rollout, and Marks was handling the paperwork and administration of the City's Year 2000 program. Viinamae's dual roles became intertwined in August 1999 when the City was required to extract and consolidate detailed information needed for the sale leaseback transaction[7] from the many purchase orders and supplier invoices associated with the Year 2000 project. Marks, and to a lesser extent Bulko, therefore became more and more involved over the remainder of 1999 in sorting out Year 2000 issues as they related to administration of the sale leaseback transaction.

8. Prior to August 1999, neither Power nor Viinamae had turned their minds to the asset management issues which would become important after the rollout had been completed. As a result, there was not enough attention paid to the nature of the asset tracking information needed while the rollout was in process.

9. For instance, Viinamae failed to instruct Bulko or Marks to record and maintain asset serial numbers as paperwork supporting the deployment was received, so that assets could be adequately traced within the City.[8] It was only after Viinamae met with MFP in August 1999, and they advised her that they would need serial numbers in order to properly deal with the sale leaseback transaction, that Viinamae belatedly instructed Marks to record serial numbers.[9] By this time, of course, much of the equipment had already been deployed. This meant that Marks had to physically pull all purchase orders and supplier invoices to collect the missing information.[10] This became an enormous undertaking, leading to significant delay in finalizing the details of the sale leaseback transaction, and consequently in payment by MFP to the City.

10. The sale leaseback transaction required that all computer equipment already acquired by the City for the Year 2000 project at the time Council approval was given to put that equipment on lease, would be sold by the City to MFP, and then leased back.

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[6] This is discussed in some detail in Chapter 9.
[7] See Chapter 11 for further discussion of the sale leaseback transaction.
[8] Viinamae 10/28/2003 at 48-50, 52-53, 61, 70.
[9] Viinamae 10/21/2003 at 48-49.
[10] Viinamae Affidavit, para. 49, 10/15/2003 at 25-26.

The sale leaseback transaction required taking an inventory of the City's already acquired computer assets in order to put them on lease.[11] The magnitude of this task led to MFP 'loaning' Currie to the City to provide assistance to Marks.[12] Their tasks included:

a. assembling all invoices for equipment the City had already purchased;[13]

b. researching the City's payment status of old invoices;

c. determining whether duplicate payment of invoices had occurred;

d. following up with vendors to ensure that credit notes were issued as requested;

e. reconciling vendor invoices to the City of Toronto's purchase orders, and resolving any differences between vendor or City as required; and

f. reconciling monthly statements from vendors for lease invoices.[14]

11. This accounting exercise took a long time to complete. It essentially began when Viinamae sent an email on August 28, 1999 to all City suppliers of information technology products. The email advised that the City planned to sell all equipment purchased in 1999 to MFP and then to lease the equipment back.[15] Suppliers forwarded copies of their invoices to MFP. MFP then used the information contained in the invoices to generate a Certificate of Acceptance and the Equipment Schedules.[16]

12. Marks indicated that the sale leaseback transaction was a very large undertaking, and was made more difficult by the competing priorities of the Year 2000

[11] Power 03/24/2003 at 150.
[12] COT031635, 56:1:6; COT031636, 56:1:7; Marks Affidavit, para. 34, 08/13/2003 at 223.
[13] Bulko 06/17/2003 at 250; Marks Affidavit, para. 18, 08/13/2003 at 217.
[14] COT031635, 56:1:6; COT031636, 56:1:7; Marks Affidavit, para. 36, 08/13/2003 at 223-224.
[15] COT024963, 55:1:22.
[16] Marks Affidavit, para. 24, 08/13/2003 at 219.

Project.[17] Complications arose when some vendors sent MFP invoices for all equipment acquired by the City, not just the computer hardware and software purchased by the City in 1999.[18] These invoices sometimes included extraneous items, such as toner cartridges, which were not intended to be put on lease. These items would therefore show up on the Certificates of Acceptance generated by MFP, and the resulting Equipment Schedules. Marks ultimately removed $11 million of such equipment from these documents.[19]

13. Leggieri had no involvement in the sale leaseback transaction.[20]

14. Bulko testified that she, herself, had minimal involvement with the sale leaseback transaction. She was occasionally be asked questions by Marks about equipment descriptions contained on invoices and packing slips. Bulko advised whether or not she thought such equipment should be placed on lease, based on her knowledge of equipment details from her involvement with the desktop rollout.[21] Bulko testified that shortly after she became Manager of the CMO in January 2000, Marks suggested that the sale leaseback aspect of the leasing program be transferred to the CMO.[22] As the CMO did not yet have any staff, Bulko maintained that the CMO was not prepared to take anything on until the reconciliation was completed.[23] Marks continued to work outside of the CMO on reviewing information relating to the reconciliation of the sale leaseback transaction through the spring of 2000.[24]

[17] Marks Affidavit, para. 20, 08/13/2003 at 218.
[18] Marks 08/14/2003 at 20.
[19] Marks 08/14/2003 at 22.
[20] Leggieri 04/09/2003 at 64.
[21] Bulko 06/17/2003 at 250; Bulko 08/11/2003 at 72.
[22] Bulko 08/11/2003 at 80.
[23] Bulko 08/11/2003 at 80.
[24] Marks Affidavit, para. 43, 08/13/2003 at 227.

c) Establishment of the CMO in January 2000

i) The CMO's mandate

15. The establishment of the CMO within I&T was not specifically contemplated in the P&F Report.[25] Ultimately, the CMO evolved from the Year 2000 Office, both in terms of staff and in terms of ongoing involvement with the leasing program.[26] Viinamae and Andrew decided, 'coming out of Y2K', that the creation of the CMO would streamline and centralize the administration of the leasing program.[27] Andrew had no real role in establishing the CMO, and had only a minor role in discussing the organizational plan.[28] Hiring for the CMO began in November 1999, and the office commenced operations in January 2000 when Bulko assumed the position of Manager, Contracted Services.

16. The CMO was set up to provide a range of technology related services to all City departments.[29] Administration of the MFP leasing program was only one constituent of the CMO's broader mandate. It had three main components: [30]

a. Contract Administration, Co-ordination & Approvals: administering purchases of information related goods and services; under the supervision of Marks;[31]

b. Technology Leasing, Administration, Coordination & Approvals: administering leases with MFP; supervised by Leggieri; and

c. Technology Asset Management: monitoring and record keeping aspects of keeping track of the City's technology related assets and standard setting; supervised by Chris Hull ("Hull").[32]

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25 Power 03/24/2003 at 112-113.
26 Bulko 08/11/2003 at 88-89.
27 Andrew 10/07/2003 at 19-21.
28 Andrew 10/14/2003 at 88.
29 Andrew 10/07/2003 at 19.

17. I&T contemplated that the technology leasing section of the CMO would:

a. review and approve departmental requests for leasing;

b. manage the overall leasing process;

c. manage the terms and conditions of the lease agreement with MFP on behalf of the user department;

d. authorize MFP to pay the supplier upon confirmation of receipt of the goods;

e. authorize Finance to pay MFP as per the terms on the Certificate of Acceptance; and

f. provide information on the leasing program.[33]

ii) CMO staff

18. Viinamae held a variety of often overlapping positions at the City of Toronto. Throughout the relevant time she was responsible for the CMO as it administered the MFP leasing program.[34]

19. In 1999, Bulko was busy putting 12,000 desktops on City desks in order to meet Year 2000 deadlines. Her focus was on the physical logistics of such a massive undertaking. Bulko was not involved in the 1999 leasing program with MFP until November 1999, when she began taking on responsibilities that would later fall under the CMO.[35] In January 2000, Bulko became the manager and first employee of the

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[30] Viinamae 10/20/2003 at 91; Marks Affidavit, para. 16, 08/13/2003 at 216-217.
[31] Marks Affidavit, para. 7, 08/13/2003 at 213.
[32] Hull 06/18/2003 at 289.
[33] COT036620 at COT036624, 63:20:19.
[34] Viinamae 10/15/2003 at 86.
[35] Bulko 08/11/2003 at 59-60.

CMO. Bulko reported to Viinamae,[36] and initially Viinamae directed her on the tasks to be accomplished and guided her on how to do them.[37] Until she became manager of the CMO, Bulko testified that she did not:

a. keep track of the amount of equipment being placed on lease;

b. have any involvement in the Oracle transaction;

c. review lease schedules;

d. decide the type or amount of equipment to be placed on lease;

e. decide the length of lease terms; and

f. review lease rates.[38]

20. From the fall of 1999 to April 2000, Leggieri was the Logistics Manager for the Year 2000 Office.[39] She won a job competition in November 2000 for the position of Supervisor of Technology Leasing, Administration, Coordination and Approval, effective April 1, 2000.[40] Leggieri reported to Bulko.[41] Leggieri's responsibilities included processing I&T Division Leasing Approval ("ITLA") forms and creating a leasing calculator that showed the departments their budget commitments for leasing the asset.[42] She also reconciled ITLA forms to the MFP Equipment Schedules and worked with MFP to refine the leasing process.[43]

[36] Viinamae 10/21/2003 at 122.
[37] Bulko 08/13/2003 at 188.
[38] Bulko 06/17/2003 at 251-252.
[39] Marks Affidavit, para. 15, 08/13/2003 at 216.
[40] Viinamae 10/20/2003 at 91; Bulko 06/17/2003 at 254, 258.
[41] Leggieri 04/09/2003 at 56.
[42] Leggieri 04/09/2003 at 62.
[43] Leggieri 04/09/2003 at 62-63.

21. Throughout the fall of 1999, Power was very involved in the leasing program and performed most of what later became CMO functions, including contract management.[44] He reported to Viinamae.[45] Power was actively involved in setting up the CMO.[46] After the creation of the CMO, Power's responsibility for the leasing program was transitioned to Bulko and Leggieri.[47] He worked with Bulko and Leggieri to establish leasing procedures for the City of Toronto and to implement the MFP leasing contract.[48] Power's involvement with the CMO waned considerably after mid-December 1999.[49]

22. On April 17, 2000, Hull was hired into the CMO to assist with the acquisition of hardware and software.[50] His title was Supervisor, Technology Asset Management.[51] He reported to Bulko.[52] He had no significant involvement in the computer leasing program.

23. Marks was originally hired in August 1998 as Viinamae's Program Assistant in the Year 2000 office.[53] She subsequently took on the role of Year 2000 Project Coordinator.[54] Marks had no previous experience in the information and technology area. Accordingly, her initial learning curve was steep.[55] In November 2000, Marks became the Supervisor, Contract Administration Coordination and Approval.[56] Although she officially assumed this position in November 2000, she continued to wrap-up the Year 2000 office until March 2001.[57] Marks reported to Bulko.[58] Other than her role in cleaning up the sale leaseback transaction, Marks had no ongoing involvement with the computer leasing program.

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[44] Andrew 10/02/2003 at 102.
[45] Viinamae 10/21/2003 at 122.
[46] Andrew 09/30/2003 at 21.
[47] Viinamae 10/22/2003 at 181.
[48] Viinamae 10/20/2003 at 89-90.
[49] Power 03/25/2003 at 61.
[50] Bulko 06/17/2003 at 254.
[51] Bulko 06/17/2003 at 267.
[52] Hull Affidavit, para. 1, 06/18/2003 at 242.
[53] Viinamae 10/22/2003 at 117; Marks Affidavit, para. 4, 08/13/2003 at 212.
[54] Viinamae 10/22/2003 at 117.
[55] Viinamae 10/22/2003 at 119-120.
[56] Bulko 06/17/2003 at 267.
[57] Marks Affidavit, para. 2, 06/18/2003 at 280; Marks Affidavit, para.6, 08/13/2003 at 212-213.
[58] Marks Affidavit, para. 1, 06/18/2003 at 280.

d) Development of leasing guidelines and procedures

24. No precedent existed at the City for a leasing program such as that contemplated by I&T with MFP. I&T staff were therefore required to design their own. They began this process in the fall of 1999, before the official start of the CMO, by meeting with individuals from various City departments to assess their needs.[59]

25. During November and early December 1999, Power and Leggieri developed forms and an approval process for use in future acquisitions of computer hardware and software. Leggieri circulated multiple drafts of a document called "I&T CMO Leasing Program" within I&T and to PMMD.[60] The most recent draft in the database was dated December 7, 1999.[61] This document contained, among other things, Business Rules, Leasing Program Procedures, a list of roles and responsibilities, and an ITLA form.[62] Earlier, a leasing process flow chart had also been circulated.[63] Leggieri identified Power and Viinamae as the primary authors of these documents.[64] Power and Viinamae agreed they would have at least seen them, and that Viinamae was responsible for reviewing and approving them.[65]

26. These draft documents expressly described the CMO's purpose:

> [T]o implement Council's approval for all computer hardware and software through MFP Financial Services, the approved Vendor of Record for leasing.[66]

27. The draft ITLA form was intended to be the leasing equivalent of a purchase requisition.[67] It indicated that the ITLA form had been:

[59] Leggieri 09/02/2003 at 144-145.
[60] COT013069, 52:2:24; COT029387, 63:20:11; COT036620, 63:20:19.
[61] Bulko 08/13/2003 at 42; COT036620, 63:20:19.
[62] COT036620 at COT036622, COT036623, COT036624, COT036627, 63:20:19.
[63] COT031621, 29:1:8.
[64] Leggieri 04/09/2003 at 40; Leggieri 09/02/2003 at 144-145.
[65] Power 03/25/2003 at 46; Viinamae 10/21/2003 at 171.
[66] COT036620 at COT036621, 63:20:19.
[67] Leggieri 04/09/2003 at 22-23.

> Approved Pursuant to the Delegated Authority contained in Clause No. 2 of Report No. 24 of the Strategic Policies and Priorities Committee entitled "Year 2000 Business Continuity Plan" adopted by City Council on November 25, 26 and 27, 1998, and the delegated authority contained in item No. 4 report 11 of the Strategic and Finance Committee entitled "Leasing of Computer Equipment and Software Information and Technology Products and Services" adopted by City Council on July 27, 1999.[68]

28. Leggieri testified that Power had drafted the above preamble. Power, for his part, stated he did not know who had drafted the preamble.[69] The draft ITLA form further cited the authority of the CAO, and required approval signatures from each of the requesting department manager, the "IT Contract Manager", and PMMD. The City submits that the ITLA form is inconsistent with the July 27, 1999 Council authority, and Power should be criticized for failing to check the authority for the leasing program. Viinamae should also be criticized for failing to properly review the ITLA form prior to approving it. Bulko agreed that, upon review, the two sources of authority contained in the preamble of the ITLA form – the Year 2000 Business Continuity Plan approved in the November 1998 Council report[70] and the leasing plan described in the P&F Report approved by Council on July 27, 1999[71] – did not authorize the leasing program as contemplated or implemented by I&T, or as reflected in the ITLA form.[72]

29. The Business Rules directed that "[a]ll new leasing agreements must adhere to the Corporate Purchasing Policy", and that PMMD should be contacted for further information on that policy.[73] In the list of roles and responsibilities, departments were expected to "select a Corporate Approved Vendor", and to "[f]ollow purchasing policy and comply with I&T standards".[74]

30. This leasing program was discussed at a meeting on December 9, 1999 attended by Spizarsky, Hewitt and Beattie from PMMD, Bulko, Leggieri, and Marks from I&T,

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[68] COT036620 at COT036627, 63:20:19.
[69] Leggieri 04/09/2003 at 38; Power 03/26/2003 at 50-51.
[70] COT015898, 29:1:12.
[71] COT012219, 29:1:12.
[72] Bulko 08/11/2003 at 110.
[73] COT036620 at COT036622, 63:20:19.
[74] COT036620 at COT036624, 63:20:19

Sawh from Budget Services, and possibly Brittain from Treasury. Pagano did not attend.[75] Following this meeting, Spizarsky and Pagano discussed the proposed process. Pagano recognized that the draft Program violated the City's purchasing procedures. He followed up with a memo to Viinamae on December 13, 1999 in which he provided a list of comments outlining PMMD's concerns with the content of the various draft documents. Among these comments were:

a. revise the Business Rules to state that "Standard purchasing procedures as outlined in the Purchasing Bylaw (No. 57-1998 as amended) must be followed for all IT Hardware, Software and Service requirements. If further information is required, contact [PMMD]". This direction was repeated in the list of procedures;[76]

b. revise the departments' roles and responsibilities to delete the reference to "a Corporate Approved Vendor". Pagano advised that "the selection of a vendor is only determined after PMMD completes the purchasing process. We suggest this be revised and moved … Ensure standard purchasing procedures as outlined in the Purchasing bylaw No. 57-1998 (as amended) are followed for all IT Hardware, Software and Service requirements prior to award. For further information contact PMMD Client Services at 392-1305";[77] and

c. "include the attached revised "Purchasing Guidelines/Purchasing Process" page in your draft document."[78]

31. The purchasing guidelines provided by Pagano set out clearly the need to obtain competitive quotes, assess them, and obtain the appropriate Council or delegated approval before an award was made through the issuance of a purchase order or

[75] COT064048, 63:20:18; Bulko 08/13/2003 at 43; Brittain 07/28/2003 at 42.
[76] COT016093 at COT016093-16094, 63:13:10a.
[77] COT016093 at COT016094-16095, 63:13:10a.
[78] COT016093 at COT016095, 63:13:10a.

execution of a legal contract.[79] There is no evidence to suggest that Viinamae ever brought Pagano's memo, or his comments, to the attention of anyone else involved in managing the leasing program.

32. Pagano asked Viinamae to take his comments into consideration, and to forward a revised draft to PMMD.[80] There is no evidence to suggest that this request was honoured by Viinamae, or that the requested revisions were ever made. If they had been seriously considered by Viinamae, and incorporated into the leasing program, it would have become apparent that the use of MFP as a vendor of record for all new leasing was not consistent with the purchasing bylaw highlighted by Pagano, or with the purchasing guidelines he provided. Viinamae failed to heed the advice she was given by Pagano.

33. Pagano's comments were appropriate, and a valid critique of the draft leasing program documents. There is no evidence, however, that he took any steps to follow up with Viinamae to obtain the revised draft that he had requested. He assumed from the lack of a response from Viinamae that his comments had been taken into consideration; however, he did not know if this was the case.[81]

34. PMMD was again consulted by the CMO about the leasing process at a meeting on June 14, 2000. [82] The attendees included: Pagano, Spizarsky, Hewitt, Beattie, Bulko, Leggieri, and Aditya Rupsingh from Accounting Services.[83] The subject of the meeting was "Purchasing Guidelines & Leasing through SAP".[84] The agenda for the meeting disclosed numerous topics for discussion, including the interim leasing process, the ITLA form, the SAP system, the E-work process and participants, and the Certificate of

[79] COT016093 at COT016096, 63:13:10a.
[80] COT016093 at COT016095, 63:13:10a.
[81] Pagano 02/26/2003 at 118.
[82] COT065115, 55:2:28.
[83] COT064042, 20:2:82.
[84] COT065115, 55:2:28.

Acceptance process.[85] There is very little evidence about this meeting or what was actually discussed.

35. The leasing procedures were approved in July 2000.[86] On July 12, 2000, Leggieri sent Pagano an email titled "Sign Off of E-Work and ITLA Process".[87] The email requested his confirmation that PMMD did not wish to approve each ITLA. Pagano confirmed that PMMD would only be involved when new contracts were sought:

> Since we have already set contracts for computer equipment services and leasing through competitive bid processes, and you will be purchasing from those contracts, then we do not need to be involved.
>
> All the requirements that do not fall under those agreements must be processed by Purchasing, after IT has reviewed and approved the departmental requirement. [88]

36. Pagano explained that he was referring to equipment that was previously authorized to be part of the MFP lease and for which pricing had already been acquired through a competitive process. If there was additional equipment to be leased over and above what Council had already approved, further approvals would be required.[89] Pagano assumed, incorrectly, that he did not need to spell this out in his response to Leggieri. He further assumed, again incorrectly, that the contract with MFP had a cap consistent with Council's approval of $43 million. In short, he assumed that I&T was complying with City bylaws and procurement policy. If he had checked to ensure this was actually the case, he would have quickly discovered that his reliance on I&T was misplaced. The Commissioner should find that Pagano should have gone this extra step. I&T had asked PMMD for its assistance in designing the leasing program, and Pagano was involved the previous fall in reviewing and commenting on the draft leasing program documents.

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[85] 20:2:87.
[86] Viinamae 10/23/2003 at 168.
[87] COT072360, 55:2:33.
[88] COT072360, 55:2:33.
[89] Pagano 03/04/2003 at 105.

3. The CMO misunderstood the parameters of the leasing program

37. Of the permanent CMO staff, only Bulko and Leggieri had any ongoing responsibility for computer leasing. Both Bulko and Leggieri misunderstood Council's approval of the MFP bid and thought it established a vendor of record relationship in which all new I&T hardware and software acquisitions at the City would be placed on lease with MFP, without the need to go back to Council.[90] They obtained this misunderstanding directly from Viinamae and Power. They had no involvement with the RFQ or P&F Report in June and July 1999, and therefore had no reason to doubt what they had been told. Marks too understood that such a vendor of record type relationship existed with MFP.[91]

38. No one in the CMO believed that there was a cap on leasing expenditures:[92]

a. Bulko never understood that there was a $43 million limit on the amount of assets to be leased from MFP.[93] Rather, Bulko understood that $43 million was the extent of the Year 2000 hardware and software equipment budget.[94] She was fully cognizant that the City had placed computer equipment exceeding $43 million on lease;[95]

b. similarly, Marks never believed that the leasing of information technology equipment was limited to $43 million.[96] Like Bulko, she presumed that this amount related only to hardware and software that had been approved as part of the 1999 budget (for Year 2000, SAP, Parking Tags and other

[90] Bulko 08/11/2003 at 95-96; Leggieri 04/09/2003 at 14; COT070817.
[91] Marks Affidavit, paras. 51, 54, 08/13/2003 at 231, 233.
[92] Viinamae 10/20/2003 at 235.
[93] Bulko 08/11/2003 at 96.
[94] Bulko 08/11/2003 at 96.
[95] Bulko 08/11/2003 at 97.
[96] Marks Affidavit, para. 52, 08/13/2003 at 231-232.

projects).[97] Viinamae, Power, and perhaps Andrew told her that MFP was the vendor of record for a leasing program that had no upper limit;[98] and

c. Leggieri also understood that there was no overall dollar limit on the amount of equipment that the City could lease from MFP. She did not think that Council had only given authority to lease $43 million worth of computer hardware and software.[99] Leggieri testified that there was a widespread understanding in the CMO that no additional Council approvals were required to put equipment on lease, and that Power and Viinamae both specifically told her so.[100]

39. Again, Bulko, Leggieri and Marks never questioned what they were told in this regard by Viinamae and Power. Consequently, the CMO staff intended to lease an undetermined amount of equipment from MFP until the 3 year leasing contract term ended.[101] They designed and implemented their processes based on this fundamental misunderstanding of the nature of the leasing program authorized by Council. Although CMO staff were fully aware that the City had placed in excess of $43 million on lease with MFP, this caused them no concern, given what they had been told by Viinamae and Pagano of the open-ended vendor of record relationship with MFP.

40. Neither Viinamae nor the CMO made any effort to hide the fact that more than $43 million of computer assets had been placed on lease with MFP.[102]

41. Therefore, Bulko, Leggieri and Marks cannot be held responsible for the fact that their leasing program was completely inconsistent with the more limited leasing program actually approved by Council and, consequently, violated the City's procurement bylaws. They were told specifically to design a leasing program for <u>new</u> technology

[97] Marks Affidavit, para. 52, 08/13/2003 at 231-232.
[98] Marks 08/13/2003 at 270.
[99] Leggieri 04/09/2003 at 17-18.
[100] Leggieri 04/09/2003 at 20.
[101] Power 03/25/2003 at 178.
[102] COT005240, 63:13:24; COT070889, 63:13:25; COT016116, 63:13:10a; COT031471, 63:9:8; COT030579, 63:12:9a.

acquisitions. Marks and Leggieri were supervisors, or first line managers, doing what they had been hired and instructed to do by Viinamae and Power. Similarly, Bulko, as manager of the CMO, was hired to implement a leasing program defined by Viinamae and Power. The fault lies with their superiors, Viinamae, Power, and Andrew, for their ill-conceived vision of the program and their determination to implement that vision despite the lack of Council authority for it.

4. The CMO rolled out the leasing program in early 2000

a) Introduction of the CMO leasing program to City departments

42. In early 2000, the CMO began to present its leasing program to various departments. The crux of the presentation was that Council had approved a leasing program, and that all computer equipment had to be leased. The presentation contained no reference to a $43 million cap.[103]

43. By email dated May 15, 2000, Bulko formally advised MFP that the CMO was the central administrator for all leases.[104] CMO leasing program materials were posted on the City of Toronto intranet site by the end of July 2000.[105]

44. Throughout 2000, in addition to dealing with specific issues such as cost allocation and refresh strategies, Bulko and Leggieri continued to work with MFP to establish and improve the leasing program. Bulko and Leggieri met with MFP to obtain reports from their asset management database, which permitted them to sort all of the equipment on lease with the City.[106]

b) The CMO's efforts to track invoices and expenditures

45. Beginning in August 1999, the CMO established invoice tracking procedures.[107] Viinamae testified that the tracking procedures were developed in the Year 2000 Office and verified with her, as she was the Year 2000 Project Director.[108] Viinamae met with Shultz "several times" to discuss the methods that the leasing program was using for reporting and tracking.[109] She testified that her staff could not keep track of all of the invoices, which resulted in the accidental nonpayment or double payment of some

[103] Bulko 08/11/2003 at 102.
[104] COT023950, 55:2:119.
[105] COT065267, 55:2:35; COT065269, 55:2:35; Bulko 08/12/2003 at 122.
[106] Viinamae 10/23/2003 at 20.
[107] TEC016745, 63:15:10; Viinamae 10/21/2003 at 179-180.
[108] Viinamae 10/21/2003 at 180.

invoices.[110] Viinamae testified that Marks subsequently did a full reconciliation to ensure that all invoices that had been processed against the program were duly authorized.[111]

46. Bulko described the reconciliation process used in the CMO to ensure all equipment put on lease had been received:

a. MFP sent a monthly list of all equipment placed on lease to the CMO, which would then reconcile the list of equipment with the departmental orders;[112]

b. at the end of a quarter, MFP created a Certificate of Acceptance for signature by the City;

c. the City's signature on the quarterly Certificate of Acceptance signaled to MFP that the goods had been received by the City and that MFP should proceed to place the goods on a new Equipment Schedule.[113]

47. The CMO also maintained spreadsheets to track expenditures under the lease.[114] Bulko testified that the CMO maintained an ITLA tracking file, which provided an ongoing summary of the asset value of the equipment on lease broken down by department or division.[115] The spreadsheets tracked many details: the ITLA number, the vendor, the department that had ordered the equipment, a description of the equipment, whether there was a license, what account was to be charged, who had requested it, to whom it was delivered, the date it was ordered, the value of the equipment, the date it was received, the Certificate of Acceptance number, the total cost of the equipment

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[109] Viinamae 10/21/2003 at 180.
[110] Viinamae 10/21/2003 at 183.
[111] Viinamae 10/21/2003 at 185.
[112] Bulko 08/11/2003 at 124.
[113] Bulko 08/11/2003 at 125.
[114] Viinamae Affidavit, para. 124, 10/15/2003 at 56-57.
[115] Bulko 08/11/2003 at 129-130.

before taxes, and the total leasing costs, among other things.[116] This information was summarized regularly (usually monthly) and sent to the departments to update them on their commitments. Bulko clarified that a quarterly summary was forwarded to the directors responsible for administration in each department.[117]

48. The CMO sent these spreadsheets to Colley or Shultz.[118] In her affidavit, Viinamae indicated that one reason that these spreadsheets were sent to Finance was because funds had to be transferred out of departmental budgets and into the leasing program account to support lease payments authorized by the ITLA forms.[119] I&T did not have the authority to withdraw funds from departmental accounts other than their own, or to make deposits into the leasing account.

c) The CMO's leasing procedures

49. There were ten steps to the CMO's contemplated leasing procedure:[120]

a. first, the department determined its needs and assessed whether its needs would be properly served by leasing, with reference to the standard list of equipment to be leased. CMO staff generally, and Hull in the Acquisition Unit in particular, worked with the department to ensure that the equipment met City standards;[121]

b. second, the department completed an ITLA form;

c. third, the ITLA form was signed by the appropriate departmental supervisor/manager/director and sent to the CMO technology leasing section for review and approval. Once Bulko approved the ITLA form,

[116] Viinamae Affidavit, para. 124, 10/15/2003 at 56-57.
[117] Bulko 08/12/2003 at 67.
[118] Viinamae Affidavit, para. 125, 10/15/2003 at 57.
[119] Viinamae Affidavit, para. 125, 10/15/2003 at 57.
[120] COT014246 at COT014249, 63:13:35.
[121] Bulko 08/11/2003 at 105-106.

Leggieri or her staff determined the lease costs per year, based on the quarterly lease rate factors provided by MFP.[122] The CMO recorded the leasing commitments derived from the ITLA form in its tracking file;[123]

d. fourth, the ITLA form was sent back to the client department to inform the department of the budget impact of the lease for each year;

e. fifth, each department was responsible for ensuring it had sufficient funds. A departmental signature was required to confirm that the department has the funds available to meet the lease commitment;

f. sixth, the completed ITLA form was sent to MFP. One copy of the form was sent to the client department and another copy was kept by the CMO leasing unit;

g. seventh, after the completed ITLA form was sent to MFP, MFP issued a purchase order to the vendor. Leggieri testified that Hull sent the purchase order to the vendor and, simultaneously, to MFP and the client department.[124] The equipment was shipped directly to the client department, which completed a "Goods Received" form. Leggieri testified that, in the alternative, the client department could send the packing slip for the equipment to the CMO;[125]

h. eighth, MFP sent a Certificate of Acceptance to the City. MFP had 30 days from the date of receipt back of the signed Certificate of Acceptance to pay the vendor of the equipment.[126] The CMO leasing unit reconciled the ITLA forms with the Certificate of Acceptance;

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[122] Marks Affidavit, para. 57, 08/13/2003 at 235.
[123] Leggieri 04/09/2003 at 75.
[124] Leggieri 04/09/2003 at 75.
[125] Leggieri 04/09/2003 at 76-77.
[126] Leggieri 09/02/2003 at 146.

i. ninth, once the City had approved the Certificate of Acceptance, it was returned to MFP. The Certificate of Acceptance was an acknowledgment and agreement that the equipment had been received and could be put on lease. Viinamae signed the Certificate of Acceptances; and

j. finally, MFP prepared a Lease (Equipment Schedule or Program Agreement) from the quarterly consolidation of Certificates of Acceptance and sent it to the City for signing.[127]

50. Upon receipt of an Equipment Schedule, the CMO reconciled the Equipment Schedule with the equipment on lease. Leggieri did not monitor the payment of invoices, except to follow up on inquiries from vendors.[128] The Equipment Schedule were signed by Bulko and Viinamae, passed to the Director of I&T (first, Andrew and later Ridge), and then forwarded to Liczyk for final approval.[129]

[127] Marks Affidavit, para. 56, 08/13/2003 at 233-235.
[128] Leggieri 04/10/2003 at 19.
[129] Leggieri 04/09/2003 at 80.

5. No one at the City evaluated MFP's quarterly lease rate factors

a) Finance was never asked by I&T to review quarterly lease rate factors

51. Andrew did not review or analyze MFP's lease rate factors, nor did he provide any guidance with respect to the criteria upon which they should have been reviewed or analyzed.[130] Andrew testified that he understood, partly through discussions with Power, that the lease rate factors were to be sent to Treasury to evaluate them for competitiveness and reasonableness.[131] In Andrew's opinion, Treasury should have monitored and, if necessary, renegotiated the lease rate factors.[132] Andrew understood that the City could either renegotiate the lease rate factors for a single quarter or cancel the contract altogether.[133] He admitted that despite his expectations, it was unclear who in fact was charged with receiving, evaluating, and signing off on the lease rate factors.[134]

52. Power also testified that he expected "Finance, as well as the CMO, to review quarterly lease rate factors." He could not explain why he thought this would happen, or how anyone could do an analysis without competitive lease rates. He did not communicate this expectation to either the CMO or anyone in Finance.[135]

53. During the establishment of the CMO, none of the staff turned their minds to the approval process for the lease rate factors on a quarterly basis.[136] There was no expert on lease rate factors in the CMO.[137] The CMO never established any processes or procedures with respect to forwarding lease rate factor sheets to Finance for review and approval.[138] Viinamae simply expected that Finance would have procedures to review

[130] Andrew 10/14/2003 at 89.
[131] Andrew 09/29/2003 at 92-93.
[132] Andrew 10/14/2003 at 58-59.
[133] Andrew 10/14/2003 at 59.
[134] Andrew 09/30/2003 at 28.
[135] Power 03/27/2003 at 219-221, 225-228.
[136] Leggieri 09/02/2003 at 149.
[137] Andrew 09/29/2003 at 97.
[138] Viinamae 10/22/2003 at 221.

the lease rate factors, without telling Finance of these expectations.[139] The draft leasing process flow charts prepared in anticipation of the establishment of the CMO did not reveal any intent to involve Finance in a review of lease rate factors. Viinamae agreed that none of the diagrams revealed that Finance had a responsibility to review the lease rate factors.[140] Both Colley and Brittain denied that lease rate schedules were reviewed by anyone in Finance.[141]

54. Simply put, the need for a financial review of MFP's lease rate factors never occurred to anyone in the CMO because the issue was never brought to their attention by either Viinamae or Power. Viinamae and Power themselves never turned their minds to this issue, or if they did, they never took steps to ensure that an adequate review was done, either by Finance, or by the CMO.

b) Viinamae signed the first Equipment Schedule without checking the lease rate factors

55. Viinamae testified that the CMO never took issue with any lease rate factors provided by MFP.[142] She did not believe that the City had the ability to negotiate different rates, apart from simply walking away and selecting another supplier.[143]

56. Viinamae signed the first set of lease rate factors on October 8, 1999.[144] She did not know what lease rate factors were, so she asked Power for an explanation prior to signing the first lease rate factor sheet.[145] He assured her that the lease rate factors were consistent with MFP's response to the RFQ.[146] Viinamae assumed that, since Finance had performed the original financial analysis of the response to the RFQ, no

[139] Viinamae 10/22/2003 at 221.
[140] Viinamae 10/22/2003 at 222.
[141] Colley Affidavit, para. 9, 09/02/2003 at 236-237; Brittain 07/31/2003 at 104.
[142] Viinamae 10/17/2003 at 46.
[143] Viinamae 10/17/2003 at 46.
[144] Viinamae 10/21/2003 at 113.
[145] Viinamae Affidavit, para. 75, 10/15/2003 at 36.
[146] Viinamae Affidavit, para. 75, 10/15/2003 at 36.

further analysis was required by I&T. Viinamae did not ask Power or anyone else how the lease rate factors differed from MFP's response to the RFQ.[147]

c) The CMO did not compare lease rate factors to external benchmarks

57. Viinamae testified that she specifically asked whether the quarterly lease rate factors received from MFP were forwarded to Finance for review, and was assured that they were by both Power and Bulko.[148]

58. Bulko testified that she received the quarterly lease rate factor sheets from Viinamae.[149] The extent of her review was to compare the new quarterly lease rate factors provided by MFP to the lease rate factors from the previous quarter. She did not compare them to any external benchmarks.[150]

59. Over the period in which Bulko compared lease rate factors, they did not vary at all. Accordingly, Bulko simply sent a note to Viinamae confirming that the lease rate factors remained constant from quarter to quarter. Eventually, the lease rate factors sheets were forwarded to Finance with the rest of the monthly documents, including the Certificate of Acceptance and the Schedules.[151] Bulko suggested that the lease rate factor sheets required a signature from Finance, but later clarified that after Viinamae reviewed the sheets, they were returned to the CMO before being sent to either Liczyk or Colley in Finance.[152] Bulko believed that the role of Finance was to evaluate the quarterly lease rate factors and determine whether or not to negotiate new ones.[153] Bulko did not know where she got this understanding,[154] and she agreed there were no

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[147] Viinamae 10/21/2003 at 113-114.
[148] Viinamae Affidavit, para.76, 10/15/2003 at 36-37.
[149] Bulko 08/11/2003 at 113.
[150] Bulko 08/11/2003 at 113.
[151] Bulko 08/11/2003 at 114.
[152] Bulko 08/11/2003 at 117-118.
[153] Bulko 08/11/2003 at 120.
[154] Bulko 08/11/2003 at 122-123.

meetings, documents, or communications to suggest that Finance was supposed to review the lease rate factors on a quarterly or other basis.[155]

60. Leggieri's evidence on this point was confusing.[156] Ultimately, it appears that during the relevant interim period, either Viinamae or Bulko received the lease rate factors.[157] They would then be passed to Leggieri, who would review them, and pass them back to Bulko for her review.[158] Viinamae then signed them. Leggieri recalled that the I&T Executive Director (first Andrew and later Ridge) would review them.[159] Finally, according to Leggieri, the lease rate factors would either be returned to Leggieri for forwarding to Liczyk, or Viinamae would forward the lease rate factors directly on to Finance.[160] Leggieri did not know whether the CMO performed a financial analysis of the lease rate factors, although she was certain that she did not perform such analysis.[161] Instead, her task was to compare the lease rate factors in the Equipment Schedules against the lease rate factors provided by MFP.[162]

61. This evidence, confusing as it is, reveals considerable uncertainty amongst the CMO staff, Viinamae, and Power as to what was and what should have been done with MFP's quarterly lease rates. Having developed a relationship of trust and confidence MFP delivered lease rate factors in a manner designed to promote their easy acceptance as opposed to a more searching review (see section 6 below). As long as MFP did not get too greedy by significantly increasing the rates quarter over quarter, MFP was confident that its now lucrative long-term relationship would remain relatively unscrutinized. As MFP expected, the CMO only compared the quarterly lease rate factors to the rates from the previous quarter, and to the rates used in the equipment schedules. No comparison was made to relevant bond or other external benchmark rates. No review was made by Finance. Andrew, Viinamae and Power must bear the

155 Bulko 08/11/2003 at 122.
156 Leggieri 04/09/2003 at 161, 177.
157 Leggieri 04/09/2003 at 161.
158 Leggieri 09/02/2003 at 178-179.
159 Leggieri 09/02/2003 at 186-187.
160 Leggieri 09/02/2003 at 178-179.
161 Leggieri 04/09/2003 at 165-166.
162 Leggieri 04/09/2003 at 167-168.

primary responsibility for this oversight, and for placing too much trust in MFP. Liczyk must also bear some responsibility for not having recognized this as a significant financial issue requiring financial expertise and thus the involvement of Finance.

6. The CMO, MFP, and Domi

a) MFP delayed sending the City the quarterly lease rate factor sheets

62. Leggieri testified that MFP was consistently late in sending the CMO lease rate factors for the next quarter.[163] She agreed that this occasionally led to the CMO approving equipment to be placed on lease prior to receiving the relevant quarterly lease rate factors.[164] In an email dated July 6, 2001, Leggieri prompted Domi to provide the lease rate factors.[165] The email was copied to Viinamae, Bulko, Wilkinson, and Currie.

> Once again, we are late in receiving the rates for the next quarter. Although, Lee Ann has said they will not change we require the rates in writing for review and approval.
>
> I prompted Lee Ann for these rates 2-3 weeks ago and although she is trying to get them together, we still have not received them. As discussed, we require some time to review the rates and send for approval. The quarter has begun already and we have yet to receive these rates …
>
> Please provide the rates by Monday by courier for signature. I will forward a note for review to finance that the rates this quarter remain the same.[166]

b) Domi circumvented the CMO process for signing documents

63. The CMO reconciled Certificates of Acceptance and Equipment Schedules received from MFP with their own internal information to confirm such things as correct pricing and that only that equipment ordered was placed on lease. These reconciliations were to be done before Liczyk signed the contractual documents committing the City to a lease. On occasion, Domi bypassed the CMO be taking

[163] Leggieri 04/09/2003 at 173.
[164] Leggieri 09/02/2003 at 149.
[165] COT004898, 58:1:84.
[166] COT004898, 58:1:84.

documents directly from MFP to Liczyk for her signature.[167] When he did this, the reconciliation process was not carried out by the CMO until after the commitment was made.

64. Leggieri testified that Domi often bypassed the CMO's review and signature process, and instead took Equipment Schedules directly to Liczyk.[168] Leggieri spoke to Domi about his circumventing the process on more than one occasion, and admonished him to stop doing this.[169] In an email dated January 17, 2001, she said:

> Dash, I happened to ask Lee Ann when we would be receiving the above mentioned documents [COA for 838PA1-4] 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.[170]

65. Bulko also testified that Domi had bypassed the CMO on more than one occasion by taking lease schedules directly to Liczyk.[171]

66. By circumventing the CMO, Domi made it difficult for the CMO to do its job. Moreover, Domi's practice of circumventing the CMO by taking documents directly to Liczyk for signature and circumventing the CMO was consistent with his conduct in personally putting the July 2000 re-writes in front of Liczyk without any review having been conducted by the CMO.

[167] COT010608, 29:1:23.
[168] Leggieri 04/09/2003 at 81.
[169] Leggieri 04/09/2003 at 84-85.
[170] COT024197, 55:2:54.
[171] Bulko 08/12/2003 at 167.

7. Reporting back to Council

67. Recommendation number 4 of the P&F Report required the CFO and Treasurer and the Executive Director, I&T, to "report back to the Policy and Finance Committee periodically on new leasing proposals and financial impact for the balance of the equipment and software".[172] Liczyk and Brittain both testified that although this was a joint reporting requirement, no one in Finance would track new leasing proposals. Rather, such a report would necessarily have been triggered by I&T identifying a need and then requesting the assistance of PMMD and/or Treasury with respect to procurement and/or analysis and joint report writing.[173]

68. Brittain explained that the CFO was always included in the requirement to report back to Council where there were purchasing implications.[174] This did not mean that Finance would take responsibility for reporting back to Council on another department's initiative.

69. Once the $43.15 million of computer hardware and software had been approved by Council, Treasury rightly believed it was at I&T's discretion whether or not Treasury would have any further involvement in additional leasing proposals over and above this amount.[175] If I&T had chosen to go back to Council for approval to put additional items on lease, with MFP or another leasing vendor, Treasury would only have been involved in assisting with any financial analysis of this initiative if requested to do so by I&T.[176]

70. Andrew testified that he left the obligation to report back to P&F in the hands of Liczyk and Treasury.[177] He did not explain how Liczyk or anyone else in Finance would know what I&T's new leasing initiatives might be, or the details of such initiatives for reporting purposes. His evidence is not plausible – as the most senior I&T executive,

[172] COT006001 at COT006002, 48:1:25.
[173] Liczyk 11/12/2003 at 45-46; Brittain 07/31/2003 at 70.
[174] Brittain 07/30/2003 at 115.
[175] Brittain 07/29/2003 at 174-175.
[176] Brittain 07/29/2003 at 49.
[177] Andrew 10/14/2003 at 37-38.

he was well aware that the procurement process leading to a Council report was always initiated by the user department, which was the project proponent and thus in the best (and sometimes only) position to determine its needs and objectives, and how to go about achieving them.