1. Overview

1. In July 2000 MFP obtained Liczyk's signature on rewritten lease schedules. It cost the City $2.5 million, which was transferred directly to MFP's bottom line. From the time it submitted its bid in response to the computer leasing RFQ, MFP was alert for opportunities to 'enhance' its deal with the City. The lease rewrites were a cynical ploy used by MFP to churn the City account to MFP's sole advantage. The Inquiry's leasing expert concluded that the rewrites were of no value to the City and their purported objectives could have readily been realized through other means at no or considerably less cost to the City. No properly informed leasing customer would have knowingly rewritten the leases on the terms the City did when Liczyk executed the contractual documents.

2. The rewrites are a second striking example of how MFP manipulated the shortcomings in the City's processes and the City's limited understanding of leasing issues to MFP's own gain. When City staff expressed an interest in developing a refresh strategy, or an asset management system, or in finding a way to allocate the costs of the computer leases to individual departments, MFP volunteered to 'assist'. In a series of informal meetings it made 'presentations' of the kinds of services it had provided to other clients without providing details of its ideas or proposals or anything in writing for City employees to take away and review. According to MFP, it came away from these discussions believing the City was very interested in MFP's suggestions.

3. By January 2000, only four months after writing its first lease with the City, MFP was planning to rewrite the City's leases by the end of March 2000. Wolfraim promised huge commissions to Domi if he could sell the rewrites. Domi knew that if he rewrote the leases he would earn a larger commission.

4. How did it happen? Did someone at the City actually 'direct' MFP to rewrite the leases as MFP contended throughout the Inquiry? Did someone in I&T foolishly authorize Liczyk to sign as she suggested in her testimony? Or did MFP effectively

mislead Liczyk about what she was signing? Did MFP also create confusion in the City ranks by obfuscating the purpose of rewrites?

5. There is no evidence that anyone at the City ever instructed MFP to rewrite the leases to separate the assets into five separate lease schedules – desktops, laptops, monitors, notebooks and printers. In particular, there is no contemporaneous documentation (internal to the City, between MFP and the City, or internal to MFP) that confirms the City's intention to rewrite the leases in this fashion. No one at MFP can identify the City employee(s) who allegedly gave the verbal instructions to proceed with the rewrites. The best MFP can say is that someone at the City gave the instruction to rewrite the leases and that Liczyk signed the rewritten leases.

6. The City submits that MFP fashioned the idea of rewrites and pushed the new lease schedules through the City without properly disclosing their content or significance. Although the City had expressed interest in organizing the leased assets in a manner that would permit costs to be allocated to various departments, no one at the City instructed or authorized MFP to implement such an organization.[1] Moreover, a close reading of the rewritten leases reveals that they did not accomplish such an organization.[2] Instead, the rewritten lease schedules reverted back to mixed asset types.

7. MFP intentionally obfuscated the issues so as to confuse asset management, cost allocation and refresh strategies with "logically grouping the assets". Moreover, MFP induced the City to believe that MFP was creating a reporting system, not rewriting the leases. Finally, MFP did not disclose to the City the cost of establishing an asset management system for cost allocation to departments, or the extension of lease terms.

8. Many City witnesses were asked about the rewrites. Many of these questions incorrectly equated the rewrites with a refresh strategy, or with cost allocation or asset management. Although the I&T witnesses acknowledged discussing refresh strategies,

[1] COT080176 at COT080190, 61:1:Report.
[2] COT080176 at COT080190, 61:1:Report.

cost allocation and asset management with Wilkinson and Domi, they denied any knowledge that these discussions precipitated a ‘rewrite’ of the lease schedules with their knowledge or approval. Neither Wilkinson nor Domi contradicted the City’s witnesses on this point.

9. Although the evidence of Viinamae, Bulko and Marks on the issue of who decided to rewrite the leases was at times confused, their answers were given with the benefit of hindsight, based on the false assumption that someone in I&T had in fact made the decision to rewrite the leases. Counsel for MFP and Liczyk pressed this point throughout their questioning of Viinamae, Bulko and Marks. It was not until Wilkinson later testified that it became clear that, even on his evidence, he had never even asked anyone in I&T to approve the rewrites.

10. Although Liczyk acknowledged signing the rewritten lease schedules, she denied ever instructing anyone at MFP to prepare them. She believed the documents she signed effected an administrative reorganization at no cost to the City. Wilkinson agreed that no one at the City, not even Liczyk, was aware that the lease rewrites involved a cost to the City.

11. MFP’s approach to the lease rewrites mirrored its conduct with respect to the extension of the lease terms from 3 to 5 years. For both transactions, there was no paper trail. Instead, MFP first met with the City to discuss broad concepts and ideas. Following these meetings, MFP committed nothing to writing, confirmed nothing in writing, and erased or discarded any examples previously provided. MFP provided no written proposal and did not disclose the actual cost of the transaction. Rather, MFP drafted a contract and arranged to have Domi personally deliver it to the City. There was no covering letter which identified the fact that the contract was being forwarded to the City for its review and execution, let alone any description of the contract. Domi approached an individual at the City with signing authority and hoped that s/he would be foolish enough to sign the contract. Months later, the City received an irreconcilable invoice or a new lease schedule. When viewed together, the extension of the lease terms and the July rewrites made this *modus operandi* clear.

12. The CFLA Code of Ethics required that leasing companies:

> Not knowingly make false or misleading statements or withhold information vital to an intelligent business decision concerning any aspect of a leasing transaction.
>
> Disclose all relevant information as to the terms and conditions of the lease, which may effect the lessee's decision. [3]

13. At a minimum, MFP had an obligation as the City's leasing partner to inform it of the cost of any changes to existing leases. Instead, MFP knowingly made misleading statements and withheld information that was vital to an intelligent business decision. MFP:

a. misled the City about the way its asset management and cost allocation issues could be addressed;

b. authored a change to the leases that was both unnecessary and of no real benefit to the City;

c. failed to disclose that there was any cost attached to the lease changes or that they did not provide the asset management tool which MFP discussed with the City;

d. created new lease schedules without any direction or instruction from anyone at the City but insisted throughout that the rewrites were "initiated" by the City staff; and

e. slipped the change in the lease terms by Liczyk by misleading her about the true nature and effect of the documents she was signing;

[3] COT043600 at COT043604, 18:3:21.

2. The rewrites and their purposes

14. On July 1, 2000, lease schedules 838-1, PA1-1, and PA1-2 were terminated and the equipment was rolled over to five new lease schedules numbered 838-5, 838-6, 838-7, 838-8, and 838-9.[4]

15. The lease rewrites separated desktops, monitors, notebooks, and printers onto separate lease schedules. The value of each asset category was rolled over to a new lease, along with some new equipment.[5] In addition, some equipment was removed from lease schedule 838-1 prior to the roll over. The value of this equipment totaled $212,612.[6] The lease rewrites resulted in an additional $2,527,354 in payment obligations, exclusive of taxes. In addition, the lease rewrites all had a common termination date: March 31, 2005. This common termination date effectively increased the already extended 60 month lease terms to 63 and 66 month lease terms.[7]

a) MFP's actual objectives

16. Having bid the deal at a loss, MFP's objective in rewriting the leases was to enhance its deal with the City to its sole benefit.

17. In May or early June 1999, Wilkinson prepared a document for MFP's Investment Committee to review during its consideration of MFP's response to the RFQ.[8] The document described MFP's approach to the RFQ.

> [W]e will emphasize the importance of vendor independence and the value-added services from MFP. Our strategy is to win the RFP on price, relationship, and value adds. <u>Once the deal has been awarded, we are confident in the opportunities to enhance our deal</u>. The known opportunities are the sale leaseback of 4,000 desktops, budget constraints in fiscal 1999 and 2000, MFP supply and services and the leasing of other none [sic] IT assets.[9]

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[4] COT080176 at COT080190, 61:1:Report.
[5] COT080176 at COT080190, 61:1:Report.
[6] COT080176 at COT080190, 61:1:Report.
[7] COT080176 at COT080194, 61:1:Report.
[8] COT023260, 5:1:100.
[9] COT023260, 5:1:100.

18. MFP's internal documentation establishes that it was proposing to rewrite the City transaction in early 2000, only four months after the City signed the first lease schedule (838-1).

19. On January 14, 2000, Wolfraim sent an email to MFP employee Heather Misiak.[10] In the email, Wolfraim confirmed that he met with Domi on January 13, 2000. During this meeting, Domi informed Wolfraim that he was trying to rewrite the City transaction.

> The arrangement is that he was paid $200,000 in Q2, and will be paid another $400,000 for Q3. *He is presently trying to rewrite the deal for Q4*. The deal for Q4 is that he is paid normal commission rates on the rewrite and the Q2 and Q3 commissions are to be deducted from the margin as a cost to the deal prior to commission calculation.[11]

20. In other words, MFP was hoping to conclude the lease rewrites only half a year after the City signed its first Equipment Schedule, and long before Wilkinson ever canvassed the issue with Liczyk.

21. Wolfraim denied that rewriting the leases was part of MFP's longstanding plan to increase its profits for the City leasing transaction.[12] Wolfraim agreed, however, that the lease rewrites were an enhancement to the deal.[13] He also acknowledged that the lease rewrites generated significant profits for MFP and that these profits were not simply additional revenue from extending the lease terms; rather, they were revenue without cost, or pure profit.[14]

22. As described in the next section, Wolfraim endeavored to justify the rewrites on a variety of grounds. However, he was unable to explain convincingly why rewriting the

[10] COT083591, 98:1:3.
[11] COT083591, 98:1:3.
[12] Wolfraim 09/27/2004 at 208.
[13] Wolfraim 09/27/2004 at 254-255.

leases was a necessary first step.[15] MFP's desire for profit is the most convincing explanation for the rewrites.

b) The purported objectives

23. MFP only described the purported objectives of the rewrites more than a year after it effected them. None of the purported objectives withstand scrutiny.

i) July 2001 MFP details the purported objectives

24. On July 12, 2001, more than a year after Liczyk signed the rewritten lease schedules, Viinamae wrote to Domi.[16] Her letter raised five unresolved issues with respect to the lease rewrites. First, the lease agreements were written at a higher rate than the original agreements. Second, the lease schedules were not reviewed by the CMO prior to signature by Liczyk. Third, new equipment was added to the lease agreements. Fourth, the terms of the leases was extended such that the equipment, including printers, was leased over 72 months. Fifth, printers should be leased over 36 months, a point about which MFP and the City agreed but which was not reflected in the lease rewrites.[17] Viinamae highlighted the City's unawareness and subsequent surprise regarding the higher lease rate, the extension of the lease terms, the addition of new equipment, and the lack of review by the CMO.[18]

25. On July 27, 2001, MFP responded to Viinamae's letter.[19] An internal MFP email revealed that Wilkinson prepared a draft of MFP's response, which was under Domi's name.[20] Wolfraim agreed that this letter, dated one year after the leases had been

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[14] Wolfraim 09/27/2004 at 223-224.
[15] Wolfraim 09/27/2004 at 208-209.
[16] COT030845, 18:3:3.
[17] COT030845, 18:3:3.
[18] COT030845, 18:3:3.
[19] COT030846, 18:3:1.
[20] COT024584, 18:3:2.

rewritten, was the first time that MFP explained in writing its version of the purported purpose of rewriting the leases.[21]

26. The MFP letter summarized the objectives of the lease rewrites and described how the lease rent was calculated. The letter did not address Viinamae's five concerns. The list of objectives was prefaced with "per our discussions with the City", although MFP identified no individual or timeframe for such discussions.[22] The letter identified three objectives:

> 1) To fix known reconciliation differences from the original deals. Examples of these differences were a) to remove some of the assets from lease, as the City had decided not to lease these items; b) to correct for items not shown as part of the Sale Leaseback on the original lease, but upon further review had been paid for by the City and therefore should be part of the Sale Leaseback.
>
> 2) To pool the assets into 5 logical groups (Desktop, Monitor, Notebook, Printer and Server) each governed by its own lease. This would allow each asset pool to be managed separately, each with there [*sic*] own strategic plan.
>
> 3) As the leases were being rewritten into asset pools, we included new equipment that had been delivered and billed but not already on lease.[23]

27. MFP explained that, in order to accomplish these objectives, a lease term had to be selected for each new lease. MFP put forward a new common lease term of 57 months.

28. Wolfraim testified that the objective of the lease rewrites was to create an asset repository to facilitate the City's budget and refresh strategies.[24] He understood that this required a regrouping of assets by asset type, and ultimately a regrouping of assets by cost centre.[25]

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[21] Wolfraim 09/27/2004 at 162-163.
[22] COT030846, 18:3:1; Wolfraim 09/27/2004 at 176.
[23] COT030846, 18:3:1.
[24] Wolfraim 01/08/2003 at 182.
[25] Wolfraim 01/08/2003 at 182.

29. Flanagan indicated that he had continuing discussions with Wilkinson about the objectives of the lease rewrites.[26] The main impetus was to assist the City administer of its leasing program.[27] Flanagan indicated that the logical grouping of equipment onto lease schedules made it easier for the City to link the equipment back to the relevant cost centre, and to manage the equipment throughout the lease term (i.e. by removal, refresh, or upgrade). Flanagan testified that the lease rewrites had the added benefit of resolving the discrepancies on some of the lease schedules and permitted the City to remove some equipment that was mistakenly on lease and add other equipment.[28]

ii) The leases did not have to be rewritten to meet the purported objectives

30. There is no credible evidence that the leases needed to be rewritten in order to accomplish the purported objectives. Indeed there is ample evidence to the contrary. In particular, the Inquiry's leasing expert Kerr persuasively refuted MFP's stated rationale for the rewrites as follows:

a. new equipment could be put on lease by signing a new Equipment Schedule;

b. extraneous equipment could have been removed from the existing lease schedules without rewriting the leases;

c. assets could be grouped by product type by generating reports from existing leases; and

d. costs could be allocated to departments by generating reports from existing leases.[29]

[26] Flanagan 02/18/2003 at 118.
[27] Flanagan 02/18/2003 at 118-119.
[28] Flanagan 02/18/2003 at 118-119.
[29] COT080179 at COT080192, 61:1:Report.

31. Moreover, all of the asset management benefits that were contemplated by the lease rewrites should have been provided by MFP at no cost to the City, pursuant to their response to the RFQ. The RFQ specifically requested respondents to agree that schedules to the MLA would provide details of equipment and costs broken down by City department:

> 1.1.3 The Respondents will enter into a leasing agreement with the City through a Master Lease Agreement. This Master Lease Agreement will outline the terms and conditions for leasing. *Schedules to the Master Agreement will provide details of equipment and costs by client department within the City.*[30]

32. MFP specifically agreed to provide the City with detailed costs broken down by department:

> Agreed. …
>
> Schedules for the leasing of the equipment/software described in this RFQ will provide details of equipment/software and costs by client department within the City.[31]

33. Wolfraim testified that MFP was always prepared to provide reporting services to the City at no cost, per its response to the RFQ.[32] Having promised to provide the City with such information in its response to the RFQ, MFP cannot point to the provision of such information to justify the extraordinary expense of the rewrites.

34. During his re-examination, Wolfraim eventually conceded that none of the purported objectives described in MFP's July 27, 2001 letter required that the leases be rewritten.[33] Nevertheless, he insisted that "the City" directed MFP to proceed with the rewrites.[34]

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[30] COT072876 at COT072882, 62:4:9.
[31] COT072876 at COT072822, 62:4:9.
[32] Wolfraim 09/27/2004 at 235.
[33] Wolfraim 09/27/2004 at 180, 186-187, 191-194, 197.
[34] Wolfraim 09/27/2004 at 208, 224-225.

35. The rewritten schedules did not group assets in a way that is of benefit as an asset management or cost allocation tool. All they did was separate the leased assets by type of equipment onto separate lease schedules. Grouping the assets in this way did not provide any real asset management or cost allocation information to the City: it did not provide any information about where the assets were located or who the users were.[35]

36. When Flanagan was asked about the nature and extent of administrative benefit to the City resulting from the lease rewrites, he did not provide a reasonable answer.[36] He explained that if the City needed to remove equipment from the previous lease schedules, it would have disrupted the entire portfolio by amending and potentially incurring breakage fees. Flanagan contended that with the rewritten leases, because there were more schedules with accordingly less equipment on each schedule, there was less likelihood that the City would disrupt such a large portion of a portfolio. The City submits that this explanation is nonsense. Increasing the number of lease schedules had no effect on the consequences of removing or replacing equipment for the City. Simply because there are now five lease schedules instead of the previous three did not materially change the City's ability to remove or replace equipment without triggering potential cost consequences. During his testimony Flanagan realized the absurdity of this explanation and retreated to the justification that the City got to keep the equipment longer:

> Well, they [the City] don't -- they have to disrupt only one (1) schedule and not -- not three (3). But in term -- I don't want to get -- lose site [*sic*] of the -- the real situ -- or sorry, what I would say, the real benefit to the City is, the fact is they were going to keep $32 million worth of equipment for another six (6) months.[37]

37. As discussed in the next section, this was of no benefit to the City.

[35] Wolfraim 09/27/2004 at 211.
[36] Flanagan 02/20/2003 at 143-146.
[37] Flanagan 02/20/2003 at 147.

c) AssetLinx agreed that the City received no benefit from the lease rewrites

38. The author of the AssetLinx Report concluded that there was no obvious benefit to the City arising out the lease rewrites.[38]

39. Wilkinson disagreed that the City received no benefit from the rewrites. He pointed to the fact that the City had paid the additional $2.5 million for the right to use the equipment for a longer term.[39]

40. If this were true, the inescapable conclusion would be that MFP charged the City a huge sum of money to use old and outdated equipment for an extra year. Prior to the lease rewrites, the City could have exercised its purchase or renewal option, if it wished to keep the old and outdated equipment, or exercised a refresh option, if it had wished to continue leasing updated equipment, or terminated the leases altogether.[40] The lease rewrites effectively closed the doors to all of these options.

41. Kerr agreed that the lease terms were extended, but testified that it was not apparent that such extensions resulted in any benefits:

> When the leases were re-written, the City got the use of approximately $20.1 million of equipment for an additional 6 months and $6.1 million of equipment for an additional three months.[41]

42. The computer leasing industry commonly believed that the expected life of an asset was three years.[42] Accordingly, it was questionable what value was obtained by extending the life of computer assets beyond five years. Even Wolfraim agreed that the City would not reasonably want to keep its technology assets beyond five years.[43]

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[38] COT080176 at COT080178, COT080196, 61:1:Report; Kerr 09/11/2003 at 87.
[39] Wilkinson 09/23/2003 at 102-103.
[40] Wolfraim 01/08/2003 at 184.
[41] MFP Comments Regarding AssetLinx Report, 09/10/2003, COT079912.
[42] Kerr 09/11/2003 87.
[43] Wolfraim 09/27/2004 at 188-189.

Flanagan also agreed that there was “some risk” that five year old equipment would not have continued utility for the City.[44]

43. Moreover, Kerr testified that the assumption that the computer assets would even last five years was inherently problematic.[45] Thus, there was no obvious benefit to extending the lease terms beyond 3 years, let alone to 5 years, particularly where the lease payment obligations are increased and the cost of returning the equipment to MFP is higher.[46] Kerr had never witnessed leases extended to 5 years for the type of computer assets that the City was leasing.[47] There was no benefit to the City from extending the leases in this manner.

[44] Flanagan 02/20/2003 at 149-150.
[45] Kerr 09/11/2003 at 88.
[46] Kerr 09/11/2003 at 89.
[47] Kerr 09/11/2003 at 89.

3. Wilkinson met with I&T and Finance before rewriting leases but never provided a written proposal

a) Wilkinson met with I&T staff during fall 1999

44. In his affidavit, Wilkinson indicated that he and Domi met with Viinamae, Bulko, Power, and Marks to discuss asset management issues approximately once every two weeks during September and October 1999.[48] Wilkinson testified that during these meetings, he and Domi learned of the City's need for reporting systems within the various departments. Wilkinson testified that MFP had experience developing and implementing such reporting systems for other customers. Such a reporting system would permit the City to allocate information technology costs to the relevant departments, and prepare budgets and forecasts related to an overall asset management plan.[49]

45. Wilkinson described two parts of the asset management process:

a. physical asset management, which required managing information about the type, location, and user of the asset; and

b. financial asset management, which required managing the cost of the asset and making the individual or department responsible for bearing its cost.[50]

i) First presentation

46. During one meeting with I&T staff in September, 1999, Wilkinson made a presentation using a projector and a screen. The meeting focused on how MFP could assist with the City's asset management system and tailor its financial and leasing services to reflect the City's future plans. The presentation included sample

[48] Wilkinson Affidavit, para. 79, 09/16/2003 at 72; Wilkinson Affidavit, para. 101, 09/16/2003 at 84.
[49] Wilkinson Affidavit, para. 102, 09/16/2003 at 84-85.
[50] Wilkinson 09/16/2003 at 264.

spreadsheets that illustrated the types of reports and approaches used by other MFP customers. It involved the following elements:

a. grouping the assets into logical groups and rolling secondary costs up to the primary asset level, thereby bringing the information to a manageable level;

b. breaking down the information by cost centre and using this to build a plan and forecast by cost centre for each fiscal year while keeping an eye on the potential impact of this plan over the next ten years;

c. disconnecting the refresh cycle from the term of the lease, so that the plan would not be governed purely by a lease term, but rather based on the needs of the user community; and

d. determining the appropriate lease term having regard to the age of the existing equipment, anticipated refresh cycles, expected trends in asset costs, expected trends in user population, and the customer's budgetary objectives.[51]

47. Wilkinson did not save these specific spreadsheets, but indicated that the columns were the same as those found in a blank spreadsheet provided to the Inquiry.[52] Wilkinson swore that he explained the variables in the spreadsheets to City staff.[53] These included: anticipated future pricing trends for equipment to be refreshed; changes in user population; first replacement date; refresh cycle thereafter; and lease terms. The other inputs that Wilkinson used were the original cost of the equipment, the age of the equipment, and the cost to replace the equipment at that point in time.[54]

[51] Wilkinson Affidavit, para. 103, 09/16/2003 at 85-86
[52] Wilkinson Affidavit, para. 104, 09/16/2003 at 86; COT036591, 99:1:3.
[53] Wilkinson Affidavit, para. 104, 09/16/2003 at 86.
[54] Wilkinson Affidavit, para. 105, 09/16/2003 at 86.

48. Wilkinson believed that the reaction to his presentation was "quite positive". He thought that City staff were familiar with the concept of "total cost of ownership", and wished to pursue the asset management ideas in his presentation.[55] Wilkinson agreed that there was no decision at this meeting to rewrite the leases.[56]

49. Viinamae indicated that she was not present for the entire meeting, but that Bulko and Leggieri, who were not leasing experts, were impressed by Wilkinson's presentation.[57] They knew that Viinamae was interested in a cost allocation reporting scheme. Viinamae testified that she believed that these reports would only require manipulating data in a pre-existing database, not adjusting lease documents.[58] Viinamae fiercely and correctly maintained that there was no logical reason, commercial or otherwise, for the City to rewrite the leases to achieve its cost allocation goals.[59]

ii) Second presentation

50. In his affidavit, Wilkinson recalled making a second presentation to the City, sometime before the end of 1999.[60] This time, the audience included those who attended the previous presentation as well as a senior individual from Accounting Services.[61] Wilkinson was not certain of the identity of the individual from Accounting Services, but speculated that it was either Shultz or Colley. He later indicated that it was probably Shultz.[62] However, Liczyk testified that Shultz was involved in the sale/leaseback transaction, not the cost allocation project in 1999 and it was highly unlikely that he attended this meeting.[63]

51. In this presentation, Wilkinson guided his audience through a series of sample spreadsheets and reports that illustrated methods of implementing an overall asset

[55] Wilkinson Affidavit, para. 106, 09/16/2003 at 86-87.
[56] Wilkinson 09/18/2003 at 32.
[57] Viinamae 10/29/2003 at 102-103.
[58] Viinamae 10/29/2003 at 103.
[59] Viinamae 10/29/2003 at 104.
[60] Wilkinson Affidavit, para. 107, 09/16/2003 at 87.
[61] Wilkinson Affidavit, para. 107, 09/16/2003 at 87.
[62] Wilkinson 09/16/2003 at 297.
[63] Liczyk 11/17/2003 at 66-67.

management plan for the City's leased equipment.[64] Despite the presence of the individual from Accounting Services, Wilkinson testified that there was no discussion about the cost to the City of rewriting the leases.[65] Put more pointedly, Wilkinson did not tell the City that to produce such spreadsheets would cost at least $2.5 million. Wilkinson did not save these presentation materials either, although he indicated that they were similar to documents used at a later meeting.[66]

52. Again, Wilkinson believed that his presentation was received favourably.[67] He indicated that, from his point of view, the "City" reiterated the "wish" to move forward with an asset management and cost allocation plan. As was the case with most of his evidence, Wilkinson could not identify any particular City employee or employees who manifested the "City's wish", nor could he identify the manner in which the "City's wish" was communicated to him/MFP.

b) Wilkinson met with Liczyk in May 2000

i) Finance wanted to allocate costs not rewrite leases

53. Liczyk testified that she and Garrett spoke about the need to make departments accountable for their costs.[68] Part of such accountability required the departments to see the effect of their capital budget requests on the actual cost of financing acquisition. Between late 1999 and early 2000, Garrett directed Liczyk to allocate to departments as much of the non program accounts as possible.[69] Shultz assigned Colley this task. [70]

54. At some point during this time frame, Liczyk learned that MFP believed that it could assist the City with this internal cost allocation issue.[71] She speculated that she

[64] Wilkinson Affidavit, para. 108, 09/16/2003 at 87.
[65] Wilkinson 09/16/2003 at 277.
[66] Wilkinson Affidavit, para. 108, 09/16/2003 at 87; COT027487, 62:2 at 624.
[67] Wilkinson Affidavit, para. 109, 09/16/2003 at 87-88.
[68] Liczyk 11/04/2003 at 114.
[69] Liczyk Affidavit, para. 218, 11/03/2003 at 85.
[70] Liczyk Affidavit, para. 221, 11/03/2003 at 85-86.
[71] Liczyk 11/17/2003 at 61.

learned this information from Colley, who gathered it from communications with the CMO.[72]

55. Liczyk testified that I&T would not necessarily be interested in cost allocation by department.[73] She believed that it was not until Colley began to prod I&T, at her direction, to establish a cost allocation plan that I&T began to do so. Pursuant to Colley's efforts, she agreed that I&T may have discussed a general asset management plan with Wilkinson as early as September 1999.[74] Liczyk also clarified that the asset management aspects of the plan that interested I&T were not necessarily congruent with the cost allocation that she wanted. She agreed that, in the fall of 1999, it was fair to assume that the City would welcome MFP's broad proposals to assist the City with asset management.[75]

ii) May 2000 meeting

56. Liczyk testified that she met with Wilkinson, Viinamae and Colley.[76] She indicated that she was called to attend this meeting at the last minute. Liczyk was certain that this meeting did not occur in her office. She believed that this meeting occurred between February 29, 2000 and May 2000.[77] Liczyk testified that she wanted costs allocated to departments. She did not want to reorganize the leases by asset type.[78]

57. Wilkinson could not recall any specific meetings or presentations directed at the issues of asset management and reporting between late 1999 and spring 2000.[79] He testified that, during this time period, there were passing references to the City's interest in pursuing an asset management plan.[80]

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[72] Liczyk 11/17/2003 at 61-62.
[73] Liczyk 11/17/2003 at 63-64.
[74] Liczyk 11/17/2003 at 64.
[75] Liczyk 11/17/2003 at 66.
[76] Liczyk Affidavit, para. 221, 11/03/2003 at 85-86.
[77] Liczyk Affidavit, para. 222, 11/03/2003 at 86; COT031667, 29:4:01.
[78] Liczyk 11/04/2003 at 117-118.
[79] Wilkinson Affidavit, para. 110, 09/16/2003 at 88.
[80] Wilkinson 09/16/2003 at 277.

58. Wilkinson testified that he met with Liczyk alone sometime in May 2000. Wilkinson recalled that he made a presentation to Liczyk during this meeting that was similar to the ones he had made to I&T.[81]

59. Wilkinson recalled guiding Liczyk through hard copy reports regarding the actual City assets under lease, as well as sample hard copy reports for other MFP customers.[82] Again, Wilkinson did not retain copies of this material. He testified that he specifically explained how each class of assets contained in the reports was governed by a separate lease with a single lease term, which could be chosen by the City to fit its projected asset replacement/refresh and budgetary needs and objectives.[83] Wilkinson agreed that Liczyk's primary objective was to allocate the cost of the assets to various cost centres. He concurred that she did not direct him as to how to best accomplish this allocation, and that she simply wanted the information in the form of a report for her use.[84]

60. Liczyk did not recall meeting with Wilkinson alone. Liczyk indicated that the only possible May 2000 meeting that she attended with Wilkinson must have included Viinamae and Colley.[85] She testified that all of her scheduled meetings were booked through her assistant and appeared in her calendar.[86] She did not know why the May 2000 meeting did not occur in her calendar, although she suggested that someone had pulled her into the meeting at the last minute or perhaps Domi had called her directly to meet with Wilkinson briefly one afternoon.[87] She could not explain why both Colley and Viinamae denied attending this meeting.[88] According to Liczyk, Wilkinson passed

[81] Wilkinson Affidavit, para. 110, 09/16/2003 at 88.
[82] Wilkinson Affidavit, para. 110, 09/16/2003 at 88; Wilkinson 09/16/2003 at 284-285; COT007837, 61:2 at 614; COT007616, 62:2 at 595; COT007284, 62:2 at 594; COT006947, 62:2 at 593.
[83] Wilkinson Affidavit, para. 111, 09/16/2003 at 89.
[84] Wilkinson 09/18/2003 at 91-92.
[85] Liczyk Affidavit, para. 221, 11/03/2003 at 85-86.
[86] Liczyk 11/17/2003 at 74-75.
[87] Liczyk 11/17/2003 at 75-76.
[88] Liczyk 11/17/2003 at 77.

around a binder that MFP had prepared for another client that had all computer assets split by department:[89]

> A: So I said, this is perfect, this is what I'm looking for. Please deliver this.
>
> Q: So you did actually look at the binder, you're telling us?
>
> A: I flipped through it.
>
> Q: Right.
>
> A: Just to sort of see what the general look of the report would look like.
>
> Q: Right.
>
> A: And I was pleased and I said, this is good, let's do this, and how fast can I get this?[90]

61. Liczyk testified that Wilkinson indicated that this type of reporting would be available to the City by year-end, as MFP was implementing systems and program changes to their asset management software.[91] Accordingly, Liczyk agreed to wait until later in 2000 to complete the department allocation exercise, but she indicated that she would like to see reports in preparation for the 2001 operating budget.[92]

62. Liczyk testified that there was no discussion at this meeting about the need to rewrite leases or to change lease rates or lease terms. She was certain that she did not give MFP, either Wilkinson or Domi, written or oral instructions to rewrite the leases to extend the lease terms or to change the lease rates.[93] Indeed, she expected that MFP would generate a prototype report for City staff to review and either approve or reject.[94] The documents in the binder were in the form of reports, not leases.[95] Liczyk further testified that there was no discussion about restructuring the leases at this meeting.[96]

[89] Liczyk Affidavit, para. 223, 11/03/2003 at 86-87.
[90] Liczyk 11/17/2003 at 81.
[91] Liczyk Affidavit, para. 223, 11/03/2003 at 86-87.
[92] Liczyk Affidavit, para. 223, 11/03/2003 at 87.
[93] Liczyk Affidavit, para. 224, 11/03/2003 at 87.
[94] Liczyk 11/17/2003 at 87.
[95] Liczyk 11/17/2003 at 81-82.
[96] Liczyk 11/04/2003 at 122.

Liczyk testified that she still does not understand why, in order to determine the amount of equipment on lease with each department at a particular time, MFP deemed it necessary to extend the lease terms and to change the lease rate factors.[97]

63. Wilkinson indicated that Liczyk appeared to have a "strong interest" in the approach outlined in his presentation.[98] She asked him what steps the City needed to take in order to move forward with such a plan. Wilkinson informed her that it was helpful to group the leased assets in logical pools and then build an asset management plan for individual cost centres:[99]

> At the conclusion of my meeting with Ms. Liczyk, I thought that there was a high degree of continuing interest on the part of the City in proceeding with the restructuring of the leases.[100]

64. In his discussions with the City, Wilkinson showed staff examples of "reports", not lease schedules, which tracked the type of assets, their location and their use.[101] No doubt such reports, if properly prepared, would have been a legitimate asset management tool. It is not surprising that City staff would have reacted positively to assistance from MFP of this kind.

65. However, Wilkinson acknowledged that he did never told Liczyk or anyone at the City that the City would incur additional costs by rewriting the leases.[102] Liczyk testified that she did not expect there to be any cost for the cost allocation information that she had requested, and that the onus was on MFP to inform the City of any cost associated with the process.[103] Pagano testified that if the lease rewrites had an increased cost to the City, then both PMMD and Council should have been advised of the financial

[97] Liczyk 11/17/2003 at 93.
[98] Wilkinson Affidavit, para. 114, 09/16/2003 at 89-90.
[99] Wilkinson Affidavit, para. 114, 09/16/2003 at 89-90.
[100] Wilkinson Affidavit, para. 116, 09/16/2003 at 90.
[101] Wilkinson Affidavit, para. 102, 09/16/2003 at 84-85.
[102] Wilkinson Affidavit, para. 113, 09/16/2003 at 89.
[103] Liczyk 11/04/2003 at 123.

implications.[104] PMMD would then evaluate whether or not to initiate another tender process.

66. Wilkinson knew perfectly well that the City's "high degree of continuing interest" was due in no small part to the fact that its representatives had no idea that obtaining these reports would cost $2.5 million. Wilkinson deliberately hid the additional cost to maintain the illusion that the City had bought into his plan.

67. MFP never did provide these kinds of reports to the City.[105] According to Wolfraim these reports could not be prepared because neither MFP nor the City had the data necessary to include in them.

68. The City did not have serial numbers to identify its assets. The City submits that a cost allocation exercise in the absence of identification by serial number and date is unfeasible. No one at MFP ever told the City that the first step in creating a viable asset management system was to identify all of its assets by serial number, acquisition date, and physical location. Moreover, Wilkinson agreed that MFP could have allocated the costs out to the City's departments without rewriting the leases into asset pools.[106] He testified that it could have been accomplished on an individual line item by line item basis. It is troubling that Wilkinson was aware throughout the lease rewrites not only that the City could have allocated costs to departments without rewriting the leases, but also of an alternative method of accomplishing this end.

iii) MFP had already started rewriting leases prior to meeting with Liczyk

69. According to Wilkinson, prior to his meeting with Liczyk, MFP had already started the process of grouping the City's leased assets by asset type.[107]

70. In fact, on June 1, 2000, MFP employee Currie sent an email to Wilkinson, copied to Domi.[108] The subject of the email was "Toronto Categorizations". In the email,

[104] Pagano 03/05/2003 at 123-124.
[105] Wolfraim 09/27/2004 at 234.
[106] Wilkinson 09/18/2003 at 121.

Currie confirmed that she had completed categorizing the equipment for the City of Toronto leases:

> I have completed to the best of my ability the categories for T.O.
>
> I *strongly* recommend that we have someone review, not only the items left blank but every single line item.
> …
> I thought you might want to do this yourself since you have plenty of spare time (ha ha!) and since you are familiar with the logic used when categorizing equipment.[109]

71. The new categories of equipment were to form part of the new lease schedules for the rewritten leases.

72. Wilkinson justified this premature step in light of the "clear indications" that MFP had received of the City's interest in proceeding with an asset management plan for its leased equipment.[110] When asked to identify anticipated next steps after his meeting with Liczyk, Wilkinson acknowledged that "any number of things" could have happened in order to move forward the City's interest in the asset management plan.[111]

73. He admitted that, in fact, nothing happened after his meeting with Liczyk. Liczyk testified that she never received anything in writing from MFP as a follow up to the meeting.[112]

c) MFP did not provide a written proposal regarding the lease rewrites

74. Wolfraim agreed that the City could have reasonably trusted MFP to protect the best interests of its customers, and that MFP had an obligation of full disclosure to its

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[107] Wilkinson Affidavit, para. 115, 09/16/2003 at 90.
[108] COT025009, 99:1:38.
[109] COT025009, 99:1:38.
[110] Wilkinson Affidavit, para. 115, 09/16/2003 at 90.
[111] Wilkinson 09/16/2003 at 285-286.
[112] Liczyk 11/17/2003 at 99.

customers including the City.[113] He further confirmed that the standards of the leasing industry required that MFP keep the City informed on a consistent and regular basis.[114]

75. Wolfraim agreed that MFP had no contemporaneous written explanation as to the purpose of the lease rewrites.[115] He admitted that MFP never provided the City with a written quotation on the cost of the lease rewrites.[116] Wolfraim also admitted that he had not seen any written proposal of the lease rewrites.[117] However, Wolfraim testified that the City did receive a proposal from MFP in the form of the rewritten lease schedules; that is, the contract documents themselves:

> Q: In fact, my review of that database confirms that there was nothing whatsoever in writing, not even a presentation that the City could take away and review prior to making a decision as to whether or not to proceed with a rewrite of the leases?
>
> A: I guess you could argue that the contracts themselves were a proposal, that's a form of a proposal.[118]

76. This was an unacceptable business practice employed by MFP to hide the fact that the rewrites would cost the City in excess of $2.5 million for no meaningful benefit.

77. No ethical leasing provider would interpret a polite, even encouraging reaction as a direction to draft a contract. A reasonable leasing provider would draft a proposal to present to City staff.[119] An ethical leasing company would ensure that its proposal clearly indicated the cost of the proposal to its clients.

78. Wolfraim testified that such lack of written documentation was fairly typical of the manner in which MFP communicated with its clients on leasing issues.[120] In his affidavit,

[113] Wolfraim 01/07/2003 at 101-102, 104.
[114] Wolfraim 01/07/2003 at 131.
[115] Wolfraim 09/27/2004 at 158-159.
[116] Wolfraim 09/27/2004 at 159.
[117] Wolfraim 09/27/2004 at 160.
[118] Wolfraim 09/27/2004 at 160.
[119] Liczyk 11/17/2003 at 70-71.
[120] Wolfraim 09/27/2004 at 161.

Wolfraim indicated that he would not expect that there would be any other significant communications:[121]

> Based upon my review of the documentation which does exist in relation to these matters, it appears to be normal and in keeping with [the] extent of documentation which I would normally expect to exist.[122]

79. In other words, the failure to provide the client with written proposals that clearly spell out the cost of the proposal was part of MFP's *modus operandi*; while such an approach may have produced sales, it represented a fundamental breach of commercial ethics. MFP promised helpful reports; it delivered a $2.5 million bill, but no reports. MFP had executed another bait and switch.

[121] Wolfraim Affidavit, para. 22, 09/27/2003 at 25-26.
[122] Wolfraim Affidavit, para. 22, 09/27/2003 at 25-26.

4. The City did not direct MFP to rewrite the leases

a) MFP does not know who told whom to rewrite the leases

80. Wilkinson recalled that he "received word" that the City had decided to restructure its leases in late June 2000.[123] He indicated that MFP "was directed" to group the leased assets into logical pools, and each pool would be the subject of a separate lease with a common term. Wilkinson believed that he learned of the City's direction to restructure the leases through Domi.[124] Wilkinson did not know the identity of the individual at the City who gave the direction.

81. Domi testified that in June 2000 he did not know many details about the City and MFP rewriting the leases.[125] Domi vehemently disagreed that he received a direction from the City to restructure the leases. He testified that he "would not know to say that".[126] He agreed that he would know "something", but that he would not know "anything in great detail".[127] In other words, he did not understand the nature of the lease rewrites sufficiently to request from the City a direction to put items in different categories or to impart such a direction to Wilkinson:

> I -- I -- I would not have a discussion about things like that. I would not know. She [Liczyk] would have discussions with Rob [Wilkinson]. I mean it was like whatever -- it was all what Rob said and did that that's what went through. Not me. It was all created by him.[128]

82. Domi testified that Wilkinson led the discussions with the City about the lease rewrites.[129] Domi understood that Liczyk was Wilkinson's primary contact at the City

[123] Wilkinson Affidavit, para. 118, 09/16/2003 at 90.
[124] Wilkinson Affidavit, para. 119, 09/16/2003 at 90-91.
[125] Domi 04/21/2004 at 24.
[126] Domi 04/21/2004 at 26.
[127] Domi 04/21/2004 at 24.
[128] Domi 04/21/2004 at 28.
[129] Domi 01/23/2003 at 201.

with respect to the lease rewrites.[130] He did not think that Viinamae or Bulko were involved in these discussions.

83. Domi did not even know when he became aware of MFP's belief that the City had decided to rewrite the leases.[131]

84. In short, no one at MFP could identify:

a. who at the City allegedly gave MFP the direction to rewrite the leases; or

b. assuming someone at the City did give that direction, to whom at MFP the City employee gave the direction to rewrite the leases.

b) Liczyk did not direct MFP to rewrite the leases

85. Liczyk testified that she spoke with Domi about cost allocation reports and told him that she liked the reports Wilkinson generated.[132] However, Liczyk maintained that she did not authorize the lease rewrites and that Domi should not have inferred that she did.[133] Domi testified that he would not have discussed cost allocation reports with Liczyk. He did not know enough to engage in such a conversation and Liczyk would only have had such a conversation with Wilkinson.[134] However, Domi agreed that he may have asked generally how Liczyk's conversation went with Wilkinson, and she may have shared her reaction.[135] Even Domi was capable of having the conversation that Liczyk described. It is likely that they did have such a conversation.

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[130] Domi 01/23/2003 at 201.
[131] Domi 04/21/2004 at 30.
[132] Liczyk 11/17/2003 at 112.
[133] Liczyk 11/17/2003 at 112.
[134] Domi 04/21/2004 at 28.
[135] Domi 04/21/2004 at 29.

c) I&T did not direct MFP to rewrite the leases

86. Andrew swore that he had no involvement in the lease rewrites.[136] He did not direct the leases rewrites, and did not even learn that the leases had been rewritten until long after he left the City. Domi testified that he could not recall any discussions with Andrew about the lease rewrites.[137]

87. Viinamae testified that not only did she not authorize the rewrites, she first learned of the lease rewrites in November or December 2000 when she was confronted with unpaid invoices for rewritten schedules.[138] Domi did not think that Viinamae or Bulko were involved in these discussions. [139]

88. In July 2000, the evidence suggests that some of the staff in the CMO had some vague awareness that the leases were to be or had been rewritten and that Liczyk was involved in some way. Viinamae, however, testified that she was unaware that the leases had been rewritten or even that such a rewrite had been requested.[140]

89. In fact, no one in I&T had any first hand knowledge about who at the City had allegedly made the “decision” to rewrite the leases:

a. Bulko did not actually know who made the decision to rewrite the leases; however she thought that Wilkinson told her that both Liczyk and Viinamae negotiated the new lease terms;[141]

b. Marks testified that Viinamae did not have a role in the decision to rewrite the leases;[142]

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[136] Andrew Affidavit, para. 167, 09/24/2003 at 76.
[137] Domi 01/23/2003 at 206-207.
[138] Viinamae 10/23/2003 at 214; Viinamae 10/16/2003 at 181.
[139] Domi 01/23/2003 at 201.
[140] Viinamae 10/22/2003 at 62-63.
[141] Bulko 08/12/2003 at 158.
[142] Marks 08/14/2003 at 183.

c. Leggieri testified that Liczyk made the decision to rewrite the leases.[143] Bulko advised Leggieri that Liczyk made the decision to rewrite the leases;[144] and

d. Viinamae testified that she did not give instructions to rewrite the leases.[145] She indicated that she could not have given the direction as she did not learn of the lease rewrites until November 2000.

i) The CMO was not directly involved with the lease rewrites

90. Power testified that he had no recollection of any involvement with the lease rewrites.[146] Similarly, Leggieri testified that she was not involved in the initial stages of the July 2000 lease rewrites.[147] Her involvement began much later, in the spring of 2001.[148] Marks was not involved in the lease rewrites in July 2000, either.[149] Bulko testified that she was aware that the lease rewrites were occurring, but she was not directly involved in the process.[150] She understood that the sole purpose of rewriting the leases was to separate the assets into logical asset pools in order to clarify the lease terms for different classes of equipment.[151] Bulko testified that she was informed by Viinamae that the process was underway, probably in spring 2000.[152] She was unaware that the lease rewrites bore any cost for the City.[153] Bulko first saw the rewritten leases in April 2001, when the lease schedules were delivered to her.[154] Bulko then directed Leggieri to reconcile the lease schedules.[155]

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[143] Leggieri 09/02/2003 at 135.
[144] Leggieri 09/02/2003 at 135.
[145] Viinamae 10/16/2003 at 186-90; Viinamae 10/21/2003 at 103; Viinamae 10/22/2003 at 56-58, 212-216.
[146] Power 03/25/2003 at 6.
[147] Leggieri 04/09/2003 at 128.
[148] Leggieri 04/09/2003 at 133-134.
[149] Marks Affidavit, para. 64, 08/13/2003 at 238.
[150] Bulko 08/11/2003 at 132.
[151] Bulko 08/11/2003 at 132.
[152] Bulko 08/11/2003 at 134-135.
[153] Bulko 08/11/2003 at 134.
[154] Bulko 08/11/2003 at 135.
[155] Bulko 08/12/2003 at 160.

5. MFP rewrote the leases to their advantage, on their terms

91. According to MFP, after receiving word of the City's "direction" to proceed with the restructuring, Wilkinson instructed Currie to begin preparing the rewritten leases.[156]

92. This process involved placing the assets that were now grouped by type (desktops, notebooks, monitors, servers, and printers) on lease. There were two key variables to be fixed for the rewritten leases: first, the applicable lease rate factor; and second, the new lease term.[157] Wilkinson provided Currie with the lease rate factors and the lease term.[158] He testified that the applicable lease rate factors were based upon a weighted calculation of the original lease rate factors, adjusted to take into account a small number of new assets that were being added and a small number of other assets which were being deleted from the lease schedules.[159]

a) MFP used 57 month lease terms instead of the weighted average

93. Wilkinson directed Currie to use 57 month lease terms for each lease schedule. He testified that he chose a 57 month term because the remaining lease terms for the existing leases and the new equipment ranged from 51 to 60 months.[160] In July 2000, the remaining lease terms for the previous lease schedules were:

a. Equipment Schedule 838-1: 51 months;

b. Program Agreement 1-1: 54 months;

c. Program Agreement 1-2: 57 months; and

d. New Equipment: 60 months.

[156] Wilkinson Affidavit, para. 120, 09/16/2003 at 91.
[157] Wilkinson 09/23/2003 at 84.
[158] Wilkinson Affidavit, para. 120, 09/16/2003 at 91.
[159] Wilkinson Affidavit, para. 121, 09/16/2003 at 91.
[160] Wilkinson Affidavit, para. 122, 09/16/2003 at 91-92; Wilkinson 09/23/2003 at 99.

94. Bulko testified that, during the summer of 2000, Wilkinson told her that he negotiated the 57 month term with Liczyk and/or Brittain.[161] Brittain, however, testified that he had no involvement whatsoever with the leasing program after January 2000 and no evidence from MFP contradicts him.[162] As mentioned above, Bulko believed that the sole purpose of rewriting the leases was to separate the assets into logical asset pools in order to establish the lease terms for different classes of equipment.[163]

95. Wilkinson did not suggest that he negotiated the length of the lease term with Brittain.[164] Wilkinson agreed that prior to the rewrites the actual weighted remaining lease term was 53 months.[165] Wilkinson did not inform anyone at the City, including Liczyk, that he had chosen a lease term four months longer than the weighted average.[166] According to Wilkinson, he "assumed" that the City would "independently" consider the lease terms and return with its "own input and response".[167] He testified that his plan was for MFP to "present" the 57 month lease terms to City staff in the lease contract itself and watch how the City staff reacted, if at all.[168] Wilkinson's strategy was to wait and see if the City thought 57 months was an appropriate lease term.[169] Even Wolfraim reluctantly agreed this manner of "presenting" a lease term was unsatisfactory:

> Q: Was it sufficient for Mr. Wilkinson to stick -- to just put it in the contractual documents from your perspective as the CEO of this company, and rely on the client to detect that fact?
>
> A: I think what I said before was I'd rather there was a piece of paper or a letter that described what the effect of the restructuring was.[170]

96. Wolfraim was also aware that MFP extended the term of the leases through the rewrite.[171] He testified the lease rewrites "triggered a renewal of some of the underlying

[161] Bulko 08/11/2003 at 141-142.
[162] Brittain Affidavit, paras. 44,45, 07/09/2003 at 156.
[163] Bulko 08/11/2003 at 132.
[164] Wilkinson 09/23/2003 at 139.
[165] Wilkinson 09/23/2003 at 97-98.
[166] Wilkinson 09/23/2003 at 99-100.
[167] Wilkinson Affidavit, para. 122, 09/16/2003 at 91-92.
[168] Wilkinson 09/23/2003 at 99.
[169] Wilkinson 09/18/2003 at 98.

leases”.[172] Wolfraim’s explanation is patently disingenuous. In fact, MFP rewrote and extended the lease term to its sole advantage without ever informing the City.

97. It was incumbent on MFP to inform the City that the 57 month lease term represented an extension of the weighted average lease terms. This obligation existed independently of the form of the contract; however, the duty to inform was heightened in this case because it was not apparent on the face of the contract that the 57 month lease term was not the weighted average.[173]

98. Wolfraim testified that the City could have figured this out by determining the net present value of all the rewritten lease schedules and then comparing it to the net present value of the pre-existing lease schedules.[174] He agreed that this mathematical calculation was an extra step required on behalf of the City.[175] The City submits that MFP deliberately buried the fact that it was extending the length of the leases in the contract. MFP never told the City that MFP was extending the terms and MFP never put it clearly in writing.

b) MFP quickly pushed the rewrites through its systems

99. On June 29, 2000, Currie sent another internal email to various MFP employees including Flanagan and Domi.[176] The subject of the email was “Global Heads Up! City of Toronto”. In the email, Currie described the timeline for pushing through the lease rewrites and described the five lease categories:

> I am in the process of preparing 5 City of Toronto AZTEC rewrites which are flagged to be pushed through the entire system for quarter end (as per Mike F.).
>
> Transaction details as follows:

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[170] Wolfraim 09/27/2004 at 248.
[171] Wolfraim 01/08/2003 at 183.
[172] Wolfraim 01/08/2003 at 183.
[173] Wolfraim 09/27/2004 at 248.
[174] Wolfraim 09/27/2004 at 248-249.
[175] Wolfraim 09/27/2004 at 249.
[176] COT027758, 99:1:38.

> 838-1, PA1-1, and PA1-2 are being split into 5 different lease categories – Desktop, Monitor, Notebook, Printer and Server/Network onto 57 month terms effective July 1st. Four of the leases have new equipment added.[177]

100. The language used in this email is indicative of MFP's approach to the lease rewrites and the City of Toronto. The City had not requested, let alone reviewed, the rewritten lease contracts, but Flanagan was instructing Currie to push the leases through the system. Domi agreed that he received this email and that he must have known by June 30, 2000 that MFP was in the process of rewriting the City leases.[178]

c) MFP yellow sheets for the rewrites

101. Flanagan testified that the Investment Committee did not need to approve the yellow sheets for the lease rewrites because MFP was not investing any additional money.[179] He understood that, in order to provide a quote to the customer, the yellow sheets may have required his signature prior to the transactions being booked. Then, prior to sending the contracts to the customer for signature, they would require two signatures: one from the Administration Division of MFP and another from the Credit Division of MFP.[180] Regardless, Wilkinson would have reviewed the yellow sheets.[181]

102. MFP created five yellow sheets for the lease rewrite transaction.[182] The yellow sheets pertained to the rewritten lease schedules, and ranged from 838-5 to 838-9, inclusive. Each yellow sheet pertained to a different class of leased assets: desktops, monitors, notebooks, printers, and servers/networks. The common term for all of the yellow sheets was 57 months. All of the yellow sheets were dated June 30, 2000, and initialed by Credit/Funding and Sales Administration on this date. Flanagan initialed all of the yellow sheets on July 6, 2000. The commencement date for all of the leases

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[177] COT027758, 99:1:38.
[178] Domi 04/21/2004 at 31.
[179] Flanagan 02/18/2003 at 121.
[180] Flanagan 02/18/2003 at 121.
[181] Flanagan 02/18/2003 at 121.
[182] COT029480, 6:1:80; COT029487, 6:1:87; COT029494, 6:1:94; COT029501, 6:1:101; COT029509, 6:1:109.

described on the yellow sheets was July 1, 2000. The yellow sheets revealed a total of $31,321,748 of equipment on lease comprising:

a. $18,129,175 for desktops (838-5);[183]

b. $860,336 for monitors (838-6);[184]

c. $2,410,700 for notebooks (838-7);[185]

d. $945,078 for printers(838-8);[186] and

e. $8,986,459 for servers and networks (838-9).[187]

[183] COT029480, 6:1:80.
[184] COT029487, 6:1:87.
[185] COT029494, 6:1:94.
[186] COT029501, 6:1:101.
[187] COT029509, 6:1:109.

6. Domi misled Liczyk to get her to sign the rewrites

103. In his affidavit, Wilkinson indicated that MFP sent the City the rewritten leases on or about July 5, 2000.[188] The rewritten leases were forwarded to the CMO as hard copies and as electronic attachments. Wilkinson testified that this was the ordinary course for delivering contract documents to the City.[189]

104. There were four lease snapshot documents related to the lease rewrites.[190] Lease snapshots were internal MFP documents used to keep track of the process by which lease documents were created, signed off, and approved.[191] The first lease snapshot pertained to rewritten lease 838-5. It was issued on July 5, 2000, signed on July 12, 2000, and accepted internally by MFP on July 25, 2000.[192] Domi agreed that lease documents were not forwarded to the City for signature until Flanagan had approved them.[193]

105. Domi was the means by which MFP physically delivered its contract documents to the City. MFP relied on Domi to communicate to the City:

a. the nature of the contract documents;

b. why the contract needed to be signed;

c. what needed to be signed;

d. who should sign the contract;

e. when the contract should be signed by; and

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188 Wilkinson Affidavit, para. 124, 09/16/2003 at 92.
189 Wilkinson 09/18/2003 at 94.
190 COT036492, 99:1:98; COT036496, 99:1:99; COT036500, COT036380, 18:3:34.
191 Domi 04/21/2004 at 32.
192 COT036492, 99:1:98.
193 Domi 04/21/2004 at 34; Flanagan 02/18/2003 at 120.

f. how the contract should be returned.

a) MFP bypassed the CMO

106. On occasion, Domi bypassed the CMO by taking documents directly to Liczyk for her signature prior to sending them to the CMO.

107. Viinamae testified that the procedure dictated that MFP should have sent the rewritten schedules to the CMO, and then Viinamae would have confirmed that the City had received the equipment.[194] The point of having documents sent to the CMO was to ensure that the City has received the goods for which MFP issued purchase orders.[195] These documents were usually Certificates of Acceptance. Upon confirmation of receipt of the equipment, the Certificate of Acceptance was rolled up with the Equipment Schedule. Equipment Schedules were also sent to the CMO.[196] The CMO staff checked equipment listed on the Equipment Schedule against the ITLA form to confirm that the City requested all that was provided, and checked the figures in the Equipment Schedule to ensure that the price was correct.[197] The documents were then forwarded to Finance.

108. Leggieri testified that the CMO procedure required her to reconcile the Equipment Schedule with the equipment on lease. Then, the Equipment Schedule would be signed by Bulko and Viinamae, passed to the Executive Director of I&T (first, Andrew and later Ridge), and then forwarded to Liczyk for final approval.[198] Leggieri confirmed that Domi often bypassed this process, and instead took the Equipment Schedule directly to Liczyk.[199] Leggieri testified that she spoke to Domi about this on more than one occasion and even sent him emails. However, Domi did not alter his

[194] Viinamae 10/22/2003 at 59.
[195] Viinamae 10/22/2003 at 59.
[196] Viinamae 10/22/2003 at 60.
[197] Viinamae 10/22/2003 at 60.
[198] Leggieri 04/09/2003 at 80.
[199] Leggieri 04/09/2003 at 81.

behaviour until Leggieri contacted Currie and asked her to ensure the Equipment Schedules were couriered to the CMO.[200]

109. Bulko confirmed that Domi had “quite often” bypassed the CMO by taking the lease schedules directly to Lizcyk for her signature.[201] Bulko agreed that this was an ongoing concern for the CMO because it did not permit the opportunity for the CMO staff to reconcile the lease schedules and correct any mistakes.[202] Bulko could not recall Domi personally attending at the Y2K office or the CMO with documents for review and signature.[203] Indeed, Bulko could only recall Domi ever personally attending at the CMO to pick up the documents to bring to Liczyk.

110. Domi delivered lease documents to Liczyk to obtain Lizcyk’s signature and to bypass any review by the CMO.

b) Liczyk signed the lease rewrites

111. The City submits that Liczyk utterly failed to exercise meaningful due diligence prior to signing the rewritten leases. Domi lied to Liczyk about the effect of the documents he was asking her to sign. Only two months after her jaunt with him to Ottawa on a private jet, and having been wined and dined by him, Liczyk trusted Domi and signed on the bottom line. Liczyk signed the contracts because she liked and trusted Domi and MFP, not because of a “system” that gave her administrative assistant greater responsibility than Liczyk for protecting the City.

112. Liczyk testified that it was unusual for people to drop by her office.[204] If there was a reason for the visit, then the caller would phone her assistant first to ensure that Liczyk would be in her office. She testified that her assistant probably checked the contract documents to ensure that they were tabbed and that there was a covering

[200] Leggieri 04/09/2003 at 83-84.
[201] Bulko 08/12/2003 at 167.
[202] Bulko 08/12/2003 at 167.
[203] Bulko 08/12/2003 at 168.
[204] Liczyk 11/06/2003 at 73.

memo.[205] As far as Liczyk was concerned, she was not responsible for performing any due diligence with respect to the documents she signed as a signing officer for the City.[206] She testified that the volume of documents that she signed as a statutory signing officer was so large that she could not possibly read them.[207] Instead, such due diligence was the responsibility of the originating department and was confirmed by their signatures or other indications on the contract documents. Liczyk expected that the originating department reviewed all contracts prior to forwarding them to her for signature.[208] The originating department was responsible for marking the signature page with a post-it note.[209] After Liczyk signed a document, the originating department would insert her title and the date next to her signature. Liczyk's assistant did not perform these tasks.[210]

i) Domi as courier

113. In her affidavit, Liczyk indicated that she only recalled Domi bringing documents directly to her office on two occasions.[211] On both occasions, Domi advised her that he was a "courier" from the CMO. Liczyk believed that, on the first occasion, Domi brought lease contracts to be re-executed as required by the City Solicitor's legal opinion regarding Viinamae's signing authority.[212]

114. On the second occasion, Domi arrived with a box of documents with a covering note and each execution page flagged for signature.[213] She believed that Domi had picked up these documents from the CMO, and Domi confirmed to Liczyk that he would return them to the CMO.[214] Liczyk assumed that Domi had called her assistant and that she had already vetted them.[215] Liczyk did not read or even scan the documents.[216] The

[205] Liczyk 11/06/2003 at 73.
[206] Liczyk 11/06/2003 at 75.
[207] Liczyk 11/17/2003 at 123.
[208] Liczyk Affidavit, para. 212, 11/03/2003 at 83.
[209] Liczyk 11/17/2003 at 129-130.
[210] Liczyk 11/17/2003 at 130.
[211] Liczyk Affidavit, para. 209, 11/03/2003 at 82.
[212] Liczyk Affidavit, para. 210, 11/03/2003 at 82.
[213] Liczyk Affidavit, para. 211, 11/03/2003 at 82-83.
[214] Liczyk Affidavit, para. 211, 11/03/2003 at 83.
[215] Liczyk 11/06/2003 at 75.

documents ranged from 400 pages in length to 20 pages, and the box contained multiple sets of each document.[217]

115. Liczyk asked Domi what the documents were. He responded that they were "administrative reorganizations" for the purpose of establishing the management reporting process.[218] Liczyk understood this term to mean that the box contained reports that divided the leased equipment by department.[219] Liczyk believed, with hindsight, that Domi's statement was factually incorrect, and that she should not have permitted MFP to circumvent the City's signing process in terms of the requirement that proper signatures be obtained in the proper order.[220] Liczyk testified that she would not have signed the documents if Domi had told her that they were rewritten leases that extended the term of the original leases.[221] She assumed that her assistant allowed Domi to bypass the City's signing process as a favour to the CMO.[222]

116. Liczyk agreed that she did not know for certain whether or not her assistant double checked with the CMO that Domi's statement was true; namely, that he had been asked by the CMO to bring the lease contracts to Liczyk for signature.[223] Liczyk did not consider the fact that Domi was a supplier, not City staff; rather, she relied on her assistant to have performed the proper due diligence in order to permit him to act as a courier for the CMO:[224]

> Well, I would say that the -- who was delivering them was incidental to the fact that there was a process that was around documents entering my office for signature.[225]

[216] Liczyk 11/17/2003 at 122.
[217] Liczyk 11/17/2003 at 124-125.
[218] Liczyk 11/06/2003 at 75.
[219] Liczyk 11/17/2003 at 121.
[220] Liczyk 11/06/2003 at 77.
[221] Liczyk 11/17/2003 at 133-134.
[222] Liczyk 11/06/2003 at 77.
[223] Liczyk 11/17/2003 at 120.
[224] Liczyk 11/06/2003 at 77-78.
[225] Liczyk 11/06/2003 at 84.

117. Liczyk claimed that she relied on the process that she had established with her assistant whereby all documents for signature were cleared, in some way, as having been reviewed by the originating department.[226]

118. The covering page (from an unidentified City staff member) that Liczyk referred to in her affidavit has never been located.[227] There was no cover letter from MFP accompanying the rewritten lease schedules.[228] This failure is completely contrary to normal and prudent business practice. It is standard business practice to record in a covering memo, for both the sender and the receiver, which contract documents are attached, that the documents were requested by a named individual, and that the documents should be returned with signature to another named individual.

119. Wolfraim defended the lack of covering documents. He testified that MFP sales representatives often personally hand delivered the documents.[229] A review of the original lease rewrites did not indicate that anyone at the City had reviewed them prior to Liczyk signing them: no initials, signatures, squiggles, or other markings.[230] Liczyk agreed that there was no evidence that Bulko, Leggieri, or Marks had ever seen, reviewed, or approved the lease rewrite documents prior to her signing them.[231]

ii) Scarcello's evidence

120. Scarcello was Liczyk's assistant from 1998 until Liczyk left her position at the City.[232] Scarcello indicated that there were, at minimum, hundreds of documents that would come in each year requiring Liczyk's signature.[233] In her affidavit, Scarcello explained her normal procedure for obtaining Liczyk's signature. She did not review the documents for content.[234] She checked for a signature or an initial to ensure the

[226] Liczyk 11/17/2003 at 146.
[227] Liczyk 11/17/2003 at 140-141.
[228] Wolfraim 09/27/2004 at 242.
[229] Wolfraim 09/27/2004 at 243.
[230] Liczyk 11/17/2003 at 140-141.
[231] Liczyk 11/172003 at 149-150.
[232] Scarcello Affidavit, para. 1, 09/01/2004 at 72.
[233] Scarcello 09/01/2004 at 77.
[234] Scarcello 09/01/2004 at 77-78.

requesting division had reviewed the document. If she did not find one, then she flagged the document for Liczyk's review. For documents from I&T, Scarcello expected to see the initials or signature of Andrew or Viinamae on the documents.[235] Scarcello indicated that most documents requiring Licyzk's signature had a memo attached to the front that explained the content of the document.

121. Scarcello recalled that Domi brought documents to Lizcyk's office for signature on two occasions.[236] Each time, Domi arrived with a large stack of documents. There were several agreements in the stack, each of which had many attachments.[237] She did not recall checking the documents to ensure that I&T had reviewed them. On one of these occasions, Domi called to inform Scarcello that he had just met with Andrew or the CMO, and needed to drop off some documents for Lizcyk's signature.[238] He indicated to Scarcello that he intended to take the documents into Liczyk's office himself.

iii) Domi's evidence

122. Domi agreed that, on more than one occasion, he picked up lease documents from the CMO and took them to Liczyk for signature. He testified that the CMO asked him to deliver the documents to Liczyk.[239] He further testified that he did not know what the documents were.[240] Domi could not recall whether or not he ever attended in Liczyk's office with the lease rewrites for her signature.[241] However, he recalled taking documents to Liczyk's office for signature.[242] Domi testified that he did not describe himself as a courier from the CMO, but agreed that it was not impossible that he would have used that turn of phrase.[243]

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[235] Scarcello 09/01/2004 at 79.
[236] Scarcello Affidavit, para.10, 09/01/2004 at 74.
[237] Liczyk Affidavit, para. 211, 11/03/2003 at 82-83.
[238] Scarcello Affidavit, para.11, 09/01/2004 at 74-75.
[239] Domi 04/20/2004 at 51-52.
[240] Domi 04/20/2004 at 52.
[241] Domi 04/20/2004 at 50.
[242] Domi 04/21/2004 at 35.
[243] Domi 04/21/2004 at 39-40.

123. Domi submitted a parking receipt to MFP for parking at City Hall on July 11, 2000, from 11:57 to 13:34.[244] He agreed that it was possible that he brought the documents to Liczyk for signature on July 11, 2000.[245] Domi could not recall ever advising Liczyk that the rewritten contracts were "administrative reorganizations".[246] He testified that he did not mislead Liczyk for two reasons: first, he was not an expert on the leasing program; and second, he did not know the extent of the leases at the time.[247] However, Domi's apparent ignorance about the leases must be juxtaposed against his admitted knowledge that the rewritten leases meant more profits for MFP and a larger commission for him.[248] When Domi was asked about Scarcello's evidence, he agreed that he may have delivered lease documents to Liczyk for signature on two occasions.[249]

124. Domi agreed that the lease rewrite documents were lengthy and that Liczyk could not possibly read all of the fine print on the documents.[250] He agreed that they were friends and that Liczyk trusted him. Domi further agreed that Liczyk would not think twice about signing MFP documents that purported to be administrative reorganizations or cost allocation reports.[251] He would not comment on whether she would sign a document that cost the City another $2 million without Council approval, stating "I just don't know what goes on there, who signs what, when, where. I just don't know":[252]

> Q: And therefore all you would have had to say to her, Mr. Domi, is, Wanda, here's a bunch of documents that you need to sign, no big deal, and she might have signed them?
>
> A: I wouldn't say no -- I wouldn't say that, no big deal.
>
> Q: Did she sign them without asking you any questions, Mr. Domi?

[244] COT026214, 99:1:51.
[245] Domi 04/21/2004 at 43.
[246] Domi 04/20/2004 at 50-51.
[247] Domi 04/20/2004 at 51.
[248] Domi 04/20/2004 at 51.
[249] Domi 04/21/2004 at 37.
[250] Domi 04/21/2004 at 61-62.
[251] Domi 04/21/2004 at 62-63.
[252] Domi 04/21/2004 at 62.

A: I don't know. I wasn't standing there.

Q: Do you have a memory of the event?

A: No, I don't.

Q: Do you deny, Mr. Domi, that you misled Ms. Liczyk in any way whatsoever, in handing her those documents?

A: I did not mislead. How did I mis – how would I mislead, I didn't know anything?

Q: By not telling her the significance of those documents?

A: I -- I did not mislead.

Q: By not telling her that those documents re-wrote the leases, the words that you knew?

A: Rewriting them, I knew, well, no. That's -- that's wrong. I would -- I would not know the right words to use, if anything, that she asked me.

Q: Not –

A: She'd have to talk to somebody else, not to me, because I would not be the person to answer her questions.

Q: Even though Peter Wolfraim's memo records a conversation with you as early as January 2000, in which you were told that if you got the leases rewritten, you stood to make half a million dollars?

A: Why wouldn't I have done it the week after, if I could do it that -- like you're saying, that easy?[253]

[253] 04/21/2004 at 63-65.

7. Domi earned $420,000 for getting Liczyk's signature on the rewrites

125. Domi had a unique commission structure at MFP for the City of Toronto transaction. In the fall of 1999, Payne suggested to Wolfraim that MFP pay Domi a commission based on the volume of initial anticipated leasing transactions with the City of Toronto, rather than on the percentage of the margin earned or expected to be earned on the leases.[254]

126. On January 14, 2000, Wolfraim sent an email to Heather Misiak ("Misiak"), copied to Long.[255] The subject line read "Commission Arrangements re: Meagacity [*sic*]". Misiak was MFP's Director of Lease Operations for the Public Sector.[256] She was in charge of lease administration. In the email, Wolfraim confirmed that he met with Domi on January 13, 2000. During this meeting, Domi informed Wolfraim that Domi was trying to rewrite the City transaction.

> The arrangement is that he was paid $200,000 in Q2, and will be paid another $400,000 for Q3. He is presently trying to rewrite the deal for Q4. The deal for Q4 is that he is paid normal commission rates on the rewrite and the Q2 and Q3 commissions are to be deducted from the margin as a cost to the deal prior to commission calculation.[257]

127. Flanagan testified that Domi received approximately $420,000 in commission exclusively for the lease rewrites.[258] Accordingly, up to and including the lease rewrites, Domi received a commission of approximately $1,020,000 in relation to the City.[259]

128. Domi testified that he knew that if the City leases were rewritten, he would make a very significant commission.[260] He agreed that "it was possible" that he knew about

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[254] Wolfraim Affidavit, para. 10, 09/27/2003 at 18.
[255] COT083591, 98:1:3.
[256] Wolfraim 09/27/2004 at 215.
[257] COT083591, 98:1:3.
[258] Flanagan 02/18/2003 at 125.
[259] Flanagan 02/18/2003 at 125-126.
[260] Domi 04/21/2004 at 47-48.

his large potential commission before the leases were rewritten.[261] Domi admitted that he may have discussed his compensation with Wolfraim on January 13, 2000, the day before Wolfraim sent his email to Misiak.[262] Domi agreed that the email suggested that MFP was hoping the rewrites would be accomplished by March 31, 2000, and that on that basis he received some commissions early, which would later be deducted from his commission from the lease rewrites.[263] However, Domi testified that he would not have been capable of giving Wolfraim the information found in Wolfraim's email.[264]

129. Domi could not identify who asked him to rewrite the leases. Instead, he just indirectly learned that rewriting the leases was his selling objective.[265] He testified that he was not capable of coming up with the idea of rewriting the leases on his own.[266] Domi consistently denied having any specific knowledge or conversations about the lease rewrites prior to the meetings between Wilkinson and City staff, despite evidence to the contrary (including Wolfraim's January 13, 2000 email):

> Q: Next sentence: "He is presently trying to re-write the deal for Q4". See that?
>
> A: Okay.
>
> Q: Is that true?
>
> A: I don't know.
>
> Q: Did you tell Mr. Wolfraim in January of 2000, that you were planning to get the computer leases re-written by Q4 end?
>
> A: I don't know that.
>
> Q: By the end of March 2000?
>
> A: By the end of March I was going to get the re-write done?
>
> Q: You were going to get the re-write done.

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[261] Domi 04/21/2004 at 48.
[262] COT083591, 98:1:3; Domi 04/21/2004 at 48-49.
[263] Domi 04/21/2003 at 58.
[264] Domi 04/21/2004 at 53.
[265] Domi 04/21/2004 at 57.
[266] Domi 04/21/2004 at 57.

> A: He may have asked me if I could, but I -- like -- how would I know to know to say, I'm going to do this? Like, give me a break.[267]

130. Domi would not concede that the City never instructed him to rewrite the leases. He agreed that he could not remember anyone instructing him to do so, but then retreated to the position that he simply did not know.[268]

131. Domi's evidence on this point should not be believed. There can be no doubt that Domi discussed his Q4 commission with Wolfraim on January 13, 2000. During that meeting he must have told Wolfraim that he was trying to rewrite the leases. His testimony that he had no knowledge about the rewrites before the Wilkinson meeting should not be accepted. His testimony on this issue, even when confronted with the Wolfraim email, is part of his deliberate campaign to mislead the Inquiry.

[267] Domi 04/21/2004 at 55-56.
[268] Domi 04/21/2004 at 61.

8. The aftermath of the rewrites

132. On July 12, 2000, MFP received the rewrites from the City, signed by Liczyk.[269] Wilkinson indicated that the next step in the development of the City's asset management plan was to allocate each asset to a cost centre. Wilkinson testified that this allocation exercise was the main stumbling block for MFP, and something that MFP could not complete independently.[270] He understood that City staff had substantially completed this task by July 2000.[271] Wilkinson occasionally checked with Currie as to the City's progress regarding the allocation of leased assets to cost centres. Currie advised him that City staff continued to work on the project and still intended to pursue the asset management plan.[272] Wilkinson swore that, throughout the fall of 2000, he was unaware of any issues or concerns about the leasing procedures or the cost centre allocations.[273]

a) The CMO was confused about the invoices for the lease rewrites

133. The CMO began receiving invoices for the rewritten Equipment Schedules at some point soon after July 2000.[274] Viinamae understood that, as a result of confusion around why the City was invoiced for Equipment Schedules that the CMO did not know about, Bulko and Leggieri did not process these invoices.[275] Viinamae pointed out that there were leases from former cities, which the CMO had been trying to consolidate, and the CMO may have believed that these leases were the origin of the new Equipment Schedules.

[269] Wilkinson Affidavit, para. 124, 09/16/2003 at 92.
[270] Wilkinson 09/16/2003 at 292-293.
[271] Wilkinson Affidavit, para. 126, 09/16/2003 at 92.
[272] Wilkinson Affidavit, para. 127, 09/16/2003 at 93-94.
[273] Wilkinson Affidavit, para. 135, 09/16/2003 at 95.
[274] Viinamae 10/29/2003 at 107.
[275] Viinamae 10/29/2003 at 107-108.

134. On July 19, 2000, Currie sent an email to Leggieri.[276] The email responded to some of Leggieri's questions about certain lease invoices. At the end of the email, Currie advised that the City should not process invoices involved in the lease rewrites:

> For the next couple of weeks, any invoices that pertain to PA1-1, PA1-2, and 838-1 (under the 838 master) should not be processed. There are the leases involved in the recent rewrite and they will therefore be rebooked and the system will issue revised invoices.[277]

135. On July 20, 2000, Leggieri sent an email with the subject line "Invoices recently faxed over".[278] She indicated that she was confused about these invoices, that she still did not know what the invoices were for, but that she presumed that Domi was in the process of rewriting them.[279] The next day, Bulko replied to Leggieri's email.[280] She asked, "When are we going to get copies of those rewrites that Dash had Wanda sign?"

136. More than a year later, on October 9, 2001, Bulko sent an email to Leggieri confirming that the CMO was still looking for the lease rewrites as of July 21, 2000.[281] The sequence of events evidenced by these emails raises great concerns about MFP's conduct. MFP brought the lease rewrites directly to Liczyk for signature, thereby denying the CMO an opportunity to review or approve them, and then did not even forward the signed rewritten contracts to the CMO for its records. This sequence of events is contrary to normal business practices.

137. Viinamae testified that she found out about the lease rewrites at the same time as the City realized that the CMO had outstanding unpaid invoices with MFP.[282] The reason that the CMO was not paying the invoices was because they did not have the

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[276] COT024013, 99:1:57.
[277] COT024013, 99:1:57.
[278] COT067357, 99:1:58.
[279] COT067357, 99:1:58.
[280] COT067357, 99:1:58.
[281] COT067356, 55:2:58.
[282] Viinamae Affidavit, para. 73, 10/15/2003 at 35; COT067826, 63:13:21; COT067776, 63:13:22; COT067915, 63:13:21.

relevant Equipment Schedules for reconciliation. Viinamae indicated that Domi had not provided the CMO with signed copies of the Equipment Schedules.[283]

[283] Viinamae Affidavit, para. 73, 10/15/2003 at 35; COT015705, 63:13:19.