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1. Overview

1. In 2001 the City needed to obtain photocopiers, some of which would be connected to the computer network. There was an emerging consensus that photocopiers were simply an extension of the I&T platform. Believing that leasing was the best way to finance the acquisition of photocopiers and that MFP was the City's "vendor of record" for all technology leasing, I&T simply assumed that the new photocopiers should be placed on lease through MFP. Members of Council challenged I&T's assumption, which led to an examination into the City's relationship with MFP. It ultimately led to this Inquiry.

2. The initiative to lease photocopiers

2. By July 2000, replacing the City's aging photocopiers was a pressing issue for I&T. Many photocopiers at the City required frequent servicing. Other photocopiers were on leases that had expired. There was a long waiting list of departments that required replacement photocopiers. Alongside these pressures, amalgamation created the need to establish a centralized process for replacing photocopiers.¹

3. Bulko was the lead for the photocopier replacement process.² Leah White ("White") was the Project Coordinator for the photocopier replacement project and she authored its Project Charter.³ The first draft of the Project Charter was completed on July 12, 2000, and it was finalized on September 27, 2000. Bulko and Jack Schachner, an external consultant, offered their comments on the document. White obtained final approval from all of the project stakeholders, including Andrew, Viinamae, Pagano, Abrams, and Bulko.⁴

4. The Project Charter outlined a plan. I&T would generate an RFP for digital and analogue photocopiers. An evaluation process would determine the successful proponent for each category of equipment. Then, I&T would create a guide outlining the approved vendors and the equipment available. All ongoing orders would be placed through the CMO. The CMO would acquire the photocopiers through the successful vendors. The photocopiers would be placed on lease with MFP. There was, of course, no Council authority for placing the copiers on lease. MFP had no right to that leasing business without having won a competitive process.

a) The Photocopier RFP

5. The Photocopier RFP sought to establish a three year agreement for the supply of photocopier equipment. The City wanted a comprehensive business solution to

¹ COT009362 at COT009366, 60:1:37.

² COT071992, 55:4:91; COT065252, 55:4:94.

³ COT009362, 60:1:37.

provide departments with a streamlined method of choosing and replacing photocopiers.⁵

6. The Photocopier RFP assumed that the photocopiers would be leased through the City's "existing leasing vendor."⁶ City staff wrongly assumed that they already had approval to lease the photocopiers through MFP, based on the July 1999 Council Report.⁷

7. The responses to the Photocopier RFP were evaluated by a team of City staff including Bulko.

b) The March 14 Administration Committee Report

8. On March 14, 2001, a report went forward to the Administration Committee communicating the results of the Photocopier RFP ("March 14 Report"). The March 14 Report sought approval to acquire photocopiers from certain suppliers. The March 14 Report was signed by Anderton and Liczyk. Viinamae and Pagano were listed as the contact persons for the report.⁸

9. The March 14 Report affirmed that photocopier technology would become an extension of the City's existing leased technology infrastructure.⁹ Five proponents were selected to provide the photocopier equipment and maintenance. The March 14 Report estimated that five hundred photocopiers would be replaced over the term of the contract at an acquisition cost of \$3.5 million. It contained a reference to the City's "current technology lease provider" which raised questions about Council's prior approval of an apparent vendor of record relationship:

⁴ COT009362 at COT009376, 60:1:37.

⁵ COT009362 at COT009366, 60:1:37.

⁶ COT015578, 60:1:38.

⁷ Viinamae 10/29/2003 at 132.

⁸ COT009581, 28:1:7.

⁹ COT009581 at COT009581, 28:1:7.

Lease agreement with departments, Information and Technology, Finance and *our current technology lease provider* will provide for the costs to be charged to department budgets at an annual costs estimated to \$1.3 million (a reduction from estimated current annual costs of \$3.0 million).¹⁰

10. The March 14 Report simply assumed the photocopiers would be leased from MFP. The March 14 Report was forwarded to Council for its approval.

11. The incorrect assumption that the photocopiers would be leased with MFP came from Viinamae. She fundamentally misunderstood the scope of the Council authority under which she operated. Unlike Liczyk, Anderton had no reason to doubt Viinamae's description of MFP as the City's technology leasing provider. Andrew had previously mischaracterized the computer leasing program to Anderton. Liczyk, who knew better, kept Anderton in the dark. In these circumstances, the mistaken assumptions contained in the March 14 Report are properly the responsibility of others.

¹⁰ COT009581 at COT009583, 28:1:7 (emphasis added).

3. The April-May 2001 Council meeting

12. The March 14 Report was scheduled to be discussed at the Council meeting held on April 23, 24, 25, 26, 27, 30, May 1 and May 2, 2001.

a) Councillor Balkissoon's initial involvement

13. Councillor Balkissoon reviewed the March 14 Report in preparation for the Council meeting during the week of April 23, 2001. He was troubled by the reference to the City's current technology leasing provider, because he could not recall Council approving a vendor of record relationship with a leasing company.

14. He questioned the parameters of the phrase "current technology leasing provider"; specifically, whether or not Council had already approved a vendor of record relationship with a leasing company.¹¹ Councillor Balkissoon telephoned Griffiths, the City Auditor, but he had no additional insight into the City's current technology leasing provider.¹² Griffiths suggested that they make inquiries of I&T.

15. In his affidavit, Griffiths deposed that he reviewed the Administration Committee Report and discussed his concerns with Andrew.¹³ Later, Griffiths acknowledged that Andrew left the City on February 2, 2001, prior to the Photocopier RFP, and that he recalled the conversation occurring while Andrew was an employee at the City.¹⁴ According to Griffiths, Andrew told him that MFP did not have an exclusive right to the photocopier leases. In contrast, Andrew testified that no one asked him whether or not additional items, including photocopiers, could be or had been placed on lease with

¹¹ Balkissoon 12/11/2002 at 56.

¹² Balkissoon 12/11/2002 at 69.

¹³ Griffiths Affidavit, para.28, 09/09/2003 at 14.

¹⁴ Griffiths 09/09/2003 at 126.

MFP.¹⁵ However, he agreed that, in his view, photocopiers did not belong on a lease with MFP, as they did not qualify as hardware or software.¹⁶

b) April 23, 2001: first day of Council meeting

16. On April 23, 2001, the first day of the Council meeting, Griffiths advised Councillor Balkissoon that I&T staff would contact him to address his concerns.¹⁷ Councillor Balkissoon indicated that he would hold the March 14 Report pending further information. As Council proceeded to debate items on the agenda, Viinamae approached Councillor Balkissoon in order to address his concerns about photocopier leasing.¹⁸ Councillor Balkissoon testified that Viinamae advised him that the City had a leasing agreement with MFP as the vendor of record.¹⁹ He could not recall Council approving a vendor of record, and asked Viinamae to provide him with the Council approval.

c) The Viinamae briefing note

17. Councillor Balkissoon recalled that a day or two later Viinamae brought him a briefing note that summarized the P&F Report, but she did not bring him a copy of the July 1999 Council Report.²⁰ The title of briefing note referred to the “Information and Technology Leasing Program”, a term that was not used anywhere in the P&F Report.²¹

18. After receiving the briefing note, Councillor Balkissoon clearly indicated to Viinamae that he wanted a copy of the July 1999 Council Report itself.²² Viinamae undertook to obtain the Council Report from the City Clerk’s office. Councillor Balkissoon testified that he did not receive the Council Report that day. The next day,

¹⁵ Andrew 10/14/2003 at 40.

¹⁶ Andrew 10/14/2003 at 40-41.

¹⁷ Balkissoon 12/11/2002 at 70.

¹⁸ Balkissoon 12/11/2002 at 71-72.

¹⁹ Balkissoon 12/11/2002 at 72.

²⁰ COT040286, 6:3:44.

²¹ COT040286, 6:3:44.

²² Balkissoon 12/11/2002 at 75.

he approached Anderton and Ridge and subsequent to those discussions Viinamae provided the Council Report to him.²³ Councillor Balkissoon considered the length of time required to respond to his request to be “very unusual”.

19. Viinamae had a different recollection. She recalled that she provided Councillor Balkissoon with a briefing note within a couple of hours of the May 2, 2001 Council meeting, and provided him with a copy of the Council Report later that same day.²⁴ She testified that after she received Councillor Balkissoon’s request for further information, she telephoned Power at Metro Hall. Viinamae asked him to draft a briefing note to address Councillor Balkissoon’s concerns.²⁵ Power then brought the document to Viinamae at City Hall.

d) Councillor Balkissoon and Viinamae disagreed over the Council Report

20. Based on his review of the Council Report, Councillor Balkissoon concluded that MFP was not the City’s vendor of record. He testified that he discussed his interpretation of the Council Report with Viinamae and they had a “total disagreement”.²⁶ Their disagreement centered on Recommendation 1:

The City of Toronto enter into a leasing contract with MFP Financial Services Limited (MFP) to lease computer equipment and related software for three years.²⁷

21. Viinamae interpreted this recommendation to mean that MFP had a three year vendor of record relationship with the City for leasing. Councillor Balkissoon interpreted the recommendation to mean that \$43 million worth of equipment would be leased from

²³ Balkissoon 12/11/2002 at 77.

²⁴ Viinamae Affidavit, para. 158, 10/15/2003 at 68.

²⁵ Viinamae 10/29/2003 at 146.

²⁶ Balkissoon 12/11/2002 at 79-80.

²⁷ COT012219, 28:1:8.

MFP for a three year term, not that every acquisition over the three year period would belong to MFP.²⁸

22. Councillor Balkissoon then asked to review a copy of the MLA. Viinamae informed him that he had to speak to the City Solicitor.²⁹ Councillor Balkissoon met with Doyle, who refused to provide him with a copy of the MLA, but offered to answer his questions on the floor of Council.³⁰

e) Council meeting: May 2, 2001

23. On May 2, 2001, Viinamae and Doyle attended the Council meeting to answer questions about the March 14 Report.³¹ Viinamae attended in order to answer questions related to other non-I&T issues.³² In her affidavit, Viinamae deposed the Anderton asked her to also speak about the MFP leasing contract at the Council meeting. Viinamae answered Councillor Balkissoon's questions.

24. On the Council floor, Viinamae's position was that the City's contract with MFP was non-exclusive.³³ Councillor Balkissoon testified that this position was markedly different from the one Viinamae had expressed to him in prior conversations and through the briefing note.³⁴

25. On the Council floor, Doyle's position was that the MFP agreement provided for a three year non-exclusive deal with MFP.³⁵

[T]here's a three-year contract. It's in effect today. I said it's non-exclusive. So if you want to look for another lease-finance provider, you can do so.³⁶

²⁸ Balkissoon 12/11/2002 at 80-81, 87.

²⁹ Balkissoon 12/11/2002 at 93.

³⁰ Balkissoon 12/11/2002 at 96-97.

³¹ Balkissoon 12/11/2002 at 98.

³² Viinamae Affidavit, para. 158, 10/15/2003 at 68.

³³ 4:1:14 at 10-11, Balkissoon 12/12/2002 at 82-83.

³⁴ Balkissoon 12/12/2002 at 82.

³⁵ Balkissoon 12/12/2002 at 34.

³⁶ Balkissoon 12/12/2002 at 80; 14:1:14 at 16.

26. In his affidavit, Doyle deposed that he had not read the Council Report prior to answering questions from Council members.³⁷ He had, however, reviewed the MLA and other lease documents between the City and MFP. Doyle agreed that the transcript of his remarks to Council accurately reflected the substance of his comments.³⁸ At the Inquiry, Doyle was asked if he still held the same legal opinion, having reviewed additional documentation, and he testified that he did.³⁹

Q: And I suppose, just to make it very clear that would mean that in 2002, three (3) years forward from 1999, the City of Toronto could enter into leasing arrangements with MFP for leases than ran in excess of three (3) years, perhaps as many as five (5), or I suppose, even in excess of five (5) years?

A: Well, it was three (3) to five (5), was what I was being told, and that's subject also to that little caveat that I mentioned yesterday about the \$43 million.

Q: Yes. I'm going to get to that in a moment, I'm not glossing over that, but just so that I can understand what your opinion is, with respect to the term of the lease –

A: Yes.

Q: -- your opinion is that in 2002, the City of Toronto could have entered into leasing arrangements with MFP for a five (5) year period; so a lease that ended in 2008?

A: Yes, if they still had the money to do it.⁴⁰

27. On May 3, 2001, Griffiths sent Councillor Balkissoon an e-mail, expressing his personal concerns with the Photocopier RFQ, and informing him that Andrew felt similarly.⁴¹

³⁷ Doyle Affidavit, para. 24, 04/07/2003 at 92.

³⁸ Doyle Affidavit, para. 28, 04/07/2003 at 93.

³⁹ Doyle 04/08/2003 at 12-13.

⁴⁰ Doyle 04/08/2003 at 13.

⁴¹ COT042708, 60:1:16.

4. The role of Lyons

a) Lyons approached Viinamae and Councillor Balkissoon

28. After the May 2, 2001 Council meeting, when Viinamae stepped off the Council floor, Lyons approached her.⁴² He asked her to explain nature of all of the questions about the vendor of record issue. She explained that Councillor Balkissoon had questions about the MFP contract. Viinamae agreed that it was possible that Lyons attended that Council meeting on behalf of MFP.⁴³

29. After Councillor Balkissoon held the March 14 Report, on April 23, 2001, his office received a phone call from Lyons.⁴⁴ Councillor Balkissoon did not return Lyons' phone call. The next day, Lyons visited Councillor Balkissoon in the Council lounge. Lyons asked if Councillor Balkissoon was aware that MFP was his client.⁴⁵ He clarified that he did not represent MFP at the time of the July 1999 Council Report. Councillor Balkissoon informed Lyons that he had some reservations about the March 14 Report and would deal with it upon receiving clarification. Lyons said:

Well, I'm here just to let you know that they're very good guys and they're my client.⁴⁶

30. Lyons agreed with Councillor Balkissoon's recollection of this event.⁴⁷

31. Wolfraim agreed that MFP had retained Lyons again, and this kind of activity was part of what MFP expected of him.⁴⁸ Domi testified that he "must have" had discussions with Lyons about the photocopier deal.⁴⁹ Councillor Balkissoon was "holding things up", and Domi wanted Lyons to find out the nature of Councillor Balkissoon's concerns and

⁴² Viinamae Affidavit, para. 146, 10/15/2003 at 64.

⁴³ Viinamae 10/29/2003 at 138.

⁴⁴ Balkissoon 12/11/2002 at 107-108.

⁴⁵ Balkissoon 12/11/2002 at 108-109.

⁴⁶ Balkissoon 12/11/2002 at 109.

⁴⁷ Lyons 05/12/2003 at 193-194.

⁴⁸ Wolfraim 12/18/2002 at 202.

⁴⁹ Domi 01/27/2003 at 149.

whether MFP could address those concerns for him.⁵⁰ Domi's phone records show two calls to Lyons in this time frame: one on May 2, 2001, and another on May 3, 2001.⁵¹

b) Barber's May 9, 2001 Globe and Mail article

32. On May 9, 2001, John Barber wrote a Globe and Mail article that criticized MFP.⁵² The article focused on the recommendation of City staff that MFP receive the exclusive right to handle photocopier leasing without tender and without Council approval.⁵³ Councillor Balkissoon was approached by Barber after the May 2, 2001 Council meeting for clarification, and the article contained references to his comments.

33. Lyons left a voicemail message for Councillor Balkissoon related to the Barber article.⁵⁴ Councillor Balkissoon characterized the message as disturbing and accusatory:

[T]he voice mail was very disturbing in that it -- it sort of made some accusations that I was looking for media coverage and if I intended to move myself forward in my political career that this is not the way to get media coverage and media attention and that if that's what I was interested in, then Mr. Lyons would be more than happy to provide me with proper media attention and media coverage and he made a lot of derogatory comments about Mr. Barber.⁵⁵

34. Lyons agreed that he left a voicemail message on Councillor Balkissoon's machine that contained accusations about him seeking media coverage.⁵⁶ He also agreed that he may have made derogatory comments about Barber. Lyons testified that the tone of the voicemail message was "very sarcastic". As a result of the foregoing events, a friend of Councillor Balkissoon suggested that they sit down together with Lyons and "sort things out".⁵⁷ Councillor Balkissoon, his friend, and Lyons met in

⁵⁰ Domi 01/27/2003 at 151.

⁵¹ Domi 04/20/2004 at 167-168; COT084403 at COT084405, 98:2:17

⁵² Balkissoon 12/11/2002 at 109-110.

⁵³ 4:1:49.

⁵⁴ Balkissoon 12/11/2002 at 110.

⁵⁵ Balkissoon 12/11/2002 at 110.

⁵⁶ Lyons 05/12/2003 at 196.

⁵⁷ Balkissoon 12/11/2002 at 112.

Councillor Balkissoon's office to settle their differences. In the end, they agreed to work with each other on business-like terms.

c) Domi and Nigro called Councillor Balkissoon

35. Following Barber's article, Councillor Balkissoon also received phone messages from Domi and Nigro.⁵⁸ Councillor Balkissoon returned Nigro's phone call. During their conversation, Nigro explained that he was not involved with the City in any capacity, and was primarily involved with leasing for the federal government.⁵⁹ He seemed very concerned with the tone of the article and its reference to him.⁶⁰ Nigro failed to mention to Councillor Balkissoon that he consulted and gave advice to MFP sales representatives about the inner workings of the City.⁶¹ Nigro admitted that he made the phone call to Councillor Balkissoon at the behest of Wolfraim.⁶² Wolfraim had asked his advice about the concerns raised during the Council meeting, and Nigro had volunteered to call Councillor Balkissoon to find out. Nigro then relayed Councillor Balkissoon's position to Wolfraim.⁶³

36. Councillor Balkissoon also returned Domi's phone call. During their lengthy conversation, Domi insisted that the City was bound by its agreement with MFP, and that MFP was entitled to the City's photocopier leasing business.⁶⁴ Domi explained that the City's entire network was leased from MFP, and therefore MFP had the first right to lease anything that connected to the network. Councillor Balkissoon advised Domi to take legal action against the City, as the City Solicitor had determined that MFP did not have an exclusive right to the City's leasing business. Domi replied that MFP would not

⁵⁸ Balkissoon 12/11/2002 at 115.

⁵⁹ Balkissoon 12/11/2002 at 116.

⁶⁰ Balkissoon 12/13/2002 at 71.

⁶¹ Balkissoon 12/13/2002 at 72.

⁶² Nigro 01/21/2003 at 132.

⁶³ Nigro 01/21/2003 at 133.

⁶⁴ Balkissoon 12/11/2002 at 117.

take legal action and that they would re-tender. Councillor Balkissoon testified that Domi seemed "very sure" that MFP would win the photocopier leasing tender.⁶⁵

He went on to say that he has no problem with the re-tendering. That he's not going to pursue a legal action but he -- he will re-tender and he fully believes that he will win it again and -- and I have to say his tone of voice sort of gave me the impression that he was very sure that he would win it again.⁶⁶

37. Domi admitted that he called Councillor Balkissoon, who returned his telephone call.⁶⁷ However, he flatly denied that their conversation centered on MFP's entitlement to the photocopier leasing business.

Q: All right. Did you tell him that the City was bound by that agreement?

A: No, I did not.

Q: Did you tell him that the City was entitled to this photocopier business?

A: I'm sorry?

Q: Did you tell him that the C -- that MFP was entitled to this photocopier business?

A: I did not say that, no. I just wouldn't -- wouldn't say that.

Q: Did you tell Mr. -- or Balkissoon, that MFP had a similar agreement with the Province of Ontario, and that the infrastructure equipment that was put into the City, the network, was to be leased from MFP?

A: I did not say that.

Q: Did you -- let's just break those down.

A: Okay.

Q: Did you say that MFP had a similar agreement with the Province, as it had with the City?

A: What I did tell him, I believe, is I spoke to him once, was I -- I just told him about MFP and our capacity in the Province just to -- I tried to tell him about MFP

⁶⁵ Balkissoon 12/13/2002 at 64.

⁶⁶ Balkissoon 12/11/2002 at 118-119.

⁶⁷ Domi 01/30/2003 at 49-50.

a little bit, that's all I did. I didn't say the City was bound by anything to MFP, in any way. I never said that.⁶⁸

38. Domi agreed that he told Councillor Balkissoon that MFP had “no issue” with re-tendering.⁶⁹

⁶⁸ Domi 01/30/2003 at 51-52.

⁶⁹ Domi 01/30/2003 at 54-55.

5. The RFQ for leasing services for photocopiers

39. In the end, Council approved the March 12 Report with the condition that I&T issue an RFQ for a leasing vendor.⁷⁰

40. On May 2, 2001, Bulko emailed Franey.⁷¹ She advised that Council approved the March 12 Report, but required I&T to issue an RFP for a leasing vendor rather than using MFP. On May 9, 2001, Bulko emailed Pagano a draft RFQ for the photocopier leasing transaction.⁷² She explained that the RFQ was based almost entirely on the 1999 computer leasing RFQ. Altman and his delegate, Frebald, were charged with assisting I&T with the financial analysis for the report.⁷³ From the beginning, Frebald showed concern about placing the photocopiers on the MLA.⁷⁴

41. The City initiated an open tender process and sought competitive bids for the leasing of photocopiers. On May 10, 2001, the City issued an RFQ for leasing services for photocopiers ("Photocopier Leasing RFQ").⁷⁵ The Photocopier Leasing RFQ invited respondents to propose lease options for the copiers the City intended to acquire.

42. On May 28, 2001, MFP submitted its response to the Photocopier Leasing RFQ.⁷⁶ MFP recommended obtaining photocopiers from the five pre-selected suppliers at a common monthly lease rate. The City's evaluation team selected MFP as the lowest bidder.⁷⁷ The Administration Committee Report dated May 30, 2001, recommended MFP as the leasing provider for photocopiers ("May 30 Report").⁷⁸

⁷⁰ Balkissoon 12/11/2002 at 100.

⁷¹ COT066818.

⁷² COT066870.

⁷³ Altman 07/07/2003 at 84.

⁷⁴ Altman 07/08/2003 at 112. Ultimately, after the City had initiated an internal investigation, Frebald provided Altman with a comprehensive critique of the MFP situation: Altman 07/08/2003 at 113

⁷⁵ COT008423.

⁷⁶ COT008423.

⁷⁷ Balkissoon 12/11/2002 at 100-101.

⁷⁸ COT067037.

6. The vendor of record issue

a) MFP

43. MFP maintained throughout the Inquiry that they did not enjoy a legally exclusive right to supply leasing services to the City. However, Domi behaved with Councillor Balkissoon in a manner that was inconsistent with this position. In his phone call with Councillor Balkissoon, Domi asserted that MFP believed that it had an exclusive vendor of record relationship with the City.⁷⁹

Q: And that Mr. Domi wanted the business because he had been working on this account for a long time and he'd been working on it very hard?

A: Well, I didn't get it that he wanted the business. He was out to inform me or educate me or make me aware, that there is a master agreement and that he is entitled to this business, by agreement and that my interpretation of what went on at Council, was not as I see it, but, in his opinion that you know, that business should have gone to MFP and they should not have been a re-tendering.⁸⁰

44. There was no reason for Domi to call Councillor Balkissoon to clarify anything, unless MFP took the position at the time that it was the exclusive vendor of record.

45. Nigro also testified that he "kept hearing" from those at MFP that MFP was the City's vendor of record.⁸¹

46. In his affidavit, Wilkinson deposed that he became aware of the issues raised by Council when the March 12 Report was considered at the April-May 2001 Council meeting.⁸² Wilkinson admitted that the City treated MFP as its exclusive leasing provider for a three year period:

[A]s the discussions progressed, I did not become aware of any other leasing company who was going through a similar process with the City. From MFP's point of view, if the City wished to de facto treat MFP as its sole leasing provider,

⁷⁹ Balkissoon 12/11/2002 at 117-118.

⁸⁰ Balkissoon 12/13/2002 at 62.

⁸¹ Nigro 01/21/2003 at 134.

⁸² Wilkinson Affidavit, para.149, 09/16/2003 at 102.

we were content to assume that role and certainly raised no objection when it became apparent, over time, that this is what the City had decided to do.⁸³

b) The City

i) I&T

47. Council had not approved MFP as the vendor of record for the City's leasing needs. Nonetheless, individuals in the City, and in I&T particularly, believed that MFP was the vendor of record. This belief was nuanced, however, as most individuals understood MFP to be not just the recommended party for all technology leasing needs, but the required party.

48. Viinamae believed that MFP was the vendor of record for all of the City's technology leasing needs.⁸⁴ She equated the terms "current technology leasing provider" and "vendor of record".⁸⁵ Although Viinamae testified that she did not believe that MFP had an exclusive arrangement with the City, she agreed that MFP was the only vendor that the City used in its leasing program.⁸⁶

49. Power testified that the CMO staff understood that MFP was the City's vendor of record for information technology equipment and services.⁸⁷

ii) Finance

50. Liczyk demonstrated the same flawed conception as I&T with respect to MFP's status as vendor of record for the City.

51. On July 14, 2000, Viinamae sent an email to Liczyk.⁸⁸ She informed Liczyk that I&T intended to release the Photocopier RFP in the coming weeks. Viinamae requested

⁸³ Wilkinson Affidavit, para.64, 09/16/2003 at 64-65.

⁸⁴ Viinamae 10/16/2003 at 99.

⁸⁵ Viinamae 10/16/2003 at 99.

⁸⁶ Viinamae 10/29/2003 at 130.

⁸⁷ Power 03/26/2003 at 219-220.

⁸⁸ COT015578, 52:2:53.

Licznyk's confirmation that the photocopiers be treated like workstations and servers, and placed on lease with MFP:

In my discussions with Purchasing, there is agreement that as Photocopy, Print and Fax technology are converging (multi-functional devices which can be networked), that these technologies should be treated like workstations and servers from a Lease perspective and therefore would fall under the MFP lease agreement.⁸⁹

52. Liczyk agreed with Viinamae. Her response implied that MFP was the exclusive leasing provider of the City:

I agree that they should be treated as an extension of our pc's and printers and therefore fall under our leasing program as peripherals.⁹⁰

53. Viinamae confirmed that the reference to "our leasing program", above, related to the leasing program in place with MFP since the fall of 1999.⁹¹ Liczyk testified that she relied on the assessment of Viinamae and the PMMD, and simply affirmed what they appeared to have already agreed upon.⁹²

54. Liczyk testified that she discussed potential business opportunities, including photocopier leasing, with Domi.⁹³ She recalled that Domi expressed interest in MFP's role as the leasing provider for photocopiers. Liczyk also reviewed the March 14 Report. She agreed that it did not even consider whether or not leasing photocopiers was less expensive than purchasing them.⁹⁴ She testified that she 'assumed' that there had been a tender to support the decision to lease the photocopiers from the City's "current

⁸⁹ COT015578, 52:2:53.

⁹⁰ COT015578, 52:2:53.

⁹¹ Viinamae 10/16/2003 at 98-99.

⁹² Liczyk 11/18/2003 at 156.

⁹³ Liczyk 11/18/2003 at 107.

⁹⁴ Liczyk 11/18/2003 at 150.

technology leasing provider".⁹⁵ Liczyk testified that she missed the fact that I&T was proposing to award another contract to MFP without a public tender process:

Q: And so are you telling us that you didn't read this report and become alerted to the reality, which was that this was another contract that was proposed to be awarded to MFP without an RFP or and RFQ?

A: That's correct.⁹⁶

55. Liczyk's evidence on this point is simply not credible. Had there been a tender for the leasing component, it would have generated a report to committee that she would have signed. Moreover, according to Liczyk, she had been very angry with Viinamae at the January 17, 2001 meeting for putting too much equipment on lease with MFP. It is not possible that she missed the fact that I&T was putting more equipment on lease if Liczyk's evidence about the January 17, 2001 meeting is to be believed.

56. In addition, Liczyk and Domi spoke on May 3, 2001. Domi placed five calls to Liczyk on that day. It is extremely likely that Domi and Liczyk spoke about the March 12 Report and the fact that MFP would not automatically receive the photocopier leasing business.

57. However, Liczyk did not inform Anderton or Ridge, the individuals to whom Viinamae reported, that Viinamae was doing exactly what Liczyk had purportedly told her not to do in January.⁹⁷

58. By the time she testified, Liczyk agreed that there should have been a tender prior to awarding the photocopier lease to MFP, and if there was no tender, then the

⁹⁵ Liczyk 11/18/2003 at 151.

⁹⁶ Liczyk 11/18/2003 at 151.

⁹⁷ Liczyk 11/18/2004 at 174-177.

item was properly held by Councillor Balkissoon.⁹⁸ Accordingly, she also agreed that Viinamae and Doyle were mistaken in their conception of the City's leasing program.⁹⁹

59. Anderton, meanwhile, testified that she had a brief discussion with Viinamae prior to the preparation of the March 12 Report.¹⁰⁰ Viinamae assured her that MFP was the vendor of record for a three year period, and that all computer assets were to be placed on lease.¹⁰¹ The July 1999 Council Report that awarded MFP the computer leasing contract was passed by Council before Anderton joined the City on February 14, 2000.¹⁰² Anderton could not reasonably be expected to review all of the reports passed by Council prior to her joining the City. It was reasonable for her to rely on Viinamae's presentation regarding MFP's status at the City. Viinamae saw herself as a future Executive Director of I&T. It was reasonable for Anderton to accept Viinamae's characterization of MFP's relationship with the City.

iii) PMMD

60. Pagano testified that prior to finalizing the draft March 12 Report, there were discussions about whether or not the photocopiers should fall under the auspices of the current leasing provider.¹⁰³ He assumed that the current leasing provider was MFP.¹⁰⁴

iv) Viinamae's May 9, 2001 email

61. After the April-May 2001 Council meeting, Viinamae contacted Griffiths to determine if the leasing program should be placed on hold pending the resolution of Councillor Balkissoon's issues.¹⁰⁵ He instructed Viinamae to proceed with business as

⁹⁸ Liczyk 11/18/2003 at 173.

⁹⁹ Liczyk 11/18/2003 at 174.

¹⁰⁰ Anderton 11/25/2003 at 32.

¹⁰¹ Anderton 11/25/2003 at 32-33.

¹⁰² Anderton 11/25/2003 at 10.

¹⁰³ Pagano 03/04/2003 at 139-140.

¹⁰⁴ Pagano 03/04/2003 at 141.

¹⁰⁵ Viinamae Affidavit, para.160, 10/15/2003 at 68-69.

usual. Accordingly, on May 9, 2001, Viinamae advised Bulko of Griffiths's directive by email, which she copied to Griffiths, Anderton, Doyle, and Ridge:¹⁰⁶

I just spoke with Jeff Griffiths who indicated that as far as he is concerned, there is no audit issue with the above MFP lease and therefore we should proceed with business as usual. At Council Ossie confirmed that Legal's interpretation is that the MFP contract is a 3-year master lease agreement whereby the City can choose to access the leasing services for computer systems and software at any point during the 3-year contract term.¹⁰⁷

62. She notified the recipients that the Photocopier Leasing RFQ would proceed as planned.

v) Searles-Kelly May 16, 2001 legal opinion

63. On May 16, 2001, Lorraine Searles-Kelly ("Searles-Kelly"), a member of City legal, sent an email to Ridge, copied to Anderson, Anderton, Brittain, Bulko, Doyle, Franey, Griffiths, Pagano, and Viinamae.¹⁰⁸ Searles-Kelly concluded that City staff were only authorized to spend \$43 million on the programs specified in the Council Report:

It does not appear that the Council authority extends beyond that three-year period or to leases other than those projects listed in the clause (i.e. Year 2000, Urban Planning & Development, Parking Tag, SAP etc., originally contained in the 1999/2003 capital budget).¹⁰⁹

64. The legal opinion of Searles-Kelly contradicted the one that Doyle expressed on the Council floor.¹¹⁰

65. The Searles-Kelly email was precipitated by Ridge's email to Pagano about the City's formal position on the exclusivity of the MFP leasing contract:

¹⁰⁶ COT029326, 52:2:54.

¹⁰⁷ COT029326, 52:2:54.

¹⁰⁸ COT064013, 55:2:68.

¹⁰⁹ COT064013, 55:2:68.

¹¹⁰ Viinamae 10/16/2003 at 112.

It is clear that while the MFP contract is not legally exclusive, we have been using it more or less exclusively for the lease of computer related hardware since 1999. As I understand the recent concerns, Bas argues that not only is there no legal exclusivity, Council did not approve the use of the contract on a defacto exclusive basis. In short, he is arguing that we should have been RFPing any computer equipment leases past 1999. As the administrators of the contract it would be helpful for us if purchasing/legal/audit could provide a formal position on this.¹¹¹

66. Pagano forwarded Ridge's email to Brittain. Both Pagano and Brittain disavowed knowledge on this issue, and Ridge ultimately asked Doyle for guidance. Doyle forwarded the request to Searles-Kelly, who provided the opinion, above.

67. After receiving this email, Viinamae approached Ridge, but Ridge had taken over responsibility for the leasing program and was not available for comment.¹¹² Viinamae testified that she did not receive any further direction on the leasing program.

¹¹¹ COT064013 at COT064014, 55:2:68.

¹¹² Viinamae 10/16/2003 at 112.

7. The end of the beginning or the beginning of the end

68. In May 2001, Ridge, the Acting Executive Director, I&T initiated a review by legal staff of the issues surrounding the MFP lease program.¹¹³

69. On August 3, 2001, Shirley Hoy (“Hoy”) sent a memo to the Mayor and Council members advising that City staff had been instructed to conduct a review of the contract with MFP.¹¹⁴ Hoy simultaneously pulled the May 30 Report recommending MFP as the successful bidder for photocopier leasing, pending the review.¹¹⁵

¹¹³ COT064013, 55:2:68.

¹¹⁴ COT005297, 4:1:1.

¹¹⁵ Balkissoon 12/11/2002 at 107

8. Two City documents find their way into Domi's files

70. A copy of the P&F Report was discovered in Domi's MFP files during preparation for the Inquiry.¹¹⁶ The header on the P&F Report shows that it was sourced from Viinamae's computer. Viinamae denied any knowledge of how the P&F Report ended up in Domi's hands. She maintained that she never provided the P&F Report to anybody outside the City.¹¹⁷ In the upper left hand corner of the document, there is a handwritten notation "Bas". Viinamae speculated that Marks printed the document for Councillor Balkissoon, and somehow the document found its way into Domi's files.

71. Similarly, a copy of Viinamae's May 9, 2001 email confirming that Griffiths instructed her to proceed with "business as usual", was also found in Domi's MFP files.¹¹⁸ Viinamae denied any knowledge of how this email ended up in Domi's possession. She agreed that the email spoke about internal City issues, and it was inappropriate for Domi to have obtained the email.

72. Domi did not know how these documents ended up in his files.¹¹⁹

¹¹⁶ Viinamae 10/29/2003 at 139; COT029327, 6:3:21.

¹¹⁷ Viinamae 10/29/2003 at 140.

¹¹⁸ Viinamae Affidavit, para.160, 10/15/2003 at 68-69; 10/29/2003 at 152; COT029326, 52:2:54.

¹¹⁹ Domi 01/30/2003 at 132.