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1. Overview

1. Domi and Jakobek went to extraordinary lengths to deny or minimize the extent of their relationship to KPMG, the OPP, and to this Commission. Why? Other than a one-off meeting in a Councillor's office, Councillors do not have *relationships* with salespeople selling goods to the City. Councillors are supposed to have nothing to do with procurement exercises other than voting to approve or reject staff reports. A relationship between a Councillor and a salesperson is inherently and undoubtedly suspicious.

2. Domi called Jakobek hundreds of times. Domi called Jakobek at home, on Jakobek's cellular telephone, on Jakobek's wife's cellular telephone, and at the office.

3. Domi flew Jakobek to Philadelphia on a private jet on May 2, 1999, to watch a playoff hockey game. Two weeks later, Jakobek requested a copy of the draft fleet leasing RFQ from Andrew. Domi placed 14 calls to Jakobek between the time MFP submitted its bid and Jakobek moved the Jakobek Amendment that opened the door for MFP to abandon its bid and write a more lucrative five-year contract that had never been put out to tender.

4. How does one explain this level of contact between Jakobek and Domi? They had nothing in common. Neither of them admitted to being friends with the other. Jakobek was famously impatient with people he believed were wasting his time. There is no innocent explanation.

5. The explanation is found in a \$25,000 payment Domi made to Jakobek on November 1, 1999. The payment was improper. It was a significant breach of business ethics and the high level of ethical conduct that the City and its citizens expect of a Councillor.

6. Domi and Jakobek both offered tortured, implausible, unproven stories to explain why both of them had such unusual bank transactions on and around November 1,

1999. Both Jakobek and Domi relied on family members to support their versions of events. The family members all spoke of spontaneous and extraordinarily generous gifts from less wealthy to more wealthy family members. All of the gifts involved large amounts of cash.

7. The case in support of the improper payment is circumstantial, but overwhelming. Cash withdrawals, followed by two telephone conversations, followed by a 13 minute trip to the City Hall parking garage, followed by four American Express transactions. No one piece of evidence standing alone is sufficient to prove that the payment was made. However, taken together, the weight of the evidence is overwhelming: Domi paid Jakobek \$25,000 in cash on November 1, 1999.

8. And that, not simply a flight to Philadelphia, or a golf game, or many telephone conversations, was what both men tried so hard to hide from the City, KPMG, the OPP, and the Commission.

2. Evidence regarding the relationship between Tom Jakobek and Dash Domi

a) Overview

9. Domi and Jakobek had an inappropriately close relationship.
10. Domi made hundreds of telephone calls from his cellular telephone to Jakobek's home, cell phone, office, and even to the cell phone of Jakobek's wife, Deborah Morrish ("Morrish"). Between May 4, 1999, and July 2000, Domi and Jakobek had at least 76 cell phone conversations. Domi and Jakobek had 13 cell phone conversations between the date that MFP submitted its bid on the computer leasing RFQ and the day that Council awarded MFP the computer leasing contract.
11. Domi flew Jakobek to Philadelphia in a private jet to attend a NHL playoff game on May 2, 1999. This trip cost well over \$7,000.¹ Although Jakobek testified that he was not aware that Domi had arranged for and paid for the flight, it is inconceivable that Domi would not want Jakobek to have been aware that MFP was providing Jakobek with the courtesy of this flight, limousine ride, and tickets to the hockey game.
12. Jakobek invited Domi to play golf with him, Andrew, and Liczyk at a private golf club on September 2, 1999. Jakobek also invited the members of the foursome back to his home for a drink after the match. This golf game took place in the month leading up to the execution of the first 5 year lease schedule.
13. Domi submitted 18 expense claims that named Jakobek. Domi has admitted that he would sometimes write an individual's name on receipts even if he/she did not attend that event. Jakobek denied attending most of the events listed in Domi's expense reports. It is impossible to determine whether or not Jakobek actually attended any of the events listed on these receipts.

¹ See COT042272, 6:1:151, the flight invoice for \$6420, COT025617, 11:1:8, the receipt for the tickets totalling \$607.50 (likely in U.S. funds), and COT025655, 11:1:9, the invoice for the limousine in Philadelphia \$389 (likely in U.S. funds). The face value of these invoices and receipts is \$7416.50, which excludes any exchange rate adjustment.

b) Evidence of telephone conversations and its limits

14. The cellular telephone records of Domi and Jakobek provided startling evidence of their inappropriate relationship. As discussed below, both Domi and Jakobek have consistently hid the true nature and extent of their relationship. Both men made statements to the Commission and to other investigators that were deliberately misleading.

15. Their cellular telephone records shed welcome light on the inappropriate nature of their relationship. To paraphrase counsel for Jakobek, as between the testimony of Domi and Jakobek and a telephone record, the City “puts its money on the telephone record”:

ALAN GOLD: I just want to make it clear that as between Andrew's recollection and a phone company computer --

MADAM COMMISSIONER: Right.

ALAN GOLD: -- I'm going to put my money on the computer every time.²

16. The telephone records obtained by the Commission under-represent the extent of Domi and Jakobek's telephone communications for three reasons.

17. First, the Commission only obtained cellular telephone records. These records do not disclose whether or not there were any calls from one land line (for example, an office phone or a residential phone) to another land line.

18. Second, the data contained in the records are limited. The Commission obtained two kinds of records: billing statements and detailed statements. Billing statements are the invoices that the cellular provider sends to its client each month.³ It is important to note that while billing statements record the fact of an incoming call to a cell phone, they

² Jakobek 09/10/2003 at 177.

³ Examples of billing statements are found in 15:1:1 – 15:2:49 (Domi) and 84:1:1-84:1:3 (Jakobek).

do not reveal the telephone number that called the cellular telephone number.⁴ Detailed statements are not usually sent to customers and include the number of the telephone that originated the call.⁵

19. Third, the telephone records are only for a limited period of time. The Commission obtained the following telephone records for Domi and Jakobek:

- a. billing statements for Domi's cellular telephone for November 1998 to December 2002;⁶
- b. detailed statements for Domi's cellular telephone from July 2000 to February 2003;⁷
- c. billing statements for Jakobek's two cellular telephones from January 1999 to July 2000⁸ and from July 2000 to February 2001;⁹ and
- d. detailed statements for Jakobek's cellular telephone from February 20, 2001 to February 17, 2003.¹⁰

c) Calls placed by Domi to Jakobek's home

20. Domi used his cellular telephone to place at least 17 calls to Jakobek's home.¹¹ Domi made his first call to Jakobek's home on April 21, 1999, one month before the City released the RFQ. The phone call lasted for 3 minutes and 23 seconds.¹² Domi placed

⁴ This is clear on the face of the billing statement. See also the explanation provided by Commission Counsel 09/10/2004 at 207-208; Barber Affidavit 86:1:7; Archibald Affidavit, paras. 10-11, 86:1:16.

⁵ Examples of detailed statements are found at COT081743, COT081841, COT081744, COT081960, COT082040, COT082154, COT082258, 82:1:1-82:1:6 (Domi); and COT082285, COT082365, COT082515, 84:1:4-84:1:5 (Jakobek). See also Archibald Affidavit, para. 16, 86:1:16.

⁶ 15:1:1-15:2:49.

⁷ COT081743, COT081841, COT081744, COT081960, COT082040, COT082154 COT082258, 82:1:1-82:1:6.

⁸ COT058125, 84:1:1; COT058220, 84:1:2.

⁹ COT058299, 84:1:3.

¹⁰ COT082285, 84:1:4; COT082365, 84:1:5; COT082515, 84:1:6.

¹¹ This total is derived from the chart found at COT061285, 51:2:51.

¹² COT053963 at COT053994, 15:1:5.

another call to Jakobek's home on May 1, 1999, at 9:59 p.m., which lasted 1 minute and 38 seconds.¹³

21. Jakobek testified that he did not speak to Domi prior to May 2, 1999, the day of the flight to Philadelphia. Given the two lengthy phone calls Domi placed to Jakobek's home, the City submits that Jakobek's evidence on this point should be rejected.¹⁴

22. Jakobek also testified that if Domi had left a message for him at his home, he may not have received the message because Jakobek's staff cleared his home voicemail.¹⁵ However, Stella Pupulin, who spent 12 years working as an administrative assistant to Jakobek, testified that she did not check Jakobek's home voicemail.¹⁶

23. Domi placed six calls to Jakobek's home in April (one call), May (four calls), and July (one call) prior to MFP winning the computer leasing RFQ in 1999.¹⁷ He also placed calls to Jakobek's home in August 1999, April 2000, October 2001, December 2001 (five calls), January 2002 (two calls) and June 2002.

24. Domi admitted that he did not have the unlisted home phone number of any other member of City Council and that he could not think of another Councillor he had deliberately called at home.¹⁸ Pierre Nadeau, Jakobek's former Executive Assistant, testified that to his knowledge, Jakobek would not have given his home number to a City supplier.¹⁹

25. Because it would be extremely unusual for a salesperson for a leasing company to ever call a member of City Council at home, the fact that Domi placed eight calls to Jakobek's home while he was on Council is strong evidence that Domi enjoyed special access to Jakobek before and after MFP won the computer leasing RFQ.

¹³ COT054023 at COT054037, 15:1:6.

¹⁴ Jakobek 05/14/2003 at 63.

¹⁵ Jakobek 05/14/2003 at 71.

¹⁶ Pupulin 09/01/2004 at 24.

¹⁷ See COT061285, 15:2:51.

¹⁸ Domi 02/11/2003 at 34-35.

¹⁹ Nadeau 08/31/2004 at 175.

26. Councillors ought to play an extremely limited role in the selection of a City supplier and in the management of the supplier's relationship with the City. There is no innocent explanation for repeated telephone calls from a supplier's key salesperson to a Councillor at his home. Domi agreed that Jakobek never told him to stop bothering him and that, if Jakobek had done so, Domi would have stopped calling.²⁰

d) Conversations between Domi's cellular telephone and Jakobek's cellular telephone

27. As explained below, the telephone records reveal that Domi and Jakobek had at least 109 cellular telephone conversations between May 1999 and September 2002. The records reveal:

- a. 76 cellular telephone conversations between May 4, 1999 and July 4, 2000;
- b. 33 cellular telephone conversations between October 10, 2000 and September 11, 2002; and
- c. Domi left 21 messages for Jakobek on his cellular telephone voicemail account.

28. This is a staggering number of telephone conversations between a City Councillor and a salesperson for a City supplier. It is inconsistent with an innocent or benign relationship between Jakobek and Domi.

29. Moreover, Domi and Jakobek had 14 cellular telephone conversations between the time that MFP submitted its response to the RFQ and the date that City Council awarded MFP the contract. There is no innocent explanation for this number of telephone conversations between a City Councillor and a salesperson during this critical time in a tendering process, which is typically known as a communication blackout period.

²⁰ Domi 02/11/2003 at 78.

i) May 1999 to July 2000: methodology and results

30. Domi's billing statements revealed the telephone numbers that he called using his cellular telephone.²¹ A review of Domi's cellular telephone billing statements revealed that he placed many calls to the telephone number assigned to Jakobek's cellular telephone.

31. From May 1999 to July 2000, Rogers Cantel provided Jakobek's cellular telephone service.²² The Rogers Cantel billing statement indicated when Jakobek received an incoming telephone call. The bill displayed the date and time the call was received, the fact that the call was received, the duration of the incoming call, and the applicable billing rate.²³ If an incoming call was recorded on Jakobek's billing statement, it meant three things:

- a. that someone answered Jakobek's cellular telephone to receive the call;
- b. the incoming call did not go to Jakobek's voicemail account; and
- c. the incoming call was not forwarded to another telephone number.²⁴

32. If an incoming call was unanswered or was otherwise picked up by voicemail, there would be no record of that call on the Rogers Cantel billing statement.²⁵

33. The City of Toronto compared the billing statements recording Domi's calls to Jakobek's cellular telephone to Jakobek's billing statements, which record all the incoming calls that were answered. The City matched Domi's outgoing telephone calls

²¹ 15:1:1-15:2:49.

²² 84:1:1-84:1:2.

²³ Barber Affidavit, paras. 4-5, 86:1:7.

²⁴ Barber Affidavit, paras. 7-10, 86:1:7.

²⁵ Barber Affidavit, para. 9, 86:1:7.

to Jakobek with incoming calls on Jakobek's billing statement. The City's analysis is set out at in a chart on the following pages. The results are conclusive: Jakobek and Domi had 76 cellular telephone conversations starting in May 1999 through July 2000.

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84						
No	Begdoc#	Tab	Pg.	Call No	Date MM-DD -YYYY	Time	Length of Call	Begdoc#	Tab	Page	Call No.	Time of Incoming Call	Length of Call
1.	COT054040	6	51	068	05-04-1999	07:48	0:40	COT058154	1	2	33	7:48	1:00
2.	COT054040	6	51	123	05-04-1999	17:15	0:42	COT058155	1	3	56	17:05	1:00
3.	COT054043	6	54	322	05-07-1999	09:47	1:31	COT058156	1	4	101	9:47	1:26
4.	COT054044	6	55	366	05-07-1999	15:43	1:11	COT058156	1	4	112	15:43	1:05
5.	COT054044	6	55	377	05-07-1999	16:12	1:35	COT058156	1	4	115	16:11	1:27
6.	COT054057	6	68	262	05-20-1999	09:20	3:30	COT058158	1	6	200	9:20	3:23
7.	COT053866	7	40	313	05-26-1999	11:49	1:58	COT058160	1	8	273	11:48	1:55
8.	COT053870	7	44	534	05-28-1999	11:56	0:34	COT058161	1	9	312	11:56	1:00
9.	COT053870	7	44	585	05-28-1999	16:12	1:23	COT058161	1	9	324	16:11	1:17
10.	COT053872	7	46	724	05-30-1999	14:26	1:33	COT058161	1	9	339	14:25	1:27
11.	COT053874	7	48	851	05-31-1999	16:41	1:10	COT058162	1	10	360	16:41	1:03
12.	COT053879	7	53	132	06-03-1999	16:47	0:59		1	2	call not present		
13.	COT053881	7	55	308	06-04-1999	15:53	1:23	COT058164	1	2	33	15:52	1:20
14.	COT053889	7	63	853	06-10-1999	13:41	0:24	COT058166	1	4	127	13:40	1:00
15.	COT053891	7	65	950	06-11-1999	14:11	0:49	COT058167	1	5	152	14:10	1:00
16.	COT053891	7	65	977	06-11-1999	15:36	0:51	COT058167	1	5	155	15:35	1:00
17.	COT053894	7	68	151	06-14-1999	08:56	0:39	COT058167	1	5	179	0856	1:00
18.	COT053894	7	68	184	06-14-1999	14:43	0:26	COT058167	1	5	183	14:43	1:00
19.	COT053894	7	68	187	06-14-1999	15:39	0:25	COT058167	1	5	185	15:39	1:00
20.	COT053894	7	68	190	06-14-1999	15:56	0:22	COT058167	1	5	186	15:56	1:00
21.	COT053911	8	42	572	06-28-1999	14:48	0:52	COT058167	1	9	331	14:48	1:00
22.	COT053920	8	50	108	07-06-1999	18:08	0:38	COT058174	1	2	38	18:08	1:00
23.	COT053921	8	52	208	07-07-1999	12:46	0:37	COT058174	1	2	43	12:46	1:00
24.	COT053921	8	52	263	07-07-1999	17:59	0:38	COT058174	1	2	46	17:58	1:00
25.	COT053923	8	54	362	07-08-1999	14:00	1:11	COT058175	1	3	60	14:00	1:07
26.	COT053931	8	62	917	07-16-1999	12:32	2:13	COT058176	1	4	138	12:32	1:28
27.	COT053931	8	62	942	07-19-1999	15:07	0:47	COT058177	1	5	140	15:07	1:00
28.	COT053935	8	66	153	07-19-1999	17:04	0:23	COT058177	1	5	150	17:04	1:00

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84						
No	Begdoc#	Tab	Pg.	Call No	Date MM-DD -YYYY	Time	Length of Call	Begdoc#	Tab	Page	Call No.	Time of Incoming Call	Length of Call
29.	COT054069	9	42	479	07-27-1999	15:19	0:33	COT058178	1	6	199	15:18	1:00
30.	COT054076	9	49	979	08-04-1999	14:17	1:07	COT058181	1	2	34	14:16	1:00
31.	COT054078	9	51	127	08-06-1999	09:59	0:36	COT058182	1	3	55	9:58	1:00
32.	COT054098	10	39	318	08-26-1999	11:55	1:40	COT058185	1	6	209	11:55	1:37
33.	COT054099	10	40	352	08-26-1999	21:17	0:46	COT058185	1	6	219	21:17	1:00
34.	COT054117	10	58	579	09-14-1999	17:13	0:34	COT058192	1	5	185	17:13	1:00
35.	COT054120	10	61	797	09-21-1999	13:36	0:42	COT058195	1	8	293	13:37	1:00
36.	COT054121	10	62	815	09-21-1999	15:04	0:22	COT058195	1	8	295	15:04	1:00
37.	COT054127	11	36	217	09-24-1999	17:37	2:27	COT058196	1	9	338	17:37	2:20
38.	COT054130	11	39	442	09-28-1999	15:33	0:26	COT058196	1	9	375	15:33	1:00
39.	COT054145	11	54	443	10-12-1999	16:01	0:27	COT058202	1	4	132	16:01	1:00
40.	COT054149	11	58	714	10-15-1999	14:19	0:31	COT058203	1	5	178	14:19	1:00
41.	COT054150	11	59	753	10-15-1999	16:04	0:59	COT058204	1	6	185	16:05	1:00
42.	COT054151	11	60	806	10-16-1999	10:53	2:11	COT058204	1	6	196	10:53	2:05
43.	COT054169	12	40	660	11-01-1999	15:46	1:38	COT058208	1	10	416	15:47	1:35
44.	COT054170	12	41	678	11-01-1999	16:45	0:22	COT058208	1	10	417	16:45	1:00
45.	COT054175	12	46	039	11-15-1999	13:41	0:21	COT058213	1	4	104	13:42	1:00
46.	COT054206	13	62	514	12-15-1999	17:17	0:21	COT058224	2	5	133	17:17	1:00
47.	COT054213	13	67	821	12-20-1999	17:41	1:36	COT058226	2	7	223	17:41	1:30
48.	COT054236	14	38	489	12-31-1999	11:55	1:49	COT058232	2	13	475	11:55	1:46
49.	COT054243	14	45	971	01-10-2000	14:35	0:34	COT058235	2	2	18	14:35	1:00
50.	COT054256	15	30	222	01-28-2000	13:31	0:21	COT058240	2	7	264	13:31	1:00
51.	COT054268	15	42	015	02-10-2000	15:12	0:21	COT058243	2	2	33	15:12	1:00
52.	COT054271	15	45	256	02-14-2000	17:09	1:23	COT058244	2	3	68	17:09	1:27
53.	COT054278	15	52	683	02-21-2000	11:33	0:15	COT058245	2	4	142	11:32	1:00
54.	COT054282	16	32	146	02-23-2000	15:49	0:26	COT058246	2	5	164	15:49	1:00
55.	COT054302	16	52	461	03-10-2000	14:13	1:00	COT058253	2	4	132	14:13	1:00
56.	COT054292	16	42	857	03-14-2000	14:38	0:30	COT058254	2	5	180	14-38	1:00

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84						
No	Begdoc#	Tab	Pg.	Call No	Date MM-DD -YYYY	Time	Length of Call	Begdoc#	Tab	Page	Call No.	Time of Incoming Call	Length of Call
57.	COT054297	16	47	201	03-20-2000	15:35	1:54	COT058256	2	7	283	15:35	1:5?
58.	COT054298	16	48	267	03-21-2000	18:20	1:20	COT058257	2	8	316	18:20	1:14
59.	COT054305	17	27	37	03-22-2000	15:42	0:18	COT058257	2	8	334	15:42	1:00
60.	COT054319	17	41	965	04-06-2000	13:20	0:52	COT058263	2	3	76	13:20	1:00
61.	COT054325	17	47	356	04-12-2000	12:18	0:15	COT058266	2	6	203	12:18	1:00
62.	COT054326	17	48	424	04-12-2000	16:52	0:24	COT058266	2	6	211	16:52	1:00
63.	COT054326	17	48	429	04-12-2000	17:31	0:11	COT058266	2	6	212	17:31	1:00
64.	COT054329	17	51	629	04-14-2000	13:10	2:33	COT058267	2	7	253	13:10	2:29
65.	COT054333	17	55	910	04-14-2000	18:17	0:13	COT058267	2	7	289	18:17	1:00
66.	COT054335	17	57	076	04-19-2000	17:55	0:30	COT058268	2	8	336	17:55	1:00
67.	COT054345	18	35	337	04-26-2000	13:36	0:46	COT058272	2	12	497	13:37	1:00
68.	COT054346	18	36	445	04-27-2000	12:51	0:20	COT058272	2	12	523	12:51	1:00
69.	COT054370	18	60	67	05-17-2000	20:14	2:12	COT058277	2	4	120	20:15	2:09
70.	COT054383	19	45	504	05-29-2000	20:08	0:30	COT058281	2	8	316	20:08	1:00
71.	COT054384	19	46	596	05-30-2000	19:19	1:10	COT058282	2	9	348	19:20	1:07
72.	COT054384	19	46	597	05-30-2000	19:21	0:44	COT058282	2	9	349	19:21	1:00
73.	COT054393	19	55	166	06-07-2000	12:31	0:54	COT058288	2	4	128	12:32	1:00
74.	COT054400	19	62	656	06-12-2000	18:50	1:03	COT058290	2	6	225	18:51	1:00
75.	COT054401	19	63	697	06-13-2000	14:28	0:34	COT058290	2	6	235	14:28	1:00
76.	COT054404	19	66	905	06-15-2000	15:28	0:19	COT058291	2	7	279	15:28	1:00
77.	COT054426	20	54	997	07-04-2000	17:06	0:42	COT058304	3	2	162	17:07	0:07

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34. By comparing the two billing statements, it was possible to determine the dates of actual conversations between Domi and Jakobek, as opposed to telephone contacts. While many of these conversations were not lengthy, there were 75 cellular telephone conversations between Domi and Jakobek between May 1999 and July 2000. This did not include any telephone conversations between Domi and Jakobek on any of Jakobek's land lines (office or home) and did not include any calls placed by Jakobek.

35. In addition to revealing the large number of telephone conversations between the two men, the chart also revealed a number of conversations at crucial times:

- a. 11 conversations in May 1999, the month of the trip to Philadelphia, Jakobek receiving the draft RFQ from Andrew, and the release of the computer leasing RFQ;
- b. one conversation on May 26, 1999, one day after Payne sent Lyons the letter terminating MFP's relationship with Lyons;
- c. three conversations between the date of the release of the RFQ and the date MFP submitted its bid in response to the RFQ;
- d. 14 telephone conversations in the blackout period between the date MFP submitted its response to the RFQ and the date that Jakobek moved his amendment to the P&F Report recommending that MFP be awarded the contract; and
- e. two telephone conversations on November 1, 1999, the day Domi withdrew \$25,000 from his bank account and spent 13 minutes in the City Hall parking garage.

36. The volume and timing of the telephone conversations between Domi and Jakobek is strong evidence of an inappropriate relationship between Domi and Jakobek.

ii) October 2000 to February 2003: methodology and results

37. Domi's billing statements revealed the telephone numbers that he called using his cellular telephone.²⁶ A review of Domi's cellular telephone billing statements revealed that he placed many calls to the telephone number assigned to Jakobek's cellular telephone during the period October 2000 to February 2003.

38. During this period, Bell Mobility provided Jakobek's cellular telephone service.²⁷ The Bell Mobility billing statement indicated when Jakobek received an incoming telephone call. The bill displayed the date and time the call was received, the fact that the call was received, the duration of the incoming call and the applicable billing rate.²⁸ The billing statement did not provide the telephone number from which the incoming call originated.

39. The Bell Mobility billing statement also contained three columns of information labeled PCD.²⁹ The first character designated the airtime period during which the call was made. This character was only relevant to determining how the call was charged and at what rate. The second character indicated the type of call. The relevant characters had the following meanings:

- a. M = the incoming call was completed to the voicemail of the cellular telephone; and
- b. \ = the incoming telephone call originated on the Bell Mobility network and was answered.

40. The City also analyzed the detailed billing statements provided by Bell Mobility for the period from January 1999 to February 2003. In addition to the information contained in the billing statements, the detailed statements contained the telephone number from which an incoming call originated.

²⁶ See 15:1:1-15:2:49.

²⁷ See 84:1:3-84:1:6.

²⁸ Archibald Affidavit, paras. 4-5, 86:1:16.

²⁹ For a detailed explanation of the PCD columns, see Archibald Affidavit, paras. 5-13, 86:1:16.

41. The detailed statements also disclosed the incoming “Call Type”. The relevant characters have the following meanings:

- a. M = the incoming call was completed to the voicemail of the cellular telephone;
- b. \ = the incoming telephone call originated on the Bell Mobility network and was answered; and
- c. 1 = an incoming call was answered.³⁰

42. The City compared Domi’s billing statements recording Domi’s calls to Jakobek’s cellular telephone to Jakobek’s billing statements and detailed statements, both of which recorded incoming calls. The City matched Domi’s outgoing telephone calls to Jakobek with incoming calls on Jakobek’s billing statement and detailed statement.

43. The City’s analysis is set out at in the chart on the following pages. The telephone records indicated that between October 10, 2000 and September 11, 2002:

- a. Domi and Jakobek had 33 conversations; and
- b. Domi left 21 voicemail messages for Jakobek.

44. This total does not include any telephone conversations between Domi and Jakobek on any of Jakobek’s land lines (office or home) and does not include any calls placed by Jakobek to Domi.

³⁰ Archibald Affidavit, paras. 14-19, 86:1:16.

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84					
No	Begdoc#	Tab	Pg.	Call No	Date	Time	Length of Call	Begdoc#	Row	Time of Incoming Call	PCD	Length of Call
1.	COT054520	23	82	037	10-10-2000	10:57	1:12	COT058361	15	10:58	PM	0:52
2.	COT054521	23	83	109	10-10-2000	23:07	1:40	COT058361	35	23:09	OM	1:00
3.	COT054522	23	84	191	10-12-2000	12:52	0:48	COT058361	64	12:52	P\	0:35
4.	COT054522	23	84	208	10-12-2000	14:44	0:09	COT058362		call not received		
5.	COT054523	23	85	247	10-13-2000	10:42	1:04	COT058362	83	10:43	PM	0:18
6.	COT054593	27	100	606	02-01-2001	12:42	1:03	COT058412	299	12:42	P\	0:45
7.	COT054619	28	95	089	02-23-2001	09:57	0:45	COT082285		09:58:40 ³¹	M	0:07?
8.	COT054619	28	95	109	02-23-2001	11:08	0:36	COT082285		11:09:25	M	0:06
9.	COT054619	28	95	125	02-23-2001	12:38	1:52	COT082285		12:38:54	\	1:34
10.	COT054687	30	121	702	05-03-2001	18:25	1:40	COT082299		18:25:36	\	1:25
11.	COT054688	30	122	753	05-04-2001	12:04	0:37	COT082300		12:04:49	\	0:23
12.	COT054695	30	129	233	05-09-2001	13:32	0:30	COT082300		13:33:20	M	0:10
13.	COT054695	30	129	243	05-09-2001	14:33	0:08	COT082300		call not received		
14.	COT054696	30	130	324	05-10-2001	08:38	0:53	COT082300		08:38:54	\	0:40
15.	COT054696	30	130	326	05-10-2001	08:55	2:10	COT082300		08:55:42	\	1:56
16.	COT054697	30	131	343	05-10-2001	10:45	0:15	COT082300		10:45:21	\	0:05
17.	COT054702	30	136	679	05-15-2001	09:30	0:16	COT082301		call not received		
18.	COT054762	32	147	452	07-16-2001	12:28	1:00	COT082316		12:28:50	M	0:09
19.	COT054764	32	149	574	07-18-2001	12:32	1:00	COT082316		12:32:41	M	0:05
20.	COT054811	34	136	246	09-13-2001	12:30	1:00	COT082330		12:31:23	M	0:08
21.	COT054811	34	136	248	09-13-2001	12:30	1:00	COT082330		call not received ³²		
22.	COT054811	34	136	249	09-13-2001	12:31	1:00	COT082330		12:32:01	M	0:09
23.	COT054830	35	109	672	10-04-2001	20:09	1:26	COT082335		20:11:01	M	0:35
24.	COT054832	35	111	752	10-05-2001	17:24	1:00	COT082335		17:24:46	\	0:28

³¹ Entries from here are on the detailed statements (Exhibit 84 Tabs 4 to 6), not the billing statements. The detailed statements do not contain call or row numbers.

³² It's unclear which of calls 20 or 21 went through, and which did not.

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84					
Nº	Begdoc#	Tab	Pg.	Call Nº	Date	Time	Length of Call	Begdoc#	Row	Time of Incoming Call	PCD	Length of Call
25.	COT054856	36	118	673	11-02-2001	16:02	1:00	COT082342		16:02:55	M	0:09
26.	COT054888	37	121	852	12-06-2001	11:55	1:00	COT082355		11:55:52	M	0:06
27.	COT054890	37	123	966	12-07-2001	14:23	1:00	COT082356		14:23:37	\	0:06
28.	COT054893	37	126	197	12-11-2001	15:50	1:00	COT082357		15:50:35	\	0:07
29.	COT054894	37	127	258	12-12-2001	12:45	1:00	COT082357		12:45:20	\	0:19
30.	COT054896	37	129	371	12-13-2001	14:36	1:11	COT082358		14:36:04	\	1:00
31.	COT054902	37	135	777	12-19-2001	16:14	5:02	COT082361		16:14:08	\	4:41
32.	COT054934	38	86	016	12-22-2001	14:03	1:00	COT082362		14:03:05	\	0:26
33.	COT054951	39	103	200	01-24-2002	10:53	1:00	COT082374		10:53:54	\	0:07
34.	COT054952	39	104	207	01-24-2002	11:10	1:00	COT082375		call not received		
35.	COT054952	39	104	208	01-24-2002	11:11	1:00	COT082375		11:11:39	\	0:12
36.	COT054974	39	115	957	02-06-2002	14:24	1:00	COT082381		14:25:18	M	0:16
37.	COT054974	39	115	962	02-06-2002	14:55	1:15	COT082381		14:55:54	\	1:03
38.	COT054975	39	116	010	02-07-2002	11:53	1:00	COT082382		11:53:31	\	0:13
39.	COT055035	42	89	162	04-24-2002	11:20	2:03	COT082408		11:20:54	1	1:47
40.	COT055035	42	89	165	04-24-2002	11:38	1:01	COT082408		11:39:02	\	0:48
41.	COT055039	43	93	728	06-07-2002	13:53	1:18	COT082419		13:53:41	\	1:07
42.	COT055052	44	106	070	06-20-2002	19:33	1:01	COT082425		19:34:45	M	0:17
43.	COT055053	44	107	082	06-20-2002	22:11	1:22	COT082425		22:11:57	\	1:05
44.	COT055093	44	120	988	07-10-2002	10:02	1:27	COT082430		10:02:33	\	1:11
45.	COT055122	45	104	894	08-06-2002	10:16	1:00	COT082441		10:17:17	M	0:18
46.	COT055122	45	104	913	08-06-2002	11:54	1:01	COT082441		11:54:19	\	0:45
47.	COT055123	45	105	988	08-07-2002	11:27	1:00	COT082441		11:28:08	M	0:08
48.	COT055123	45	105	993	08-07-2002	11:46	1:00	COT082441		11:47:54	M	0:18
49.	COT055123	45	105	999	08-07-2002	12:10	1:00	COT082441		12:10:37	\	0:23
50.	COT055140	46	78	147	08-22-2002	10:48	1:00	COT082449		10:49:00	M	0:05
51.	COT055153	46	91	954	09-04-2002	9:37	1:00	COT082453		09:38:51	M	0:06
52.	COT055153	46	91	995	09-04-2002	15:30	1:00	COT082453		15:30:50	\	0:27

Domi Records – Exhibit 15							Jakobek Records – Exhibit 84					
Nº	Begdoc#	Tab	Pg.	Call Nº	Date	Time	Length of Call	Begdoc#	Row	Time of Incoming Call	PCD	Length of Call
53.	COT055153	46	91	997	09-04-2002	15:32	1:00	COT082453		15:32:27	\	0:47
54.	COT055154	46	92	050	09-05-2002	11:26	1:00	COT082454		11:27:30	\	0:26
55.	COT055155	46	93	148	09-06-2002	12:13	1:00	COT082455		call not received		
56.	COT055159	46	97	367	09-09-2002	17:52	1:04	COT082456		17:52:37	\	0:43
57.	COT055158	46	96	334	09-09-2002	11:10	1:00	COT082456		11:11:00	M	00:05
58.	COT055158	46	96	345	09-09-2002	13:25	1:00	COT082456		call not received		
59.	COT055159	46	97	369	09-09-2002	17:59	1:00	COT082456		17:59:11	\	0:11
60.	COT055160	46	98	455	09-11-2002	10:33	1:00	COT082457		10:33:56	\	0:23
61.	COT055160	46	98	457	09-11-2002	10:35	1:27	COT082457		10:35:09	\	1:16

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45. The timing of several of the calls is particularly noteworthy since Domi swore in an affidavit dated December 15, 2003 that:

I agree that I told Commission Counsel during an interview conducted on or about September 4, 2002 that I did not believe that Tom Jakobek was present on the May 2, 1999 flight to Philadelphia . . .

[I]t was my recollection at the time of the interview that Jakobek was not on the flight.³³

46. Domi and Jakobek spoke frequently to each other around the time Domi first told Commission Counsel that Jakobek was not on the flight to Philadelphia:

- a. September 4, 2002, the day that Commission Counsel met with Domi at the MFP offices, Domi left a message for Jakobek and had two telephone conversations with Jakobek.³⁴
- b. September 5, 2002, the second day that Commission Counsel interviewed Domi, Domi had another conversation with Jakobek.
- c. September 6, 2002, the day after Commission Counsel met with Domi “very late into the evening”, Domi placed a call to Jakobek that does not appear on Jakobek’s phone records.
- d. Between September 4 and September 11, 2002, Domi and Jakobek had seven conversations and Domi left two additional messages for Jakobek.

47. Domi testified that he could not recall the purpose of these telephone calls. He added that he did not think it was related to his meeting with Commission Counsel. He also added that he had “no reason not to call” Jakobek.³⁵

³³ Domi Affidavit, paras. 3, 8, 04/19/2004 at 180-182.

³⁴ Domi 01/22/2003 at 203-204; Domi 02/11/2003 at 86-87.

³⁵ Domi 02/11/2003 at 92-96.

48. It is an inescapable conclusion that Domi was calling Jakobek to report to him on the interview with Commission Counsel. It was at this time, if not sooner, that Domi and Jakobek began to tailor their stories to hide the true extent of their relationship. From that point forward, Domi and Jakobek actively misled the Commission regarding the nature and extent of their relationship. They knew they had something to hide and they tried to ensure that the truth would never come out.

iii) Telephone calls by Domi to Jakobek's office

49. Between March 15, 1999 and October 12, 2000, Domi placed 50 calls to Jakobek's office.³⁶ Jakobek testified that this was his general office telephone number³⁷ and it is the number that appeared on his office letterhead.³⁸ It is impossible to know to whom Domi spoke when he called the general office number.

iv) Conclusion

50. During the period March 15, 1999 and October 12, 2000, Domi placed 135 calls to Jakobek and they had at least 76 conversations. During this time he called Jakobek's:

- a. office number 50 times;
- b. cellular telephone number 77 times; and
- c. home 8 times.

51. Therefore, if Domi wanted to speak with Jakobek while he was a City Councillor, Domi was almost twice as likely to call Jakobek's cellular telephone or home as he was to call Jakobek's City Hall Office.

³⁶ See COT061285, 15:2:51.

³⁷ Jakobek 05/15/2003 at 62.

³⁸ COT084377, 98:2:38.

52. Between October 10, 2000 and September 11, 2002, Domi placed 70 calls to Jakobek and they had at least 33 conversations. During this period, Domi called Jakobek's:

- a. new cellular telephone 61 times; and
- b. home 9 times.

53. The records demonstrated that Domi and Jakobek had over 109 conversations, at least 76 of which occurred while Jakobek was a member of City Council. These totals stand in stark contrast to Jakobek's evidence that he would only have spoken to Domi a handful of times:

Well, I believe the vast majority of those are when I was no longer on City Council and Domi was calling me to talk to me about the world and I would say that, just -- with the greatest of respect, that you're identifying a handful of calls that were actual conversations as of -- and you're putting it in the context of two hundred (200) calls and I just want to make sure that the vast majority of these two hundred (200) calls over four (4) years were less than a minute and I have no recollection of the vast majority of them because I never -- I never got them. But I do agree there were times when I spoke to the gentleman, yes.³⁹

54. The Commissioner should take the phone records over Jakobek's memory every time.

e) Evidence of socializing

55. Domi submitted 18 expense claims that named Jakobek. Domi has admitted that he would sometimes write an individual's name on receipts even if he/she did not attend that event. Jakobek has denied attending most of the events listed in Domi's expense reports. It is impossible to determine whether or not Jakobek actually attended any of the events listed on these receipts.

³⁹ Jakobek 5/14/2004 at 104.

3. Domi and Jakobek hid and minimized their relationship

a) *Jakobek hid the relationship with Domi from KPMG*

56. During the summer and fall of 2001, the City of Toronto became concerned about the terms of the leases it had signed with MFP and the amount of equipment and software that the City had apparently put on lease. The City wanted to get to the bottom of the matter and as part of this effort, the City retained KPMG Investigation and Security Inc. (“KPMG”) to conduct a review of the City’s leasing contracts with MFP. Jakobek refused to provide any meaningful cooperation with this first attempt by the City to get to the bottom of its concerns with the MFP leases.

57. The City concluded that KPMG was unable to get to the bottom of the issue. One of the reasons that KPMG was unsuccessful was Jakobek’s refusal to provide any meaningful assistance.

58. On November 15, 2001, Doug Nash (“Nash”), senior vice-president of KPMG, wrote to Jakobek.⁴⁰ The letter read, in part:

[W]e believe that you may have some information that will assist in our work. As you know, we attempted to meet with you but you were unwilling to meet and requested that we submit some questions to you in writing.

...

Could you please provide us with any information you have with respect to MFP, including the following:

...

Contact, if any, that you may have had with representatives of MFP, including who was involved, the circumstances of the meetings, when they occurred, and their purpose.

59. Jakobek replied by November 19, 2001.⁴¹ Jakobek did not answer KPMG’s question about contact with representatives of MFP. His response was entirely limited to the issue of his motion:

Thank you for your letter of Nov 15th and your inquiries. Unfortunately I do not have the documents or minutes from the meetings you quoted from. Given it has been well over 2 years since the time you are asking about it is impossible for me to recall the exact details. However, the motion which attempts to expand the life span of equipment is consistent with my belief that computers and other high tech equipment can and should last longer than 3 years. A simple cost/benefit analysis by KPMG would probably support my position and that of the former City Council. I hope this answers your questions and thank you for having thought of me. I have no further comment to make as I was never involved in contracts or lease terms.

60. Jakobek failed to mention any contact that he had with Domi or other representatives from MFP. This was the first, and earliest, attempt by Jakobek to hide his relationship with Domi, but it was by no means the last.

61. When Commission Counsel noted that Jakobek did not respond to KPMG's question regarding contact with representatives of MFP, Jakobek replied that he did not believe that the question was relevant then or now:

Q: The last question that they asked you specifically was:

“Contact, if any, that you may have had with representatives of MFP, including who was involved, the circumstance of the meetings, when they occurred and their purpose.”

You will agree with me that you did not answer or, in fact, address yourself to that question at all in this?

A: I did not think then and I do not think now that that is even relevant.⁴²

62. The City submits that the question was obviously relevant and that Jakobek knew it was relevant. Jakobek added that he felt he had given Nash a general response, although he allowed that he did not specifically address the issue of contact with MFP.⁴³

⁴⁰ COT014593 at COT014593, 33:1:41.

⁴¹ COT014597, 33:1:42.

⁴² Jakobek 05/14/2003 at 92-93.

⁴³ Jakobek 05/14/2003 at 94-95.

b) Jakobek hid the relationship with Domi from Commission Counsel

63. Jakobek also attempted to hide the true nature and extent of his relationship with Domi when he responded to questions from Commission Counsel in August and September 2002.

64. On August 14, 2002, Commission Counsel wrote to Jakobek and requested to interview him.⁴⁴ Jakobek replied to Commission Counsel on August 19, 2002.⁴⁵ Jakobek wrote:

I wish to make it absolutely clear that I am and have been more than willing to assist the City of Toronto and your inquiry in resolving the matters you have written to me about.

...

To the best of my knowledge I have had no involvement, with the exception of ONE motion that you have provided and which you have attributed to me. In that regard I have reviewed the questions you provided me with, that were put to me by KPMG's investigation last year as well as my response. Unfortunately I have no additional information that I could add do [sic] to my non-involvement in these matters.

65. Jakobek did have additional information that he could have provided to Commission Counsel; much of which has been elicited through this Inquiry. However, in an attempt to minimize his involvement, Jakobek told Commission Counsel that he had no information.

66. Commission Counsel wrote to Jakobek on September 6, 2002, and stated that:⁴⁶

The Commission would like the opportunity to interview you about the Policy and Finance Committee meeting, your role, if any, in the development, evaluation and consideration of the RFQ through which MFP was selected, any discussions or considerations regarding the City leasing its technology and *other matters falling within the Commission's terms of reference, including your contact or relationship, if any, with MFP* [emphasis added].

⁴⁴ COT061341, 33:2:13.

⁴⁵ COT061343, 33:2:14.

⁴⁶ COT061346, 33:2:15.

67. Jakobek replied to Commission Counsel on September 9, 2002.⁴⁷ Jakobek advised that “I have given you all the information I can recall”. He specifically addressed Commission Counsel’s question regarding MFP as follows:

Your September 6th, 2002 letter also referred to information regarding any contact or relationship, if any with MFP. I am not aware of any relationship with MFP and myself. With respect to contact, I would need to know with whom and when I may have had contact before I could comment further.

68. Jakobek’s denial of a relationship with MFP was misleading; his refusal to comment on contacts with MFP was deliberate. Jakobek did not *need* to “know with whom I may have had contact before [he] could comment further.” He chose to provide Commission Counsel with no information regarding his relationship with Domi until he knew what information Commission Counsel already had.

69. Jakobek did not need his memory refreshed regarding his relationship with Domi. Jakobek *could* have replied that “Why, yes, I have had contact with Domi. In fact, I have spoken with him five times in the last five days.”⁴⁸ Instead, Jakobek continued to hide the nature and extent of his relationship with Domi.

70. On May 14, 2003, Jakobek testified that “it would have been nice” if Commission Counsel had sent Jakobek the list of Domi’s expenses. The City submits that Jakobek’s failure to provide any meaningful response to Commission Counsel’s questions regarding MFP and Domi was part of a concerted effort to hide the true nature and extent of his relationship with Domi (from this Inquiry).

71. Jakobek also misled the Commission when he testified. His evidence regarding the telephone conversations has been described above. The balance of his testimony will be described below.

⁴⁷ COT061344, 33:2:16.

⁴⁸ See chart of calls at rows 51-59, at 16-17 of this Chapter.

c) *Domi and Jakobek hid their relationship from the OPP*

72. On September 30, 2002, the Commissioner adjourned the Inquiry at the request of the OPP to permit the OPP to investigate certain allegations made by employees or former employees of DFS.⁴⁹

i) *Domi lied to the OPP*

73. As part of its investigation, the OPP interviewed Domi on October 10, 2002.⁵⁰ The transcript of that interview demonstrated that Domi hid the nature and extent of his relationship with Jakobek from the OPP. It is impossible to reconcile Domi's description of his relationship with Jakobek with the evidence before this Inquiry:

AK: What's your recollection with specific Councillors⁵¹ at the City of Toronto?

DD: Um I don't really have any strong relationships with Councillors there. Uh I know Councillors but I don't have any uh I don't have a strong relationship with anybody.

AK: Like who? Who do you know in Councillors at the City of Toronto?

DD: Uh who would I know. Uh I might know Councillor DESARO [sic Disero] or ARNETTI [sic Berardinetti] uh who else would I know. Now um uh FELD Mike FELDMAN. Uh I know NUNZIATA. I know maybe half a dozen. I don't really have uh I know Case OOTES the Deputy Mayor. Um that's about it. (I/A)

AK: And the previous again going back to ninety nine. Obviously the election was in two thousand. What about Councillors at during that sort of time frame? Any relationship with any Councillors at that point?

DD: Um probably the same ones. I mean the one that's not there now is Councillor JAKOBEK I know very little.

AK: How would you characterize your relationship with JAKOBEK?

DD: Uh I knew him. I mean I didn't have um a relationship with him or

AK: So you wouldn't characterize that as a friendship?

⁴⁹ 09/30/2002.

⁵⁰ COT041622 at COT04182, 5:1:84.

⁵¹ The transcript of Domi's interview continually misspells Councillor and Councillors as Counsellor and Counsellors. We have corrected the spelling throughout this excerpt to make it easier to read.

DD: No.

AK: Or a

DD: No.

AK: Acquaintance?

DD: Uh no.

AK: Business

DD: No. I I I mean probably same as I knew them all. I mean just kind of.⁵²

74. Domi completely and deliberately misrepresented his relationship with Jakobek.

75. First, Domi asserted that he knew Jakobek the same as he knew all the others. This is patently false. For example, Domi never deliberately called another Councillor at home. Domi also had Councillor Disero's telephone number in his address book. However, Domi's telephone records reveal that he only placed five telephone calls to Councillor Disero's office.⁵³ Such a gross disparity in the number of telephone calls demonstrates that Domi did not know Councillor Disero the same way he knew Councillor Jakobek.

76. Second, Domi denied that Jakobek was "a friend", an "acquaintance", or "a business [acquaintance, presumably]". Domi told the OPP that he "just kind of" knew Jakobek. Reasonable people can disagree on whether or not two people are friends. However, the City submits that there can be no doubt that the relationship between Domi and Jakobek met any reasonable definition of "acquaintance". Domi:

- a. flew with Jakobek on a private jet to watch a playoff hockey game in Philadelphia at Domi's invitation;

⁵² COT041622 at COT081436-81437, 5:1:84

⁵³ COT053848, 15:2:57.

- b. played golf with Jakobek at a private club at Jakobek's invitation;
- c. visited Jakobek's house for drinks after the golf game;
- d. made hundreds of telephone calls to Jakobek; and
- e. had at least seven telephone conversations with Jakobek in September 2002, the month before he gave his OPP interview.

77. Third, the OPP's questions about Jakobek did not come out of the blue. Domi testified that he only received 24 hours notice of the OPP interview.⁵⁴ Domi had been interviewed by Commission Counsel for two days in September 2002. He had been working with MFP to prepare for the Inquiry, which was scheduled to commence on September 30, 1999. Wolfraim explained that MFP and Domi had spent a great deal of time during the summer of 2002 reviewing Domi's expenses, including the 18 expense receipts that named Jakobek:

In fact, during the preparation in the summer of 2002, for this Inquiry, we went through Dash's expenses in great detail, as you can imagine, we went through things like the flight manifests.

And we asked him the question, any number of times, because Jakobek's name was on the flight manifest for Philadelphia. We asked him, was he there? And Dash, said no he didn't turn up, he didn't show up for the flight.⁵⁵

78. Domi also testified that he the OPP did not show him any documents or records during his interview.⁵⁶ Domi did not need to be provided with records to remember that he placed 11 calls to Jakobek and spoke with him at least seven times in September 2002, the month before the interview.

79. The OPP asked Domi a series of straightforward questions. Domi conceded that his statements to the OPP were not accurate and that he should have stated that

⁵⁴ Domi 02/12/2003 at 128.

⁵⁵ Wolfraim 09/28/2004 at 69-70.

⁵⁶ Domi 02/12/2003 at 128.

Jakobek was a business acquaintance.⁵⁷ However, he did not agree that he had misled the OPP. Instead, he explained his statements by saying that it was not easy to be questioned by the OPP, that he had not felt comfortable being there, and that he had been “very nervous” when being interviewed by the OPP.⁵⁸

80. Domi lied to the police. His nervousness alone does not explain his decision to lie. The City submits that the OPP interview was another occasion when Domi hid the extent and nature of his relationship with Jakobek.

ii) Jakobek did not advise the OPP of the nature and extent of his relationship with Domi

81. On November 11, 2002, Jakobek gave a 29 minute interview to the OPP.⁵⁹ The OPP did not ask Jakobek any specific questions about MFP. However, in response to a question regarding which companies submitted bids in response to the 1999 computer leasing RFQ, Jakobek allowed that he “knew MFP existed. They were awarded the contract”.⁶⁰

82. The City submits that Jakobek’s statement to the OPP was an attempt to mislead the OPP about the nature and extent of his knowledge of the company and an attempt to deflect any further questions that would reveal his close relationship with MFP’s key salesperson.

⁵⁷ Domi 02/12/2003 at 124.

⁵⁸ Domi 02/11/2003 at 31-33.

⁵⁹ COT043012 at COT043012, 33:1:87 .

⁶⁰ COT043012 at COT043013, 33:1:87.

4. Flight to Philadelphia

83. Certain elements of the trip to Philadelphia are no longer disputed:

- a. on May 2, 1999, Domi and Jakobek flew together to Philadelphia on a private jet along with Vince Nigro, Harold Peerenboom and others;
- b. the purpose of the trip to Philadelphia was to watch Game Six of the playoff series between the Toronto Maple Leafs and the Philadelphia Flyers;
- c. MFP paid for the flight and the hockey tickets;
- d. Jakobek's name appeared on the flight manifest for the trip;⁶¹
- e. on or about September 4, 2002, Domi told Commission Counsel that Jakobek was not on the flight to Philadelphia.⁶²
- f. on or about December 19, 2002, Jakobek told Peter Small of the Toronto Star, and other reporters that he was not on the flight;⁶³
- g. in the week prior to January 25, 2003, Jakobek told Linda Diebel, a reporter for the Toronto Star, that he was not on the flight to Philadelphia.⁶⁴

84. The City submits that Domi and Jakobek collaborated in an ultimately futile attempt to convince the Commission that Jakobek was not on the flight to Philadelphia:

⁶¹ COT042273, 6:1:152; COT042274, 6:1:153.

⁶² Domi Affidavit, para. 5, 04/19/2004 at 180-181.

⁶³ Jakobek 05/14/2003 at 48-49.

⁶⁴ Jakobek 05/14/2003 at 35-37.

- a. Domi lied to the Commission under oath by stating that Jakobek was not on the flight.
- b. Jakobek attempted to convince Harold Peerenboom to mislead Commission Counsel by stating that Jakobek was not on the flight.
- c. Jakobek lied to two of his own lawyers by telling them that he was not on the flight.
- d. Jakobek had one of his lawyers advise counsel for Domi, Paul Cavalluzzo (“Cavalluzzo”), that Jakobek was not on the flight to Philadelphia.

a) Domi testified that Jakobek was not on the flight to mislead the Commission

85. Domi repeatedly testified that Jakobek was not on the flight to Philadelphia. For example, he twice told Cavalluzzo that Jakobek did not show up for the flight:

Q: -- if this is correct. Okay. Now, let us go to Philadelphia --

A: Okay.

Q: -- and that's at Tab 26. Maybe Tab 27 is easier to read which is Doc 42275. Do you have that?

A: Yes.

Q: The names involved in this case are yourself --

A: Yes.

Q: -- Jakobek, who you told us didn't show?

A: Right.⁶⁵

...

Q: Okay. So, I calculate, Mr. Domi, in those

⁶⁵ Domi 02/12/2003 at 178.

three (3) trips, including the third one (1) in which you paid out of your own pocket, in which we've been reading in the newspaper about, as a City expense, of these three (3) flights, seventeen (17) persons were invited, two (2) of which related to the City of Toronto?

A: Yes.

Q: Tom Jakobek, who didn't show up. And Wanda Liczyk, who paid her way?

A: Yes.

Q: Is that correct?

A: Right.⁶⁶

86. Domi's evidence was consistent with the description of Domi's anticipated evidence that Cavalluzzo provided to Nigro:

Q: Correct. Okay. Now, let's go to the Philadelphia trip, which is the next week. This is May 2nd, of 1999, there's yourself, and at that time, once again you're with TEDCO. Jim Ginou, who is he?

A: He's an individual like – my understanding was he sits on a number of Boards and

...

Q: Okay. So, and the other name there, Mr.-- as I told you before, is Jakobek. Domi's testimony will be that Jakobek was not on that flight.

So, leaving that name aside, not one (1) of these individuals on this flight was related to the City of Toronto, even though it was expensed as the City of Toronto?

A: Correct.⁶⁷

87. In his affidavit, Domi confirmed that when he testified at the Inquiry, he believed that Jakobek was not on the flight:

8. I understand that Jakobek has testified that he was, in fact, on the Philadelphia flight. While I do not dispute Jakobek's testimony, it was my recollection at the time of the interview that Jakobek was not on the flight. This was also my recollection at the time I testified before the Inquiry. I still do not

⁶⁶ Domi 02/12/2003 at 182-183.

⁶⁷ Nigro 1/20/2003 at 104-105.

have any independent recollection of Jakobek's presence on the Philadelphia flight although I do not dispute that Jakobek was on the flight.⁶⁸

88. On other occasions, Domi claimed not to remember whether or not Jakobek was on the flight.⁶⁹ Domi admitted that the only person he could not remember being on the flight was Jakobek.⁷⁰ On recall, counsel for the City put a number of facts to Domi regarding the trip to Philadelphia. Over 16 pages of transcript, these facts included:

- a. the names on the flight manifest for the trip;
- b. the reasons why it was important from a business perspective to take Jakobek on the trip to Philadelphia;
- c. the connections among the various people on the plane to Philadelphia;
- d. that the City's computer leasing RFQ was the most important leasing opportunity that Domi was actually aware of at the time of the flight to Philadelphia;⁷¹
- e. that it was only the second time Domi had ever been on a private plane;
- f. that the group had been separated in Philadelphia, reconnected, and traveled by limousine back to the Philadelphia airport; and
- g. that Jakobek was one of only four other people on the plane in addition to Domi.⁷²

89. After this detailed recitation of the facts, during which counsel for Domi objected twice to the repetitiveness of the questions, Domi testified as follows:

⁶⁸ Domi Affidavit, para. 8, 04/19/2004 at 181 [emphasis added].

⁶⁹ Domi 01/28/2003 at 101.

⁷⁰ Domi 04/20/2004 at 58-59.

⁷¹ Domi 04/20/2004 at 65.

⁷² See generally Domi 04/20/2004 at 55-71.

Q: He was one of the five (5) people on the plane other than you, right?

A: Okay.

Q: I suggest to you, Domi, that in light of all of that it is simply not possible that you have forgotten that Tom Jakobek was on that flight.

A: How is it simply not possible? Because you're saying so?

Q: I'm suggesting to Domi that it is not possible that someone could forget all of that.

A: All of what?⁷³

90. This answer demonstrates Domi's unwillingness to be helpful to the work of the Commission. Domi's evidence regarding Philadelphia was repeatedly argumentative, evasive, and unhelpful. It was also untruthful on a number of essential issues. In particular, Domi testified that Jakobek was not on the flight because he and Jakobek had previously agreed to mislead the Commission.

b) The Commissioner should reject Jakobek's testimony that while he lied to the media, he never intended to mislead the Commission

91. On May 14, 2003, Jakobek admitted:

- a. that he flew with Domi to Philadelphia on a private jet to watch a playoff hockey game;⁷⁴
- b. that he told the press that he was not on the charter flight to Philadelphia, and that was not true;⁷⁵ and
- c. that he did not clarify that he had been on the flight to Philadelphia until he met with Commission Counsel shortly before he testified in mid-May 2003.⁷⁶

⁷³ Domi 04/20/2004 at 71.

⁷⁴ Jakobek 05/14/2003 at 30.

⁷⁵ Jakobek 05/14/2003 at 30.

92. On May 15, 2003, Jakobek stated that while he lied to the press, he never intended to mislead the Commission regarding his presence on the flight to Philadelphia:

I want to answer your question by saying, it has never, ever, ever, been my intent to mislead, or whatever, this Inquiry.⁷⁷

93. Jakobek had every intention of misleading the Commission regarding the trip to Philadelphia. There was no evidence that supported Jakobek's assertion. All of his actions were inconsistent with an intention to tell the truth and were consistent with an intention to deliberately mislead the Commission. Had Commission Counsel not confronted Jakobek with his cellular telephone records, which demonstrated that his cell phone was in Philadelphia on May 2, 1999, Jakobek would have continued to deny that he took the MFP flight.

j) Jakobek's conduct in the summer of 2002 was inconsistent with an intention to tell the truth

94. Wolfraim testified that the question of whether or not Jakobek was on the flight to Philadelphia was of great concern to MFP. Wolfraim testified that he repeatedly asked Domi whether or not the expense receipts and the flight manifests were correct:

In fact, during the preparation in the summer of 2002, for this Inquiry, we went through Dash's expenses in great detail, as you can imagine, we went through things like the flight manifests.

And we asked him the question, any number of times, because Jakobek's name was on the flight manifest for Philadelphia. We asked him, was he there? And Dash, said no he didn't turn up, he didn't show up for the flight.⁷⁸

95. Wolfraim also testified in January 2003 that he had not personally spoken to Jakobek about whether or not he was on the flight.⁷⁹ Wolfraim acknowledged that

⁷⁶ Jakobek 05/14/2003 at 53.

⁷⁷ Jakobek 05/15/2003 at 8.

⁷⁸ Wolfraim 09/28/2004 at 69-70; Wolfraim 01/08/2003 at 98.

⁷⁹ Wolfraim 01/08/2003 at 98.

“[t]here’s still some issue” whether or not Jakobek was on the flight, but that he was not prepared to accept that Jakobek flew to Philadelphia.⁸⁰

96. Jakobek testified that he never discussed whether or not he was on the Philadelphia flight with Domi, directly or indirectly.⁸¹ The City submits that this testimony should be rejected.

97. Domi testified that it was very possible that he spoke to Jakobek about whether or not Jakobek was on the flight and that Jakobek said something along the lines of “I was not there [Philadelphia]”:

Q: Mr. Domi, you conceded to Mr. Manes yesterday that it's possible that you yourself talked to Mr. Jakobek on this subject?

A: Possibly.

Q: You did, sir, you did speak to him, you did talk about Philadelphia with him, surely you did?

A: I said it's possible.

Q: It's likely.

A: Possible.

Q: What did he tell you, Mr. Domi?

A: I don't -- was not there.

Q: He said, I was not there?

A: Well, I -- I don't know, something -- I'm sure something along that lines.

Q: Something along those lines?

A: Yeah.

Q: All right. Was that in a telephone conversation, sir?

A: Don't know.

⁸⁰ Wolfram 01/07/2003 at 240.

⁸¹ Jakobek 09/09/2004 at 70.

Q: A meeting?

A: Perhaps telephone.

Q: Perhaps telephone? Mr. Jakobek wanted to know what you were going to say, didn't he, Mr. Domi?

A: Well, I don't know about that.

Q: He wanted to talk to you about the issue, didn't he?

A: Possible.

Q: Surely that's what you assumed?

A: Possible.

Q: Mr. Domi, you can do better than that. Mr. Domi, you spoke to Tom Jakobek, and he told you that he wasn't on the flight, fair?

A: Like I said, it's very possible.

Q: Can you put it at probable, sir?

A: I can't put it at probable, possible.⁸²

98. Domi knew that the question of whether or not Jakobek was on the flight was important to his employer and to him. He knew the flight manifest indicated that Jakobek was on the flight. He knew his expense report indicated that Jakobek was on the flight.

99. Domi and Jakobek had at least 12 telephone conversations between June 7 and September 11, 2002, when MFP and Commission Counsel were asking Domi pointed questions about the flight to Philadelphia. Domi left Jakobek an additional seven messages on his cell phone.

100. The Commissioner should conclude that Domi discussed the Philadelphia trip with Jakobek during the summer of 2002. It is inconceivable that Domi and Jakobek could have spoken so frequently in the lead up to the Inquiry and not discussed the trip.

⁸² Domi 04/20/2004 at 79-80.

101. The Commissioner should also conclude that Jakobek never told Domi that he would acknowledge being on that flight. To the contrary, he led Domi to believe that he would deny it. If Jakobek had told Domi that he intended to acknowledge that he was on the flight:

- a. Domi would have told Wolfraim that Jakobek would testify that he was on the flight, which he clearly did not do.
- b. Domi would not have continued to insist to his employer and to the Commission that Jakobek was not on the flight;
- c. Domi would not have relied on the fact that Jakobek's lawyer advised Cavalluzzo that Jakobek would testify that he was not on the flight if Domi knew otherwise.

102. The Commissioner should conclude that at least as early as the summer of 2002, Jakobek and Domi intended to mislead the Commission by denying that Jakobek was on the flight.

ii) Jakobek's statements to Harold Peerenboom are inconsistent with an intention to tell the truth to the Commission

103. Harold Peerenboom ("Peerenboom") also flew to Philadelphia with Domi, Nigro and Jakobek. Peerenboom swore an affidavit dated April 27, 2003. In that affidavit, he stated that:

- a. In early to mid-November 2002, Jakobek asked him for his recollection of the flight to Philadelphia. Peerenboom told Jakobek that he had no recollection of the flight to Philadelphia. Jakobek told Peerenboom that he was not on the flight to Philadelphia.⁸³

⁸³ Peerenboom Affidavit, para. 6, Jakobek 05/14/2003 at 79-80.

- b. On November 27, 2002, and after the conversation referred to above, Peerenboom told an investigator for the Commission that Jakobek was not on the flight to Philadelphia.⁸⁴
- c. Had Jakobek refreshed Peerenboom's memory and reminded him that Jakobek was on the flight, Peerenboom would not have told the investigator that Jakobek was not on the flight.⁸⁵
104. Domi testified that Peerenboom had told him that Jakobek had told Peerenboom that Jakobek was not on the flight to Philadelphia:

Q: Mr. Domi, you also told Mr. Manes yesterday that there was -- or that -- the general consensus was, I think I wrote it down accurately, that Tom Jakobek was not on that flight. Remember --

A: That's --

Q: -- using those words, sir.

A: Yes.

Q: Who was part of that general consensus?

A: I mean, just -- no one remembered -- just -- that's what I heard.

Q: You heard that from the others on board the flight, is that what you meant?

A: Right, right.

Q: You heard that from Harold Peerenboom?

A: Yes.

Q: Peerenboom told you that Tom Jakobek had told him that Jakobek's position was that he was not on the flight, fair?

A: Yes, yes.⁸⁶

⁸⁴ Peerenboom Affidavit, para. 7, Jakobek 05/14/2003 at 79-80.

⁸⁵ Peerenboom Affidavit, para. 9, Jakobek 05/14/2003 at 79-80.

⁸⁶ Domi 04/20/2004 at 73-74.

105. Jakobek denied ever telling Peerenboom that he was not on the flight.⁸⁷ Jakobek testified that the conversation took place in December, after the media coverage of Jakobek's denial of having taken the flight.⁸⁸ However, counsel for Jakobek did not cross-examine Peerenboom on his affidavit.

106. The evidence of Peerenboom should be preferred to that of Jakobek. Peerenboom's chronology of events is coherent:

- a. Jakobek told Peerenboom in early to mid-November 2002 that he was not on the flight;
- b. Peerenboom told the Commission's investigator on November 27, 2002, that Jakobek was not on the flight;

107. Jakobek's version of events made no sense. Jakobek suggested that he spoke with Peerenboom in December and that Peerenboom told him that Peerenboom did not remember Jakobek being on the flight. That is inconsistent with what Peerenboom told the investigator in November. Peerenboom did not tell the investigator that he could not remember if Jakobek was on the flight. He was definitive: Jakobek was not on the flight.

108. Peerenboom had no reason to incriminate Jakobek by swearing an affidavit that Jakobek told him he was not on the flight if that was not true. Jakobek, on the other hand, had every reason to try to deny that he misled a potential witness regarding whether or not he was on the flight to Philadelphia.

109. Jakobek's statements to Peerenboom are inconsistent with his testimony that he never intended to mislead the Commission. They are evidence that, even before he was contacted by the media in December 2002, he intended to deny that he was on the flight to Philadelphia.

⁸⁷ Jakobek 05/14/2003 at 77-82.

⁸⁸ Jakobek 05/14/2003 at 79.

iii) Jakobek's Statements to media in December 2002

110. Jakobek told several members of the media that he was not on the flight to Philadelphia. Jakobek admitted that these statements were not true. Jakobek testified that he lied to the media after being surprised by a media call and going into a "denial mode":

My recollection, Manes, as I've said to you, is -- is that I was going into my son's school and got a call, and returned the call, without even realizing who I was returning the call to, and it was a reporter from the Toronto Star, and that he was throwing out trips to Montreal, trips to Ottawa, trips to Philadelphia, all sorts of expenses, and I went into a denial mode and I denied everything, and that was my recollection of the first time that it was all thrown at me, yes.⁸⁹

111. For the reasons set out above, this was certainly not the first time that Jakobek had thought about the Philadelphia trip and its significance to the Inquiry. His explanation that he lied because he was caught by surprise is disingenuous and should be rejected.

iv) Jakobek's statements to Linda Diebel, January 2003

112. In the week prior to January 25, 2003, Jakobek repeated his lie that he was not on the flight to Philadelphia to Linda Diebel ("Diebel"), a reporter for the Toronto Star.⁹⁰ This time, he went even further; he crowed to Diebel that Commission Counsel had nothing on him:

I never accept hockey tickets, ever....

They originally said I went to Montreal, then they said, 'No he didn't.' Now they are still pursuing Philadelphia, notwithstanding the fact they've hired a private investigator and interviewed other people on the plane and they haven't got anything....⁹¹

⁸⁹ Jakobek 05/14/2003 at 47.

⁹⁰ Jakobek 05/14/2003 at 35.

⁹¹ COT061449 at COT061452, 33:2:2

113. Jakobek's statements to Diebel are fundamentally inconsistent with his stated intention to tell the truth to the Inquiry. Jakobek essentially bragged to Ms. Diebel that Commission Counsel had nothing. It is inconceivable that Jakobek would have made those statements if he intended to testify that he was on the flight.

v) Jakobek lied to Alan Gold and through him to Cavalluzzo

114. Domi's first day of evidence was January 22, 2003. Paragraph 9 of Domi's affidavit, sworn December 15, 2003, stated that:

Prior to testifying, I was also told, through counsel, that Mr. Jakobek's counsel had indicated that Mr. Jakobek's position would be that he was not on the Philadelphia flight.⁹²

115. Cavalluzzo confirmed that the 'counsel' referred to was Alan Gold ("Gold").⁹³

116. In other words, Jakobek lied to Gold, who, in turn, advised Cavalluzzo that Jakobek's position was that he was not on the flight to Philadelphia. There is absolutely no evidence, and the City does not for a moment suggest, that Gold knew that Jakobek had lied to him. Gold was perfectly entitled to rely on the word of his client that he was not on the flight.

117. There was simply no reason for Jakobek to lie to Gold unless he also intended to lie to the Commissioner.

vi) Letters from David Roebuck to the Toronto Star, January 24 – 27, 2003

118. On January 24, 2003, Royson James ("James") wrote an article for the Toronto Star titled "Star Witness' Testimony Doesn't Open Many Doors."⁹⁴ That article discussed whether or not Jakobek was on the flight to Philadelphia. James's article appeared after Jakobek gave his interview to Diebel, but before her article appeared on January 25, 2003.

⁹² Domi Affidavit, para. 9, 04/19/2004 at 182.

119. On January 27, 2003, L. David Roebuck ("Roebuck") sent a letter about James's article to Mary Deane Shears, Managing Editor of the Toronto Star ("Roebuck Letter").⁹⁵

120. Roebuck is a prominent and respected lawyer in the Toronto office of Heenan Blaikie LLP, a leading national law firm. Roebuck is a Fellow of the American College of Trial Lawyers. He has been peer-rated in The Canadian Legal Lexpert Directory as a leading practitioner in the areas of corporate commercial and securities litigation and has been recognized in The International Who's Who of Business Lawyers (U.K.) and in Lexpert/American Lawyer Media 2004 Guide to the Leading 500 Lawyers in Canada. Roebuck is past Treasurer and past Chairman of the Civil Litigation Section (Ontario) of the Canadian Bar Association; past member of the Ontario Council of the Canadian Bar Association; past Associate Editor of Carswell's Canadian Cases on Employment Law; and past Director of The Advocates' Society.

121. Jakobek retained Roebuck in connection with this Inquiry in mid to late November, and certainly no later than December 6, 2002, when he wrote a letter to Commission Counsel.⁹⁶

122. On January 27, 2003, Roebuck wrote the following to Shears:

I act for Tom Jakobek.

Royson James was the author of an article that was published in the Toronto Star on January 24, 2003. In the article he wrote, amongst other things that:

"Specifically - was former Toronto Budget Chief and mayoral candidate Tom Jakobek on a hockey trip to Philadelphia, a trip Jakobek says he didn't take though others tell a different story."

The article was written in regard to the testimony at the Toronto Computer Leasing Inquiry. No witness at that Inquiry has testified that Jakobek, together with Dash Domi and others, flew on a private plane to Philadelphia to attend a

⁹³ Domi 04/20/2004 at 72.

⁹⁴ COT061370, 33:2:23.

⁹⁵ COT063152, 33:2:77.

⁹⁶ Jakobek 05/22/2003 at 70-73, 75-76.

hockey trip. **Jakobek has stated that he did not attend on such a trip and will repeat that under oath when he gives evidence at the Inquiry.**

I trust you agree that it would be unfair and beneath the journalistic standards of the Toronto Star to make an assertion that “others tell a different story” unless it had reliable information sourced to individuals who would be in a position to know whether Jakobek was on that flight. If you had reliable information sourced to individuals with knowledge, the Toronto Star could have published that information and then stood behind it. You did not. **Furthermore, if you have such reliable information you should provide that information to Manes as Commission Counsel so that he can call such evidence if he considers the matter to be significant.** At the present time, a number of persons stated to have been on the chartered flight in question, and thus in a position to know, are not on the list of witnesses intended to be called at the Inquiry.

Jakobek stands by his statement that he did not attend the trip, and he is in a position to know. If the Toronto Star will not go on the record as who the “others” are who “tell a different story”, surely fairness requires that it publish a retraction.⁹⁷

123. When confronted with the Roebuck Letter, Jakobek told two very different versions of events on consecutive days of evidence. First, he said that he never saw the letter before it went out, wished the letter had never been sent, and wished he had corrected the letter after it was sent. However, when it became clear that he had reviewed a virtually identical draft of the letter before it was sent, he changed his account, testifying that he lied to Roebuck about Philadelphia and instructed him to send the letter at the same time he was prepared to tell the truth to the Commission.

124. The City will consider Jakobek’s second version of events first.

125. Jakobek admitted that he reviewed a draft version of the Roebuck Letter. The draft was dated January 24, 2003.⁹⁸ Jakobek admitted that he had authorized Roebuck

⁹⁷ COT063152, 33:2:77 [emphasis added].

⁹⁸ COT063146, 33:2:84.

to send the Roebuck Letter.⁹⁹ The draft and final versions of the letters were virtually identical, except:

- a. the Roebuck Letter included the opening sentence “I act for Tom Jakobek”, which did not appear in the draft;
- b. the draft was addressed to James and showed c.c. to Shears only, whereas the Roebuck Letter was addressed to Shears copied to James and Jakobek;
- c. the Roebuck Letter was slightly revised to reflect the fact that it was not being sent to the author of the article, but to the editor of the newspaper;
- d. the Roebuck Letter included the sentence “Jakobek stands by his statement that he did not attend the trip, and he is in a position to know”, which did not appear in the draft; and
- e. the draft letter that Jakobek reviewed, approved, and authorized Roebuck to send included the statement “Jakobek has stated that he did not attend...Inquiry.”

126. Jakobek testified that he lied to Roebuck and told him that he was not on the flight to Philadelphia. Jakobek testified that he instructed Roebuck to repeat that lie to the Toronto Star and to demand a retraction on that basis:

Q: But certainly, as of early December he was retained; is that fair?

A: Yes.

Q: He had been, as you've told us, in communication with Commission Counsel on your behalf?

A: Yes.

⁹⁹ Jakobek 05/21/2003 at 16-18.

Q: He was the person who was charged by you with fielding their requests for information from you?

A: Yes.

Q: You told Mr. Roebuck, your lawyer, that you were not on the flight to Philadelphia?

A: Correct.¹⁰⁰

Q: You told him that in January of 2003?

A: Correct.

Q: You knew that was untrue?

A: Correct.

Q: You lied to your lawyer, Mr. Jakobek?

A: Yes.

Q: You also told him that you would testify at this Inquiry, that you were not on the plane?

A: Yes, by approving it, yeah.

Q: Because he would not have written the January 27th letter to the Toronto Star, containing those words, unless you told him that?

A: Correct.

127. Jakobek testified that although he told Roebuck that he was not on the flight to Philadelphia, he never intended to mislead the Commission and always intended to tell the Commission that he was indeed on the flight to Philadelphia:

Q: Now, Mr. Jakobek, when you testified last Thursday and last Wednesday, you were at great lengths to say that those initial lies to the press were regretful, you took responsibility for them, you wished they hadn't happened, but no one should conclude that those lies to the press reflected any intention on your part to lie to Commission Counsel, Mr. Manes, or to Commissioner Bellamy; is that fair?

A: Yes.

Q: You said it over and over?

¹⁰⁰ Jakobek 05/22/2003 at 76 – 77.

A: Yes.

Q: It never, ever, from August of 2002, ever crossed your mind that you would say anything to Mr. Manes, or to Commissioner Bellamy, that wasn't true?

A: Correct.

Q: Come now, Mr. Jakobek, you were never ever contemplating telling the Inquiry anything but the truth, but you were still lying to your own lawyer?

A: Correct.¹⁰¹

...

Q: Mr. Jakobek, your sworn testimony is that you were prepared to come clean with Mr. Manes at any time, when you hadn't even come clean with your own lawyer?

A: Yes, ma'am.

Q: You were planning to tell the truth to this Inquiry, while you were telling Mr. Roebuck to tell the Star effectively the opposite?

A: Yes, ma'am.¹⁰²

128. Jakobek's second version of events should not be believed. No rational person would tell his lawyer, that he would testify that he was not on the flight if he intended to admit that he was. No rational person would instruct his lawyer to tell a major newspaper that he would testify under oath that he was not on the flight and demand a retraction in these circumstances while intending to testify that he was in fact on the flight.

129. There was no benefit to be gained by Jakobek misleading his own counsel if he in fact intended to come clean. Jakobek knew, or ought reasonably to have known, that Roebuck could not provide good counsel without knowing the truth about his involvement with MFP, including the flight to Philadelphia. Jakobek lied to Roebuck because Jakobek intended to lie to the Commission.

¹⁰¹ Jakobek 05/22/2003 at 81-82.

¹⁰² Jakobek 05/22/2003 at 82.

130. Jakobek's testimony is implausible and lacks the ring of truth. Jakobek's credibility is further diminished by the fact that, when Jakobek was first confronted with the Roebuck Letter, he stated that Roebuck wrote the letter without authority. Jakobek's first version of events is described below.

131. The chronology of events surrounding Jakobek's testimony about the Roebuck Letter is important. Jakobek first testified on Thursday, May 14, 2003. On that day, Jakobek admitted that he was on the flight to Philadelphia. The next morning, Friday, May 15, 2003, the Toronto Star reported on the Roebuck Letter.¹⁰³

132. When the Commission resumed sitting on Friday, May 15, 2003, Commission Counsel asked Jakobek about Roebuck's letter to the Toronto Star. Just before 4:30 p.m. that day, Commission Counsel entered a copy of Roebuck's letter dated January 27, 2003, into the record. Commission Counsel had obtained a copy of that letter by summons from the Toronto Star.¹⁰⁴

133. Jakobek testified that:

- a. Roebuck was authorized to write a letter;
- b. he did not specifically discuss the contents of the letter with Roebuck before the letter was sent; and
- c. he did not see the letter until after Roebuck sent it to the Toronto Star;¹⁰⁵

134. Jakobek later repeated that he did not see the letter until after Roebuck sent the letter and that he should have corrected the letter after it was sent:

I did not give him all the specifics, I did not see the letter until after it went out. I should have seen the letter before it went out, I should have been smart enough to look at the letter before it went out, I should have

¹⁰³ Jakobek 05/15/2003 at 5.

¹⁰⁴ Jakobek 05/15/2003 at 202-203.

¹⁰⁵ Jakobek 05/15/2003 at 207-208.

corrected the letter before it went out, I should have corrected the letter after it went out, but I did not.¹⁰⁶

135. Jakobek blamed Roebuck's letter on his initial lie to the press. Jakobek then described reaction to receiving a copy of Roebuck's January 23, 2003 letter:

I said something that wasn't true. It caused a chain of events. It even, for all intents and purposes, caused this letter and I don't know how many times to say you regret saying it and how many times you say you wish – you say I'm sorry I said but the reality was when I got this letter from my lawyer and I looked at it and I saw that part and I saw this part here that said, you know, you're going to, for all intents and purposes, sue the Star. I'm thinking, oh, my God. What -- what are we doing here and I-- I called my solicitor to say please stop everything you're doing.¹⁰⁷

136. Finally, Jakobek stated that he did not “blame Mr. Roebuck for having sent the letter, but I sure as heck wished he hadn't sent it once I read it.”¹⁰⁸

137. Jakobek's account was a complete work of fiction. He recanted his evidence on the next hearing day, Monday, May 21, 2003. Jakobek admitted that he did see a draft of Roebuck's letter before it went out. He approved that draft. He did have the opportunity to make any changes he wished before the letter went out. He chose to make no significant changes. He never wished that Roebuck had not sent the letter because he himself instructed Roebuck to send it after he himself reviewed it.¹⁰⁹

138. When confronted with Roebuck's letter, incontrovertible evidence that completely contradicted his testimony that he never ever intended to mislead the Commission, Jakobek's first instinct was to lie, which he did. He fabricated, out of whole cloth, a compelling narrative that made him the innocent victim of his lawyer's actions. Jakobek even fabricated his reaction to seeing Roebuck's letter of January 23, 2003.

¹⁰⁶ Jakobek 05/15/2003 at 217, see also 210.

¹⁰⁷ Jakobek 05/15/2003 at 212.

¹⁰⁸ Jakobek 05/15/2003 at 219.

¹⁰⁹ Jakobek 05/16/2003 at 18-19.

139. This episode demonstrates, conclusively, that Jakobek was prepared to, and did, lie to the Commission while under oath.

5. The Improper Payment: Overview

a) *Domi transactions: November 1, 1999*

140. On Friday, October 29, 1999, MFP made a \$200,000 commission payment to Domi for the City transaction. After deductions and set-off for draws already paid, MFP deposited over \$57,000 into Domi's account.

141. On Monday, November 1, 1999, the first business day following the deposit, Domi withdrew \$25,000 in \$1000 bills. Domi spoke twice with Jakobek that same day: at 3:46 p.m. (for about 90 seconds) and again at 4:45 p.m. (for about 20 seconds). Two minutes after the second call, Domi drove into the City Hall parking garage. Only 13 minutes later, Domi left the parking garage. He submitted the parking receipt to MFP for reimbursement. Domi admitted that it was very likely that he went to see Jakobek on November 1, 1999.

b) *Jakobek family transactions: November 2 and 3, 1999*

142. On November 2 and 3, 1999, the two days after the Domi withdrawal, the Jakobek family engaged in an extraordinarily complex series of banking transactions to disguise the source of funds that were deposited to Jakobek's American Express account.

143. On Tuesday, November 2, 1999:

- a. Jakobek appears to have deposited \$3400 in cash into his bank account;
- b. his mother, Ursula Jakobek ("Ursula"), deposited \$3000 cash into bank accounts controlled by her and her mother, Maria Michie ("Michie");

- c. Ursula also transferred money among four bank accounts controlled by Michie and her; and
- d. Ursula certified three cheques payable to American Express by Michie (two cheques on two accounts totalling \$11,000) and by Ursula (one cheque for \$4,000).

144. On Wednesday, November 3, 1999, a \$21,000 payment was made on Jakobek's American Express account, which consisted of the \$15,000 in certified cheques from his mother and grandmother and an additional \$6,000 in cash.

c) *Jakobek and Domi concocted implausible alibis*

145. Domi and Jakobek both relied on family members to provide alibis for their suspicious banking transactions between November 1 and 3, 1999. Both alibis shared remarkably similar fundamental elements. Both men relied on:

- a. the purported repayment of long-standing family debts, which had never been documented;
- b. family members to fill obvious gaps in their own stories;
- c. family members' willingness to handle thousands of dollars of cash at a time;
- d. family members having thousands of dollars in cash in their homes;
- e. spontaneous, extraordinarily generous gifts of money from less wealthy to more wealthy family members that were apparently treated as if it was pocket change; and
- f. incredibly tight-knit, loyal, and protective family members.

i) *Domi alibi*

146. Dash Domi testified that he gave the twenty-five \$1,000 bills to his brother Tie Domi on Tie's birthday to repay him for some of the money Tie had loaned Dash over

the years. Dash admitted that no details of the loans were ever written down. He could recall very few details about his borrowing or the manner of the repayment. Tie testified that he had loaned money to Dash and that Dash had repaid him *some* amount of money on his birthday. However, he was not specific about the year he received the money except in his brief affidavit , which was prepared by counsel for Dash. Tie contradicted Dash by stating that the repayment was not all in \$1,000 bills, but also in smaller denominations. Tie could not confirm that Dash gave him exactly \$25,000. Tie and Dash confirmed that no one else saw Dash give Tie a birthday card full of \$1000 bills.

ii) Jakobek alibi

147. In October 2003, Jakobek swore an affidavit in which he explained that the money for the American Express payment came from his father-in-law, Ken Morrish. After being pressed by Commission Counsel for more details, he reiterated this story in a second affidavit in December 2003.

148. In September 2004, during the recall phase of the Inquiry, Jakobek testified that he had no idea that the money had in fact traveled through his mother and his grandmother's accounts until late August 2004, when Commission Counsel presented him with copies of the certified cheques. He testified that even then he had only a 'faint recollection' that his mother might have been paying for some or all of her share of the trip and had 'no idea' why his grandmother paid any money to his American Express account.

149. No family conducts innocent transactions this way. It is inconceivable that Ursula and Michie:

- a. gave their wealthy son and grandson \$15,000 for a trip he had already planned, and possibly already paid for;
- b. provided the funds to Jakobek by way of three certified cheques drawn on three separate accounts;

- c. provided the funds to Jakobek indirectly, by certifying three cheques payable to American Express, when they did not know whether Jakobek still had an American Express card or whether he had used it for the trip; and
- d. had cash on hand sufficient to provide the funds, but instead made transfers among four separate accounts, commingled funds between them, and then back-filled the accounts with more \$100 bills later in November.

150. This evidence supports the conclusion that Jakobek controlled the accounts held in the names of his parents and Michie. He used those accounts to disguise the source of funds controlled by him. However, the November 2 and 3, 1999 transactions are not the only evidence that Jakobek controlled these accounts.

151. Commission Counsel obtained, and Grant Thornton LLP (“Grant Thornton”) reviewed, a number of accounts held by Tom Sr., Ursula, and Michie. These accounts revealed an astonishing number of cash deposits (usually in \$100 bills), withdrawals, and transfers to the benefit of Tom Jakobek. In October and November alone, Tom Sr., Ursula and Michie transferred \$34,500 directly to Tom Jakobek or to third parties for his benefit.

152. Tom Jakobek testified that he never received money from his parents *per se* and that they only gave him money to repay him for things he had done for them or paid for on their behalf. Jakobek could not explain why his parents and grandmother transferred \$19,500 to him in October and early November, in addition to the American Express payments.

153. Ursula explained that part of the money she and Tom Sr. gave to Jakobek over the years was repayment of a debt that their son, Joe Jakobek, owed to Tom. Jakobek never said that Joe owed him money or that his parents were paying him money to discharge Joe’s debt. The details of Joe’s debt were never written down by Tom, Joe, Tom Sr. or Ursula. Joe produced a torn scrap of paper that he claimed was a tally of the

payments. Joe and Ursula's explanations of the debt, evidence about the amount of the debt, and repayment terms differed from each other, were internally inconsistent, and were inherently improbable.

154. Ursula testified that she, Tom Sr. and Michie all kept thousands and thousands of dollars in their houses, in shopping bags, and in suitcases. This, she testified was the source of the cash deposits to their accounts. This source appeared to be limitless.

155. The maze of Jakobek family banking transactions is stunning. There is no legitimate source for the frequent significant cash deposits. There is no innocent explanation for the massive transfers of wealth from Ursula, Tom Sr., and Michie to Tom Jakobek. The evidence that Jakobek controlled these accounts and used them to disguise the source of cash at his disposal is overwhelming.

d) *Otherwise inexplicable relationship between Domi and Jakobek*

156. The conclusion that Domi made an improper payment to Jakobek is also supported by the evidence that they had an otherwise inexplicable relationship and went to great lengths to hide it or to minimize it.

157. Councillors may have an occasional meeting with a supplier in their offices. Councillors do not have *relationships* with salespeople selling goods to the City. Councillors are supposed to have nothing to do with procurement exercises other than voting to approve or reject staff reports. A *relationship* between a Councillor and a salesperson is inherently and undoubtedly suspicious.

158. How does one explain Domi's special access to Jakobek? They had nothing in common. Neither of them admitted to being friends with the other. Jakobek was famously impatient with people he believed were wasting his time. There is no innocent explanation for the number and nature of their contacts.

e) *Conclusion: Domi gave Jakobek \$25,000*

159. The City submits that Domi gave the \$25,000 to Jakobek for having moved the Jakobek Amendment, which allowed MFP to carry out its bait and switch. Jakobek moved some or all of the money through the accounts of his grandmother and his parents and had some of it returned to his benefit in the form of the certified cheques payable to his American Express account.

160. The Commissioner should find that Jakobek swore two affidavits stating that Ken Morrish, his wealthy father-in-law, was the source of the funds when in fact he knew all along that the money traveled through his mother and grandmother's accounts. He did not bring this evidence forward, because he knew he couldn't. No one would believe that his mother and grandmother of modest means transferred \$15,000 to him one day after Domi's cash withdrawal.

161. He had to bury the cheques because he knew that they would bury him. Instead, he retreated to safer ground: his wealthy father-in-law, who could not be called as a witness, had made the payment for him.

6. November 1, 1999: Domi withdrew \$25,000 cash and went to City Hall for 13 minutes

a) *Domi's bank accounts*

162. Commission Counsel obtained records from two of Domi's TD bank accounts:

a. Branch 1392 – Account 3148xxx (8/6/1998 to 4/25/2002);¹¹⁰ and

b. Branch 1144 – Account 3147xxx (from 1/1/1999 to 3/11/2003).¹¹¹

163. Domi also apparently had one or more lines of credit, possibly in the amount of \$60,000.¹¹² No records were produced regarding any lines of credit.

164. From November 1998 until May 2001, MFP directly deposited Domi's draw and his commission payments into Account 3148xxx. Domi's draw, which MFP advanced bi-weekly, fluctuated between \$2402 and \$2841, after withholdings.

165. In addition to the draws, MFP deposited the following commission payments, after statutory withholdings, into Domi's accounts:

a. \$57,457.23 on January 29, 1999;¹¹³

b. \$94,185.88 on October 29, 1999;¹¹⁴

c. \$191,984.20 on January 28, 2000;¹¹⁵

d. \$68,280.14 on May 30, 2000;¹¹⁶

¹¹⁰ COT082636, 85:1:31.

¹¹¹ COT082538, 85:1:30.

¹¹² Domi 04/20/2004 at 213-214, 218.

¹¹³ COT082536 at COT082647, 85:1:31.

¹¹⁴ COT082536 at COT082673, 85:1:31.

¹¹⁵ COT082536 at COT082681, 85:1:31.

- e. \$262,605.08 on August 30, 2000; and¹¹⁷
- f. \$26,826.02 on April 30, 2001.¹¹⁸

166. Domi made a large number of significant cash withdrawals from his accounts, including:

- a. \$25,000 on November 1, 1999;¹¹⁹
- b. \$6,000 on April 17, 2000;¹²⁰
- c. \$3,200 on April 27, 2000;¹²¹
- d. \$3,000 on April 28, 2000;¹²²
- e. \$3,000 on May 5, 2000;¹²³
- f. \$3,000 on May 24, 2000;¹²⁴
- g. \$5,000 on June 8, 2000;¹²⁵
- h. \$10,000 on June 16, 2000;¹²⁶
- i. \$2,000 on June 29, 2000;¹²⁷

¹¹⁶ COT082536 at COT082696, 85:1:31.

¹¹⁷ COT082536 at COT082705, 85:1:31.

¹¹⁸ COT082536 at COT082726, 85:1:31.

¹¹⁹ COT082536 at COT082673, 85:1:31.

¹²⁰ COT082536 at COT082690, 85:1:31.

¹²¹ COT082536 at COT082691, 85:1:31.

¹²² COT082536 at COT082691, 85:1:31.

¹²³ COT082536 at COT082693, 85:1:31.

¹²⁴ COT082536 at COT082695, 85:1:31.

¹²⁵ COT082536 at COT082697, 85:1:31. Cash used to pay Visa account.

¹²⁶ COT082536 at COT082698, 85:1:31.

¹²⁷ COT082536 at COT082699, 85:1:31.

- j. \$20,000 on July 7, 2000;¹²⁸
- k. \$10,000 on October 12, 2000;¹²⁹
- l. \$30,389.93 on October 25, 2000;¹³⁰
- m. \$15,781.29 on November 21, 2000;¹³¹
- n. \$5,000 on November 21, 2000;¹³²
- o. \$5,000 on November 23, 2000;¹³³
- p. \$4,000 on December 28, 2000;¹³⁴
- q. \$4,614.69 on December 28, 2000;¹³⁵
- r. \$10,000 on February 23, 2001;¹³⁶
- s. \$11,675.50 on March 15, 2001;¹³⁷
- t. \$5,000 on May 17, 2001;¹³⁸
- u. \$10,000 on June 27, 2001;¹³⁹
- v. \$3,000 on February 11, 2002;¹⁴⁰ and

¹²⁸ COT082536 at COT082700, 85:1:31.

¹²⁹ COT082536 at COT082709, 85:1:31.

¹³⁰ COT082536 at COT082710, 85:1:31. Visa payment.

¹³¹ COT082536 at COT082712, 85:1:31. Bill payment.

¹³² COT082536 at COT082712, 85:1:31.

¹³³ COT082536 at COT082713, 85:1:31.

¹³⁴ COT082536 at COT082715, 85:1:31.

¹³⁵ COT082536 at COT082715, 85:1:31. Visa payment.

¹³⁶ COT082538 at COT082538, 85:1:30. Paid Visa bill.

¹³⁷ COT082536 at COT082539, 85:1:30. Paid TD travel and Amex bill.

¹³⁸ COT082536 at COT082544, 85:1:30.

¹³⁹ COT082536 at COT082548, 85:1:30.

w. \$2,000 on July 18, 2002.¹⁴¹

167. Domi explained that the overwhelming majority of the cash withdrawals were used to pay renovations to his new house. However, Domi's evidence on this was wholly inadequate:

- a. Domi could not provide the names or contact information for any of the trades people he retained to complete the renovations;¹⁴²
- b. he had no invoices or receipts for any of the work performed at the house;¹⁴³
- c. Domi claimed to have acted as his own general contractor, but admitted that he knew nothing about construction;¹⁴⁴ and,
- d. Domi could not say what was done in his house or when.¹⁴⁵

168. The City accepts that Domi renovated his house. However, nothing else about Domi's story makes sense. It was impossible to match the stream of payments from his account to any of the work performed on his house. Sometimes he appeared to be spending far too little to accomplish what he claimed was being done to his house. At other times, he appeared to be spending far too much.

169. The City submits that the Commissioner should not conclude that all or even most of the cash withdrawals were spent on the house renovations.

¹⁴⁰ COT082536 at COT082575, 85:1:30.

¹⁴¹ COT082536 at COT082598, 85:1:30.

¹⁴² Domi 04/19/2004 at 235.

¹⁴³ Domi 04/20/2004 173-174.

¹⁴⁴ Domi 04/20/2004 at 183.

¹⁴⁵ Domi 04/20/2004 at 202.

b) Domi withdrew \$25,000 on November 1, 1999

170. On Monday, November 1, 1999, Domi withdrew \$25,000 from his Account 3146xxx.¹⁴⁶ According to the bank documents, Domi obtained twenty-five \$1,000 bills from the branch at the corner of Eglinton Avenue West and Dufferin Street.¹⁴⁷

171. Domi agreed that he had never withdrawn \$25,000 in \$1000 bills before.¹⁴⁸ The amount Domi withdrew was over 25% of the amount of money MFP deposited into his account the previous Friday.

172. Domi testified that he gave this money to his brother, Tie, in repayment of a series of loans that Tie had made to him over the years.

c) Domi spoke twice with Jakobek

173. Domi had two telephone conversations with Jakobek on November 1, 1999. Domi placed both calls from his cell phone to Jakobek's cell phone.

174. First, Domi spoke to Jakobek at 3:46 p.m. The conversation lasted 1 minute and 38 seconds according to Domi's cellular telephone bill.¹⁴⁹ Jakobek's bill indicated that the conversation lasted 1 minute and 35 seconds.¹⁵⁰

175. Domi spoke with Jakobek again less than one hour later, at 4:45. This conversation lasted only 22 seconds according to Domi's cellular telephone bill.¹⁵¹ Jakobek's bill indicates only that the call lasted less than one minute.¹⁵²

176. Domi testified that he did not remember either telephone call.¹⁵³

¹⁴⁶ COT082536 at COT082673-82674, 85:1:31.

¹⁴⁷ COT082755, 85:1:31; COT082756, 86:1:4.

¹⁴⁸ Domi 04/20/2004 at 107.

¹⁴⁹ See COT054169, chart at page 10 of this Chapter.

¹⁵⁰ See COT058208, chart at page 10 of this Chapter.

¹⁵¹ See COT054170, chart at page 10 of this Chapter.

¹⁵² See COT058208, chart at page 10 of this Chapter.

d) Two minutes after speaking with Jakobek, Domi parked in the City Hall parking garage for 13 minutes

177. Domi submitted a parking receipt dated November 1, 1999, to MFP for reimbursement¹⁵⁴ (“Parking Receipt”).

178. Emil Zamiara, the Internal Auditor for the Toronto Parking Authority, reviewed the Parking Receipt.¹⁵⁵ Zamiara concluded that the Parking Receipt demonstrated that:

- a. the Toronto Parking Authority issued the Parking Receipt at Carpark #36, the Nathan Phillips Square Garage, located at 110 Queen Street West, at Toronto City Hall (“City Hall Parking Garage”);
- b. the driver entered the City Hall Parking Garage at 4:47 p.m. on November 1, 1999;
- c. the driver left City Hall Parking Garage at 5:00 p.m. on November 1, 1999, using the Chestnut Street exit, which is the closest exit to the City Hall building; and
- d. the driver paid the \$1.50 parking fee in cash.¹⁵⁶

179. Domi entered the City Hall Parking Garage approximately two minutes after he spoke with Jakobek for the second time on November 1, 1999. Domi admitted that he would not have parked there unless he was going to see someone at City Hall that day.¹⁵⁷ Domi testified that it was “very likely” and that he “probably went to see” Jakobek on November 1, 1999.¹⁵⁸ He admitted that it was unlikely that he was going to see

¹⁵³ Domi 04/19/2004 at 248.

¹⁵⁴ COT025898, 89:1:22.

¹⁵⁵ Zamiara Affidavit, para. 4, 86:2:6.

¹⁵⁶ Zamiara Affidavit, paras. 6, 12-17, 86:1:6.

¹⁵⁷ Domi 04/20/2004 at 111.

¹⁵⁸ Domi 04/20/2004 at 112-113.

Andrew, Viinamae, or anyone at the CMO, because all of them worked at Metro Hall.¹⁵⁹ He admitted that it was very unlikely that he was going to see Liczyk.¹⁶⁰

180. Domi left the City Hall Parking Garage 13 minutes after he arrived. Domi agreed that:

- a. one could not have a meeting with anyone in 13 minutes;
- b. one could not have a meal; but
- c. one could pick something up or drop something off.¹⁶¹

181. Jakobek testified that he could not recall if he was at City Hall at that time, but he had no witnesses that could place him anywhere else.¹⁶²

¹⁵⁹ Domi 4/20/2004 at 111.

¹⁶⁰ Domi 4/20/2004 at 112.

¹⁶¹ Domi 04/20/2004 at 113-114.

¹⁶² Domi 04/19/2003 at 250.

7. The Domi family's explanation

a) Family background

182. Domi has an older brother Tahir "Tie" Domi and a sister. Domi's father passed away approximately 14 years ago.

183. Since both brothers figure prominently in this part of the chapter, Dash Domi will be referred to as Dash and Tie Domi will be referred to as Tie.

184. In 1999, Dash lived with his mother and his sister.

b) Dash Domi

185. Dash swore an affidavit on December 15, 2003, in which he explained that he gave the \$25,000 he withdrew from his bank account on November 1, 1999 to Tie to repay past loans from Tie:

19. The first cash withdrawal described in Appendix "A" occurred on November 1, 1999. That withdrawal was in the amount of \$25,000.00. I made this cash withdrawal shortly after I received one of my first significant commission payments from MFP.

20. I recall making this withdrawal. I made the withdrawal on November 1, 1999. November 1 is the birthday of my brother, Tie Domi.

21. Tie Domi had provided me with financial assistance many times. In my estimation, my brother provided me with at least \$40,000 in financial assistance between 1993 and 1996. I felt and continue to feel deeply indebted to my brother for his financial assistance. My brother's financial aid assisted me while I was trying to make a success of my fitness club. The assistance was in the nature of a transaction between family members. It was not formally described as a loan and there were no documents regarding his assistance to me. Nonetheless, I considered my brother's assistance to be a debt that I would repay when I was able.

22. Prior to November of 1999 my income levels had never permitted me to pay back my brother for any of his generosity. However, as of November 1, 1999 I was in receipt of a significant commission payment from MFP. Accordingly, I

decided to withdraw \$25,000.00 from my personal bank account and to give that money to my brother on his birthday. This is, in fact, precisely what occurred.

44. None of the cash transactions recorded in Appendix "A" was paid to or for the benefit of or provided to or for the benefit of any staff person or employee of the City of Toronto or any City of Toronto Councillor. For the purpose of clarity, and without limiting the foregoing, I have never provided any employee or councillor for the City of Toronto with a financial inducement.

45. I make the foregoing statement because I understand that the Commission has requested that I make such a stipulation. I have co-operated with the Commission and continue to co-operate with the Commission in the course of this Inquiry. However, I resent and take great personal offence to any suggestion that I may have provided any financial payments to any City of Toronto employee or Councillors.¹⁶³

186. Dash testified that he could remember few details of the loans from Tie. For example, he could not remember:

- a. how many times Tie loaned him money. It was more than twice, but it could equally have been four times or twenty times;¹⁶⁴
- b. what was the most amount of money his brother ever loaned him at one time, except that it was never more than \$10,000;¹⁶⁵
- c. what he did with the money except to say he paid bills, and bought things;¹⁶⁶ and
- d. that he always felt if he made money he would repay his brother.¹⁶⁷

187. Dash testified that he could remember few details of repaying the loan to his brother on November 1, 1999. For example, Dash:

- a. had little more than a vague memory of giving his brother \$25,000 on his birthday, November 1, 1999, at Domi's home;¹⁶⁸

¹⁶³ Domi Affidavit, paras. 19-22, 44-45, 04/19/2004 at 195-186, 194.

¹⁶⁴ Domi 04/20/2004 at 85-86.

¹⁶⁵ Domi 04/19/2004 at 87.

- b. could not recall if there was a birthday party for Tie Domi or not;¹⁶⁹
- c. could not recall if there was dinner or not;¹⁷⁰
- d. had no specific memory of how he gave his brother the birthday card with twenty-five \$1000 bills inside;¹⁷¹
- e. was certain he did not give the card to Tie in front of any other members of his family and that no one saw him give the card to his brother;¹⁷²
- f. could not recall his brother's reaction to receiving the card;¹⁷³ and
- g. could not recall what his brother did with the card, but recalled that his brother did not open the card;¹⁷⁴

c) Tie did not confirm key elements of Dash's story

188. Tie swore an affidavit dated January 15, 2004, which stated:

3. On or about November 1, 1999, I received an amount of money from my brother which was given to me because of the past financial assistance I have given Dash over the years. November 1 is my birthday, as stated in Dash's affidavit. I do not recall the precise amount money given to me, but I can confirm that it was around \$25,000.00 as stated in Dash's affidavit. This money was expended on personal matters.

4. As this was a personal transaction with my brother there was no written documentation. Nor was there such documentation in respect of the past financial assistance I gave to Dash.

¹⁶⁶ Domi 04/20/2004 at 88.

¹⁶⁷ Domi 04/19/2004 at 254.

¹⁶⁸ Domi 04/19/2004 at 233, 258

¹⁶⁹ Domi 04/19/2004 at 255.

¹⁷⁰ Domi 04/20/2004 at 117.

¹⁷¹ Domi 04/19/2004 at 264.

¹⁷² Domi 04/19/2004 at 265.

¹⁷³ Domi 04/19/2004 at 266-268.

¹⁷⁴ Domi 04/19/2004 at 268.

5. The financial assistance I gave Dash was never intended to be a formal loan. It was one brother helping out another brother because I was in a position to do so. The understanding was that Dash didn't have to repay it unless he was in a position to do so.¹⁷⁵

189. Tie did not corroborate key elements of Dash's evidence. Tie testified that:

- a. the money contained in the envelope from his brother was not all \$1000 bills;¹⁷⁶ and
- b. he could not say with certainty whether or not there was \$21,000, \$22,000 or \$25,000 in the envelope he received from his brother; he could only say it was in the "twenties".¹⁷⁷

190. The essence of Dash's story is that he gave all twenty-five of the \$1000 bills to his brother and that he gave his brother nothing but \$1000 bills. Tie did not corroborate his brother on this crucial point.

191. Tie testified that there was no documentation of any of the loan transactions because it was "all personal. It wasn't anything to do with business."¹⁷⁸

192. Tie explained how his brother gave him over \$20,000 as follows:

Q: Where did Dash give you the money, perhaps is the better question?

A: At his house. At my mother's house. I was lying down on the front living room and --

Q: I'm sorry, I didn't hear that last one?

A: I was lying on the couch --

Q: All right.

¹⁷⁵ Tie Domi Affidavit, paras. 3-5, 08/31/2004 at 8-9.

¹⁷⁶ Tie Domi 08/31/2004 at 18-19.

¹⁷⁷ Tie Domi 08/31/2004 at 18.

¹⁷⁸ Tie Domi 08/31/2004 at 41.

A: -- in the living room at the front of the house and my sister and my mother gave me cards already that were on the coffee table where I was lying down, which I usually do when I'm at my mom's house.

And my brother walked in with a -- kind of a smirk on his face and he handed me a little thicker envelope than -- than normal and I just took it. And he said "Happy birthday" and I put it next to my mother and my sister's cards and I lied down and went back to sleep, tried to.¹⁷⁹

193. Tie admitted that no one saw:

- a. Dash give him the envelope;¹⁸⁰
- b. Tie open the envelope when he got home;¹⁸¹ or
- c. Tie put the money in his safe with all his other money after he opened the envelope.

194. Tie's affidavit stated simply that "he spent the money on personal things." When he testified, Tie for the first time explained that he spent the thousand dollar bills, *inter alia*, at Pusateri's grocery store and at Royal de Versailles Jewellers.¹⁸² He stated that when he purchased jewellery at Royal de Versailles he probably paid for some in cash and put some on a credit card.¹⁸³

195. Tie admitted that he had not produced a single document to verify his story including purchase receipts and bank documents.¹⁸⁴

196. Representatives of Royal de Versailles provided an affidavit to the Commission which stated that Royal de Versailles did accept \$1000 bills from customers that were known to them or where the bills were authenticated prior to the release of the purchased goods from the store. The representative of Royal de Versailles stated that

¹⁷⁹ Tie Domi 08/31/2004 at 48-49.

¹⁸⁰ Tie Domi 08/31/2004 at 51.

¹⁸¹ Tie Domi 08/31/2004 at 53

¹⁸² Tie Domi 08/31/2004 at 65-68.

¹⁸³ Tie Domi 08/31/2004 at 72.

¹⁸⁴ Tie Domi 08/31/2004 at 83-86.

she recalled Tie making some payments using \$1000 bills and that, since the representative knew Tie, payment using the bills was approved.

197. Royal de Versailles also produced some records relating to appraisals provided to Tie for jewellery purchased by him. The records establish that Tie purchased goods from Royal de Versailles in May 2000, June 2001, December 2001 and January 2002.¹⁸⁵ The documents do not establish whether or not Tie purchased any goods prior to May 2000 or if he used \$1000 bills for any of the purchases. Pusateri's confirmed that they accepted \$1000 bills in 1999, but provided no evidence that Tie ever used a \$1000 bill at Pusateri's.¹⁸⁶

d) Conclusion regarding the Domi brothers' evidence

198. The Commissioner should conclude that Dash did not give Tie \$25,000 in \$1000 bills on November 1, 1999. It is likely that Tie loaned his brother money over time and that Dash repaid some of that money to Tie after January 1, 1999. However, the City submits that Dash did not give the \$25,000 he withdrew from the bank on November 1, 1999 to Tie. Instead, Dash gave that money to Jakobek.

199. Tie contradicted his brother's account in two important respects. Tie stated that:

- a. that the money contained in the envelope from his brother was not all \$1000 bills;¹⁸⁷ and
- b. he could not say with certainty whether or not there was \$21,000, \$22,000 or \$25,000 in the envelope he received from his brother, he could only say it was in the "twenties".¹⁸⁸

¹⁸⁵ Supplementary Shay Affidavit, 86:2:21.

¹⁸⁶ Affidavit of John Mastroianni, 86:2:22.

¹⁸⁷ Tie Domi 08/31/2004 at 18-19.

¹⁸⁸ Tie Domi 08/31/2004 at 18.

200. Dash never suggested that there could be bills in denominations other than \$1000 bills. The fact that there were other bills in the envelope strongly suggests that Tie is recalling an occasion other than November 1, 1999. While Tie repeatedly insisted that he received the bills on “November 1”, he never insisted that he received the bills in 1999. It is possible that Tie remembered getting an envelope containing money on his birthday, November 1, but that this did not occur in 1999.

201. Dash’s evidence regarding the payment to his brother was not credible and there were a number of inconsistencies between his testimony in April 2004 and other evidence.

202. In September 2003, Dash could not recall where he gave Tie the money. Dash stated “Maybe at my house or his. Ron, I don’t recall. Come on.” Dash’s December 2003 affidavit did not refer to where he gave Tie the money. By the time of his April 2004 testimony, Dash was certain that he was at his own house when he gave Tie the money.¹⁸⁹ Dash explained that his memory became clearer after he talked to Commission Counsel in September 2003.¹⁹⁰ This is not credible and suggests that Dash was fabricating this element of his evidence.

203. Dash testified that Tie’s wife was at his house on November 1, 1999.¹⁹¹ Tie testified that he was temporarily separated from his wife in November 1999 and that she was not at the gathering.¹⁹²

204. Dash’s affidavit stated that “Prior to November of 1999 my income levels had never permitted me to pay back my brother for any of his generosity.”¹⁹³ In fact, nine months earlier, on January 31, 1999, MFP deposited \$57,457 into Dash’s bank account on account of commission payments. Dash admitted that he did not repay any of his

¹⁸⁹ Domi 04/19/2004 at 258-259.

¹⁹⁰ Domi 04/24/2004 at 125-126.

¹⁹¹ Domi 04/19/2004 at 260; Domi 04/20/2004 at 121-122.

¹⁹² Tie Domi 08/31/2004 at 49-50.

¹⁹³ Domi Affidavit, para. 22, 04/19/2004 at 186.

brother's assistance in January 1999. Instead, he used the money for personal purposes, including "things I wanted to buy".¹⁹⁴

205. Although Dash insisted that if he made money he always intended to repay his brother, he also acknowledged that he never made any other payments to Tie despite earning over \$1.2 million in commissions and owing Tie at least another \$15,000.¹⁹⁵

206. The Domi brothers have provided an alibi that can neither be independently proven nor disproven:

- a. Tie loaned Dash some money over the years, but it was never in writing and there are no documents to corroborate their stories;
- b. no one else saw Dash give the money to Tie;
- c. no one saw Tie open the card or put the money in the safe;
- d. Tie did not count the money and he immediately mixed it with other funds in his safe; and
- e. Tie cannot say when or where he spent the money Dash gave to him.

207. The best explanation for the Domi brothers' evidence was provided by Dash on January 22, 2003, when he said:

- a. "if you knew our family, we are very loyal people";¹⁹⁶
- b. "if you have no loyalty, you've got nothing";¹⁹⁷ and
- c. "loyalty is the foundation of every strong relationship".¹⁹⁸

¹⁹⁴ Domi 04/20/2004 at 94-95.

¹⁹⁵ Domi 04/20/2004 at 95-98.

208. Tie agreed with these statements.¹⁹⁹ He readily acknowledged that loyalty to family is almost everything, although he also stated that would not lie for his brother on the stand.²⁰⁰

¹⁹⁶ Domi 01/22/2003 at 27-28

¹⁹⁷ Domi 01/22/2003 at 47-48

¹⁹⁸ Domi 01/22/2003 at 47-48.

¹⁹⁹ Tie Domi 08/31/2004 at 143-144.

²⁰⁰ Tie Domi 08/31/2004 at 144-145.

8. Suspicious Jakobek family banking transactions, November 2 and 3, 1999

209. Jakobek's parents are named Thomas Z. Jakobek ("Tom Sr.") and Ursula Jakobek ("Ursula"). Tom Sr. and Ursula had three sons, born in the following order: Michael Jakobek; Joseph Charles Jakobek ("Joe"); and Thomas R. Jakobek (for the purposes of the balance of this chapter only "Tom").

210. Ursula's mother is named Maria Michie ("Michie").

a) Commission Counsel retained Grant Thornton to review bank accounts

211. Commission Counsel obtained a number of bank accounts held by Jakobek and various members of his family.

212. The Commission also retained Grant Thornton to review some bank accounts held by the Jakobek family. Grant Thornton reviewed the following:

- a. Copies of Branch/Financial History Inquiries, Bank Statements and available supporting documentation as related to the following bank accounts:

	Account Holder	Account No.	Time Period
1	Maria Michie and Ursula Jakobek	CIBC 12-47xxx	Sept. 17 to Dec. 3, 1999
2	Maria Michie and Ursula Jakobek	CIBC 79-17xxx	Sept. 29 to Nov. 30, 1999
3	Ursula and Tom Z Jakobek	Canada Trust 322-152xxx	Oct. 1 to Nov. 30, 1999
4	Maria Michie and	Canada Trust	Oct. 1 to Nov. 30,

	Ursula Jakobek	392-509xxx	1999
5	Ursula Jakobek	TD Bank 0250xxx	Oct. 1 to Nov. 30, 1999
6	Ursula Jakobek	TD 0285xxx	Oct. 1 to Nov. 30, 1999
7	Ken Morrish	Bank of Montreal 7201xxx	Jun 30 to Nov 30, 1999
8	Ken Morrish	National Bank of Canada 3851 10 02x xx	Sept 30 to Dec 1, 1999 Dec 16 to Dec 30, 1999 May 1 to May 30, 2000.
9	Ken Morrish	TD Investment account 944xxx	Sept 15, 1999 Oct 15, 1999 Dec 15, 1999 Jan 3, 2001
10	Kelmor Limited	National Bank of Canada 0085xxx	Aug 1, 2001 to Aug 31, 2001.
11	Thomas Jakobek	Bank of Nova Scotia 8860x-xx	Oct. 1, 1999 to De. 29, 2000.

- b. Statement of Account for Thomas R. Jakobek for Bank of Nova Scotia Line of Credit account no. 4538 006 xxx xxx for the period August 16, 1999 to August 28, 2000;
- c. Statements of Account for Thomas R. Jakobek for American Express account no. 3735 065804 xxxxx for the period ended February 17, 1999 and April 13, 1999 and for the periods dated from August 16 to December 13, 1999;

- d. RRSP transaction information for T.R. Jakobek for the period December 31, 1998 to December 22, 2000;
- e. Documents and information produced to date from the TCLI, as related to the financial transactions potentially involving Tom Jakobek;
- f. The Affidavit of Rick Neals, Director of Security, Amex Canada Inc dated June 25, 2004; and
- g. The Affidavits of Tom Jakobek dated October 15, 2003 and December 2, 2003.

b) Tom Jakobek deposited \$3400 on November 2, 1999

213. On November 2, 1999, Tom deposited \$3,400 to his Bank of Nova Scotia account.²⁰¹ The deposit slip for the transaction did not indicate that any cheques were deposited to the account.²⁰² Where Tom deposited cheques into his account, the bank records produced to the Commission included copies of the cheques that were deposited.²⁰³

214. The City submits that it is more likely than not that Tom deposited \$3,400 in cash to his account on November 2, 1999.

215. According to Tom, whenever he deposited cash into his account, his father-in-law Ken Morrish had given it to him.²⁰⁴

c) Ursula and Michie banking transactions on November 2, 1999

²⁰¹ COT084117 at COT084118, 106:3:6.

²⁰² COT084117 at COT084118, 106:3:6.

²⁰³ See, e.g., COT084117 at COT084120-84121, 106:3:6.

²⁰⁴ Tom Jakobek 09/09/2004 at 261-262.

216. On November 2, 1999, one day after Domi withdrew \$25,000 in cash, Ursula executed a complicated series of banking transactions. These transactions described below, involved \$3000 in hundred dollar bills, four bank accounts, and three certified cheques made payable to American Express. These transactions were a deliberate attempt to mask the source of the funds being deposited to Jakobek's American Express account. Domi was the original source of the money.

217. Several of these transactions involved accounts on which both Ursula and Michie had signing privileges. Ursula and Michie were co-signatories on five accounts located at CIBC,²⁰⁵ Canada Trust, and the Bank of Nova Scotia. Although they were co-signatories, all five accounts were Michie's and all of the money in the accounts was Michie's.²⁰⁶

j) CIBC Account 79-17xxx

218. On November 2, 1999, Ursula deposited \$1000 cash in \$100 bills to Michie's CIBC Account 79-17xxx, which was located at the corner of Danforth and Coxwell.²⁰⁷

219. Ursula then immediately transferred \$5200 from that account to another of Michie's CIBC accounts, Account 12-47xxx, which was also located at the corner of Danforth and Coxwell.

220. On November 15, 1999, Ursula deposited \$4200 in \$100 bills into this account.²⁰⁸

221. This deposit brought the balance back to where it was before the November 2, 1999 transactions.

²⁰⁵ COT084231, 106:1:22.

²⁰⁶ Ursula Jakobek 09/20/2004 at 26; Ursula Jakobek 09/24/2004 at 40-42.

²⁰⁷ COT084243 at COT084251, 106:3:23.

²⁰⁸ COT084243 at COT084253, 106:3:23.

ii) CIBC Account 12-47xxx

222. On October 31, 1999, the bank balance in Michie's CIBC Account 12-47xxx was \$2599.39.²⁰⁹ On November 2, 1999, Ursula:

- a. transferred \$5200 into this account from another Michie Account, 79-17xxx (see above); and
- b. certified a \$3700 cheque, which was signed by Michie, dated November 2, 1999, and payable to American Express, on this account.²¹⁰

223. This left an account balance of \$3729.39 at the end of the day.

iii) Canada Trust account 392-0509xxx

224. On October 31, 1999, the bank balance of Michie's Canada Trust Account 392-509xxx was \$4,878.23. On November 2, 1999, Ursula:

- a. deposited \$1000 in hundred dollar bills into this account;²¹¹
- b. transferred \$1600 into this account from another Canada Trust Account, 322-152xxx, which was held by Ursula and her husband Tom Sr.;²¹² and
- c. certified a \$7300 cheque, which was dated November 2, 1999, signed by Ursula and payable to American Express.²¹³

225. On November 24, 1999, Ursula deposited \$3,000 in cash to this account, including twenty-two \$100 bills.²¹⁴

²⁰⁹ 106:1 at 7.

²¹⁰ COT084231 at COT084237-84238, 106:3:22.

²¹¹ COT084555 at COT084259-84261, 106:3:24.

²¹² COT084555 at COT084262-84263, 106:3:24.

²¹³ COT084255 at COT084264-84267, 106:3:24.

²¹⁴ COT084255 at COT084268 -84269, 106:3:24.

iv) Canada Trust/TD account 1664-0285xxx

226. On November 1, 1999, the bank balance in Ursula's TD bank Account 0285xxx was \$4208.57.²¹⁵ On November 2, 1999, Ursula:

- a. deposited \$1000 in hundred dollar bills into her Canada Trust/TD Account 1664-0285xxx.²¹⁶
- b. wrote and certified a \$4000 cheque payable to American Express, dated November 2, 1999.²¹⁷

227. On November 4, 1999 Ursula deposited \$2,100 in cash into this account, including fifteen \$100 bills.²¹⁸

d) \$21,000 Payment to Jakobek's American Express Account on November 3, 1999

228. On November 3, 1999, in four separate transactions, payments totalling \$21,000 were made to Jakobek's American Express account as follows:

- a. Transaction 39,037 - \$4000 payment by cheque;
- b. Transaction 39-038 - \$3,700 payment by cheque;
- c. Transaction 39-039 - \$7,300 payment by cheque; and
- d. Transaction 39-040 - \$6,000 payment by cash.²¹⁹

²¹⁵106:1 at 9.

²¹⁶COT084270 at COT084289 106:3:25.

²¹⁷COT084270 at COT084290-84291, 106:3:25.

²¹⁸COT084270 at COT084293, 106:3:25; 106:1 at 9.

²¹⁹Tab 2 to Neals Affidavit, COT084321 at COT084324, 86:1:13.

229. The payments were made at the Amex Travel Office located in the Royal York Hotel between 11:46 and 11:48 a.m.²²⁰ The payments do not appear to have been made in \$1000 bills.²²¹ The payment records do not disclose who made the payments.

²²⁰ Schedule A to Neals Affidavit, COT084321, 86:1:13.

²²¹ Tab 4 to Neals Affidavit, COT084321 at COT084327, 86:1:13.

9. The Jakobek family's explanation

a) *Jakobek family background*

230. Tom Sr. was born in 1921.²²² Ursula was born in 1933.²²³ Tom Sr. and Ursula moved separately to Toronto in 1952.²²⁴ They met in 1953 and were married that same year.²²⁵

231. Ursula worked as a house cleaner before operating a dry cleaning business with her husband from 1953 to 1958.²²⁶ From 1958 to 1983 Ursula ran an unlicensed daycare out of her home.²²⁷ From 1984 to 1999 Ursula worked at the Financial Post and later the National Post. She worked in the circulation department depositing money in the bank from credit cards, cash, and cheques.²²⁸

232. From 1952 to 1962, Tom Sr. worked at the St. Regis Hotel successively as a bellhop, then a waiter and desk clerk, then auditing receipts for rooms and the restaurant.²²⁹ After leaving the hotel, Tom Sr. worked for Singer Sewing Machines as a salesperson from 1962 to 1972.²³⁰ In 1972, Tom Sr. opened his own sewing machine business on the Danforth.²³¹ From 1974 to 1989 Tom Sr. joined the commissionaires and worked at the University of Toronto running the porter's lodge in a women's residence.²³²

233. Tom Sr. and Ursula had three sons, born in the following order: Michael Jakobek; Joseph Charles Jakobek ("Joe"); and Thomas R. Jakobek ("Tom").

²²² Thomas Z. Jakobek 09/20/2004 at 17.

²²³ Ursula Jakobek 09/20/2004 at 3.

²²⁴ Thomas Z. Jakobek 09/20/2004 at 17-18.

²²⁵ Thomas Z. Jakobek 09/20/2004 at 23; Ursula Jakobek 09/20/2004 at 4; Ursula Jakobek 09/24/2004 at 134-135.

²²⁶ Thomas Z. Jakobek 09/20/2004 at 21, 23.

²²⁷ Ursula Jakobek 09/20/2004 at 6-7.

²²⁸ Ursula Jakobek 09/20/2004 at 8-9.

²²⁹ Thomas Z. Jakobek 09/20/2004 at 17-18.

²³⁰ Thomas Z. Jakobek 09/20/2004 at 19-20.

²³¹ Thomas Z. Jakobek 09/20/2004 at 20.

²³² Thomas Z. Jakobek 09/20/2004 at 22-23.

i) Income and bank accounts

234. Tom Sr. and Ursula lived modestly. Their income tax notices of assessment for the years 1998, 1999 and 2000 reveal their total incomes to be:

- a. Thomas Z. Jakobek: \$17,677 (1998); \$20,052 (1999); and \$18,349 (2000).²³³
- b. Ursula: \$37,684 (1998); \$36,913 (1999); and \$22,295 (2000).²³⁴

235. Despite their limited incomes, Tom Sr. and Ursula maintained a complex web of personal bank accounts at the Toronto Dominion Bank,²³⁵ the Royal Bank,²³⁶ Canada Trust,²³⁷ the Scotia Mortgage Corporation,²³⁸ CIBC²³⁹ and the Polish Parishes Credit Union.²⁴⁰ These accounts were located at branches scattered all over the City: from the Beaches, to the Annex, to Yonge and Eglinton.

236. Michie also lived modestly. From 1991 until recently, Michie lived in subsidized senior's housing on Coatsworth Avenue. In her 1990 application for subsidized housing, Michie certified that she had a total monthly income of only \$1603.18 (\$1078 after cost of accommodation) and held only \$91,000 in assets: \$1000 in a bank account; and a \$90,000 outstanding mortgage. In 1999 her total income was \$15,033, which included investment income of \$3,500 for Canada Trust certificate 392-2307xxx.²⁴¹ In 1999, she had \$883.87 in total in her various bank accounts.

²³³ 98:6:1; 98:6:2; 98:6:3.

²³⁴ 98:6:10; 98:6:9; 98:6:8.

²³⁵ 98:3:29; 38:3:32.

²³⁶ 98:3:30.

²³⁷ 98:3:31.

²³⁸ 98:3:39, 98:3:42.

²³⁹ 106:3:23.

²⁴⁰ 98:3:33.

²⁴¹ 98:2:48.

237. Michie held five bank accounts at CIBC,²⁴² Canada Trust, and the Bank of Nova Scotia. Although Ursula was a co-signatory, all five accounts were Michie's and all of the money in the accounts was Michie's.²⁴³

238. Ursula testified that her mother kept both chequing and savings accounts because she thought that she would get more interest from a savings account.²⁴⁴

239. Ursula testified that in 1999 she did all of the banking for her mother, but never did anything with the accounts unless her mother asked her to do so.²⁴⁵ Ursula testified that Michie never signed blank cheques for her, never post-dated cheques, and always told her what amount to write on the cheque and to whom to make the cheque payable.²⁴⁶

240. Ursula also testified that if she deposited cash or transferred money into a joint account, the money came from Michie and was deposited or transferred only on Michie's instructions.²⁴⁷ According to Ursula, although she never saw or counted the money, she knew that Michie kept cash in a shopping bag over the hook on her bedroom door and in other places in her house.²⁴⁸

241. Ursula said that she did not tell her mother how to handle her money affairs.²⁴⁹

b) Tom Jakobek's affidavits: the payment came from Ken Morrish

242. In response to requests from Commission Counsel, Tom swore two affidavits regarding the payments to his American Express Card.

²⁴² 106:3:22.

²⁴³ Ursula Jakobek 09/20/2004 at 26; Ursula Jakobek 09/24/2004 at 40-42.

²⁴⁴ Ursula Jakobek 09/24/2004 at 31.

²⁴⁵ Ursula Jakobek 09/24/2004 at 31-37; Ursula Jakobek 09/20/2004 at 50.

²⁴⁶ Ursula Jakobek 09/24/2004 at 33-34.

²⁴⁷ Ursula Jakobek 09/24/2004 at 40-42.

²⁴⁸ Ursula Jakobek 09/24/2004 at 43-44.

²⁴⁹ Ursula Jakobek 09/24/2004 at 60, 87.

243. Tom's first affidavit, sworn October 15, 2003 ("Tom's first affidavit") stated:

1. THAT I have been asked about four deposits totaling 21,000 dollars to my American Express card account on November 3, 1999.
2. THAT as far as I recall these funds were sourced from my father-in-law and deposited in anticipation of our upcoming family trip to Disneyworld. We were simply prepaying our imminent trip.
3. THAT my father-in-law has been a generous source of funds throughout the years, in relation to the purchase of our splendid home, our automobiles, as well as the payment of some of our credit cards and other expenses in full each month, and not pay merely a minimum amount required.²⁵⁰

244. Tom's second affidavit, dated December 2, 2003 ("Tom's second affidavit") stated:

THAT I have been asked about four deposits totaling 21,000 dollars made to my American Express card account on November 3, 1999.

THAT as far as I recall these funds were sourced from my father-in-law, by his usual means of support which is either cash, bank drafts or cheque and deposited in anticipation of our upcoming family trip to Disneyworld. We were simply prepaying our imminent trip. I am not privy to the exact source of these funds to my father-in-law and can only speculate. He had various sources of such income.

THAT my father-in-law has been a generous source of funds throughout the years, in relation to the purchase of our splendid home, our automobiles, as well as the payment of some of our credit cards and other expenses in full each month, and not pay merely a minimum amount required.

THAT I do not recall details of the payments. I usually made payments at the bank at Queen and Bay or at the American Express Office at the Royal York Hotel. I cannot really recall who made each payment or how. [emphasis added]

THAT I inquired of American Express for copies of any records of those payments and was told it was impossible.²⁵¹

245. Although Tom subsequently testified that these affidavits were correct, in fact, both of these affidavits were false.

²⁵⁰ 86:1:1.

²⁵¹ 86:1:2.

c) Bank records prove payment came from accounts of Ursula and Michie

246. In late April 2004, Commission Counsel learned that the source of the \$21,000 payments to Tom's American Express bill was:

- a. a \$4,000 certified cheque from Ursula payable to American Express;
- b. \$11,000 in certified cheques from Maria Michie payable to American Express; and
- c. \$6,000 in cash.

247. Tom testified that until he saw the Grant Thornton report in late August, he had no idea that \$15,000 of the payments had come through the accounts of his mother and grandmother.²⁵²

248. Tom testified that he still believed the \$6,000 in cash came from his father-in-law, Ken Morrish.²⁵³ There are no documents that support Tom's contention, including the bank records of Morrish that were produced under summons.²⁵⁴ The Ken Morrish bank records that were reviewed by Grant Thornton disclosed no disbursements during the period of October 1 to November 16, 1999.

d) Tom Jakobek had little recollection of why his mother and grandmother gave him \$15,000 in cheques payable to American Express

249. Tom first stated that he had no recollection of the cheques, but having reviewed the cheques, he concluded that there was one from Ursula, one from Ursula and Tom

²⁵² Tom Jakobek 09/10/2004 at 98-99.

²⁵³ Tom Jakobek 09/08/2004 at 15.

²⁵⁴ 106:1 at 10.

Sr., and one from Ursula and Michie.²⁵⁵ The cheques revealed only that one was from Ursula and two were from Michie.²⁵⁶

250. Tom then stated that he did not “have any recollection other than a faint recollection” that one of the cheques might be his mother paying for her part of the trip to Disneyworld.²⁵⁷

And I can't even tell you that that's the trip. I would be great if I could say, you know, that cheque there that's for four thousand dollars (\$4,000) or that cheque that's for thirty-seven hundred (3700) whatever, that's her portion of the trip. I can't tell you that today.

251. In addition to the \$6,000 cash from Ken Morrish, Tom testified that “there was also money from my parents, which I did not recall and – so that part may be incorrect.”²⁵⁸

252. Tom testified that he “just didn't recall” that his parents had given him this money. He added that even when he saw the cheques:

- a. the light did not go off and he did not actually remember that he got the money from his mother and grandmother;²⁵⁹
- b. he did not wonder where his grandmother, who lived in subsidized housing, got the money for the \$11,000 in cheques she wrote that day;²⁶⁰
- c. he was not surprised that his grandmother had written \$11,000 in cheques payable to American Express,²⁶¹ and

²⁵⁵ Tom Jakobek 09/08/2004 at 14.

²⁵⁶ 106:1 at 7; 106:4.

²⁵⁷ Tom Jakobek 09/08/2004 at 15-16.

²⁵⁸ Tom Jakobek 09/08/2004 at 54.

²⁵⁹ Tom Jakobek 09/08/2004 at 80.

²⁶⁰ Jakobek 09/08/2004 at 123-124.

²⁶¹ Jakobek 09/08/2004 at 132.

- d. to this day he had absolutely no idea why his grandmother may have written those cheques.²⁶²

253. Tom maintained that his parents “don’t give me money, per se” and that “they were simply repaying me money for things I had done or things that they had received or whatever”.²⁶³ He admitted that he did not need the money from his parents, to pay for his trip to Disneyworld or anything else.²⁶⁴

i) Ursula’s explanation of why she and Michie wrote \$15,000 in cheques payable to American Express

254. Ursula testified that she was going on the November 1999 trip to Disney World and that she wanted to “contribute some” to the cost of the trip. Ursula explained this to Michie and Michie decided that she too wanted to “contribute some to the [great]-grandchildren” by paying part of the cost of the trip.²⁶⁵

255. Ursula agreed that:

- a. neither she nor Michie had never paid for any other trips to Disney World or any other big trips like that;²⁶⁶
- b. Michie had never done anything like this before for the great-grandchildren;²⁶⁷
- c. this was a very special event and Michie was contributing a very generous amount of money;²⁶⁸

²⁶² Jakobek 09/08/2004 at 136-137.

²⁶³ Tom Jakobek 09/08/2004 at 59-60, 174-75, Tom Jakobek 09/09/2004 at 263-264

²⁶⁴ Tom Jakobek 09/08/2004 at 74, 176, 179.

²⁶⁵ Ursula Jakobek 09/24/2004 at 50.

²⁶⁶ Ursula Jakobek 09/24/2004 at 70.

²⁶⁷ Ursula Jakobek 09/24/2004 at 51.

²⁶⁸ Ursula Jakobek 09/24/2004 at 52.

- d. she told Tom that she and Michie were making a contribution to the cost of the trip, probably over the phone;²⁶⁹
- e. she could not recall what Tom's reaction was when she told him that she and Michie were contributing \$15,000 towards the Disney World trip, but he was appropriately thankful;²⁷⁰
- f. she wanted to let the great-grandchildren know that Michie was doing something very special;
- g. neither she nor her mother knew how much the trip to Disney World would cost and Michie simply picked the number \$11,000 as her contribution;²⁷¹ and
- h. she did not know if Tom still had an American Express Card, much less whether or not he used his American Express card, to pay for the trip when she certified \$15,000 in cheques payable to American Express.²⁷²

256. The City submits that Ursula's explanation of the reasons for the payments should be rejected. Her evidence does not make sense. It is not reasonable. Specifically:

- a. it is extremely unlikely that an elderly woman living in subsidized housing with an annual income of \$15,033 would contribute \$11,000 to pay for her wealthy great-grandchildren to go on a trip to Florida;
- b. the timing of the payments is inexplicable with reference to the trip; Ursula knew that the trip had been booked many months earlier, there was nothing to trigger the payments on November 3, 1999;

²⁶⁹ Ursula Jakobek 09/24/2004 at 53, 75.

²⁷⁰ Ursula Jakobek 09/24/2004 at 74, 82.

²⁷¹ Ursula Jakobek 09/24/2004 at 62.

²⁷² Ursula Jakobek 09/24/2004 at 65-66

- c. the amount of the payment is entirely unexplained – neither of them knew how much the trip cost in total or per person; and
- d. it is extremely improbable that they would have made out \$15,000 in certified cheques payable to American Express when neither of them knew that Tom still had an American Express card, much less used it to pay for the trip.

257. By his own account Tom has a ‘phenomenal memory.’ It was often on display. Yet he testified that he had “only a faint recollection” that his mother was paying for part of her trip and he had no idea why his grandmother had written the \$11,000 in cheques. If Michie wrote the cheques, Ursula would have ensured that Tom knew and thanked his grandmother. It was an extraordinarily generous gift. Not only was it 2.5 times larger than the \$6,000 supposedly given by Ken Morrish, it represented an infinitely greater sacrifice on Michie’s part. Tom remembered Ken Morrish’s contribution. There is no way he would have or could have forgotten a genuine gift of \$11,000 from his grandmother.

ii) Ursula’s explanation of the reason for the complicated transactions that led to the payments to American Express

258. Ursula could not explain why her mother used such a complicated series of transactions to pay for part of the trip.²⁷³ She did only what her mother told her to do: no more and no less.

259. Specifically, on November 2, 1999, Michie directed her to make the series of cash deposits and transfers to fund the two cheques to American Express:

Q: And you would have done the sixteen hundred dollar (\$1600) transfer?

A: Under my mother's instructions.

²⁷³ Ursula Jakobek 09/24/2004 at 83-84.

Q: Yes. So, she would have told you --

A: She would tell me what to do and I did it.

Q: Okay. So, if she told you transfer money in there -- did she tell you the amount?

A: She would have because why -- I wouldn't know how much to transfer.

Q: So, she tells you to transfer sixteen hundred (1,600) and transfer a thousand (1,000) -- I mean, deposit a thousand (1,000)?

A: Yes.

Q: How does she know what -- what numbers to tell you?

A: Well, in plain English, she -- she's not a stupid woman.²⁷⁴

260. However, Ursula's evidence was not true. In fact, Ursula transferred money from one of her own accounts to Michie's account to cover part of the \$7,300 cheque to American Express. Ursula had no explanation for why she did exactly what she said she never did: commingle funds with her mother.

Q: Okay. So she must have asked you to -- here's a thousand dollars (\$1,000), put it in that account?

A: Yes.

Q: And she also said, transfer sixteen hundred (1,600)?

A: Well, I wouldn't transfer unless she -- told me to.

Q: Okay. And so you went and you did all that at -- on her instructions?

A: Yes.

Q: Now, the sixteen hundred dollar (\$1,600) transfer, is this her own money that she's -- she's spending here?

A: I don't get you.

Q: Is she -- is she spending her own money or are you helping her with this --

A: Why should I help my mom?

²⁷⁴ Ursula Jakobek 09/24/2004 at 41.

Q: Well --

A: Sixteen hundred dollars (\$1,600) wasn't that a transfer?

Q: Yes, it is a transfer.

A: Yes.

Q: And that's why I'm a little confused because if we got to that account, Mrs. Jakobek, and -- and find out whose account that is, we can see by looking down here and I'll just highlight for you, that the account that the money came out of, at your grandmother's direction, was the account belonging to your and your husband.

Can you help us understand why that would be?

A: No, I don't --

Q: Okay.

A: -- I don't. Was it the same bank?

Q: It's the Canada Trust account in the name of you and your husband. And I'll just move back along and what we see, if I can just pull it up again -- is that, to use the laser pointer, we have the seventy three hundred dollar (\$7,300) cheque that you tell us she told you to write.

We have the thousand dollars (1,000) in cash that you tell us she told you to deposit. And we have the transfer that you tell us she told you to make. And what I'm saying to you is, can you help us with why she told you to transfer money out of your own account to cover that cheque?

A: No, I don't recall.²⁷⁵

261. Ursula's evidence was internally inconsistent. On the one hand she testified that she would only follow her mother's instructions with respect to her mother's accounts. However, the records clearly indicated that she commingled funds from her own account into her mother's account.

262. In addition, Ursula testified that she would not have certified a cheque unless Michie specifically instructed her to do so. Ursula said that her mother wanted the November 2, 1999 American Express cheque certified because in September she had

²⁷⁵ Ursula Jakobek 09/24/2004 at 47-49.

made a mistake about how much money was in her chequing account and bounced a cheque.²⁷⁶

263. The explanation is not plausible. It makes no sense to certify cheques payable to a grandson let alone payable to American Express, particularly without knowledge that Jakobek still owned an American Express card.

iii) Ursula's explanation of how she got the cheques to Tom

264. During her interview, Commission Counsel asked Ursula whether she gave the cheques to Tom at the same time or one at a time. Ursula replied that she did not think she gave them to Tom, instead she gave them to Ken Morrish.²⁷⁷ She explained that she actually remembered Ken Morrish dropping by the house and taking the cheques down to the bank because he too was going to pay some money for the trip.²⁷⁸ This was the only time Ken Morrish ever delivered cheques for Ursula or did any banking for her.²⁷⁹

265. Ursula's version of this story was very similar to that told by Jakobek's former Executive Assistant, Nadeau. During his interview with Commission Counsel, they asked him about paying bills. Nadeau volunteered that "if [Jakobek] had a bill to be paid elsewhere or – he would say, "You have to go and pay American Express" or something like that...". Nadeau stated that he had to pay Tom's American Express bill a couple of times. One time, Nadeau continued:

[w]as for a trip he went to on – to Florida. And his father-in-law actually gave me a ride down because he was paying for it. ...it just happened that he was at City Hall. So he said 'I'll give you a ride down', instead of me having to, you know, go to TTC and all that – so he gave me a ride to the Royal York on his way going down to Metro Hall....he was paying for [the trip]. He happened to be paying for it.²⁸⁰

²⁷⁶ Ursula Jakobek 09/24/2004 at 35.

²⁷⁷ Ursula Jakobek 9/20/2004 at 38.

266. According to Nadeau, Tom arranged the pick-up:

Tom said, "Go to the side and my father-in law will take you down to American Express." And that's how it happened.²⁸¹

267. These recollections do not have the ring of truth. They represent an after-the-fact and recent attempt to construct an alibi for Tom:

- a. to keep the cheques out of Tom's hands; and
 - b. to confirm at least part of Tom's affidavit explanation that the source of the funds for the trip was Ken Morrish.
- e) *No innocent explanation for transfers from parents to Jakobek***

268. In addition to the American Express payments (\$15,000) discussed above, between October 5, 1999, and November 3, 1999, Tom's parents transferred \$19,500 to Tom's benefit. Tom admitted that he could not think what it was he was doing for them at that time that would warrant that amount of money.²⁸² Tom maintained that his parents "don't give me money, per se" and that "they were simply repaying me money for things I had done or things that they had received or whatever."²⁸³

269. Tom also testified that he did not know if this month was representative of the amount of money his parents transferred to him to repay him for things he had done or purchased for them.²⁸⁴

²⁷⁸ Ursula Jakobek 9/20/2004 at 39.

²⁷⁹ Ursula Jakobek 9/24/2004 at 69-70.

²⁸⁰ Pierre Nadeau Interview 7/15/2004 at 20-21.

²⁸¹ Pierre Nadeau Interview 7/15/2004 at 20-21.

²⁸² Tom Jakobek 09/010/2004 at 94-95.

²⁸³ Tom Jakobek 09/08/2004 at 59-60, 174-75; Tom Jakobek 09/09/2004 at 263-264.

²⁸⁴ Tom Jakobek 9/10/2004 at 104.

270. Tom repeatedly testified that he never gave or loaned his parents any money.²⁸⁵
In fact as he stated:

I don't know what my father has or my mother has. I don't know how much they have. But I do know that they can afford to look after the things that I do for them. Otherwise I wouldn't do them.²⁸⁶

271. Tom's parents were transferring funds to Tom at an extremely high rate. Tom could not explain why his parents were transferring him so much money.

272. In addition, some of the transfers from Tom's parents looked extremely suspicious for intra-family transactions designed to repay Tom for things paid for or did for his parents:

- a. Tom Sr. gave Tom \$10,000. To do so, he used two accounts at different banks to write two cheques in the extremely unusual amounts of \$3,444 and \$6,556.²⁸⁷
- b. On October 5, 1999, Ursula transferred \$5,000 to Tom from Michie by way of anonymous bank draft instead of cheque.

i) Ursula remembered the debt Joe owed to Tom

273. Even if Tom could not recall any other reason he received money from his parents, Ursula, who testified after Tom, came up with a reason.

274. Ursula testified that Tom and Joe purchased 48 Glen Manor ("Glen Manor") together in 1983. She explained that when Glen Manor was sold and the proceeds of sale allocated between them, Joe owed approximately \$50,000 to Tom.²⁸⁸ Instead of

²⁸⁵ See, e.g., Tom Jakobek 09/08/2004 at 172; Tom Jakobek 09/09/2004 at 264-265.

²⁸⁶ Tom Jakobek 09/10/2004 at 91.

²⁸⁷ COT084109 at CPT084115-84116, 106:3:5.

²⁸⁸ Ursula Jakobek 09/24/2004 at 112-113.

giving Tom his share of the Glen Manor proceeds, Ursula testified, Joe used all of the proceeds to purchase 5A Norwood (“Norwood”).²⁸⁹ Joe was then indebted to Tom in the amount of approximately \$50,000.

275. Ursula’s version of events was not true. Joe purchased Glen Manor in 1983. He purchased Norwood in 1991, two years before he sold Glen Manor in 1993.²⁹⁰ He could not have used the proceeds from the Glen Manor sale to buy Norwood.²⁹¹

276. Nevertheless, Tom’s parents decided to retire Joe’s 1983 debt to Jakobek. However, Tom would not accept his parents’ money for “quite a few years”. Oddly, Joe began to “repay” his parents for their payments to Tom before his parents made any payments to Tom. Ursula and Tom Sr. then told Tom that he had to take their money because Joe was paying them back for money his parents had not yet paid. Tom agreed and his parents then repaid him the money he did not want at a rate faster than Joe was paying them:

My husband and I said, we would pay Tom back. But for quite a few years Tom wouldn't take the money back; he said, I don't need it.

But then Joe started to pay us money back for that loan, so I don't know if it was my husband or I, we said, Tom, you have to start taking the money now, because Joe is paying us the money back.

So, we started to pay Tom back. We paid Tom back a little faster than Joey paid us back but on the end it will all work out.

So, the cheque my husband or I made out to Tom, was from the loan what Joe didn't pay back to Tom.²⁹²

277. Ursula did not know very much about the debt or its repayment:

- a. she was unsure when Joe began to pay her and when she began to pay Tom;

²⁸⁹ Ursula Jakobek 09/24/2004 at 113-114.

²⁹⁰ 98:06:30.

- b. there was no regular schedule of payments;
- c. there was no regular amount that she and Tom Sr. paid Tom;
- d. she did not keep track of how much she and Tom Sr. had paid on the debt; and
- e. she did not know how much of the debt remained outstanding, but knew that it had not all been paid back yet.²⁹³

278. However, Tom knew when his parents were making payments for Joe's debt.

279. So, there were now three possible reasons for Tom's parents to be writing cheques to Tom in 1999:

- a. repayment for things Tom did for his parents;
- b. repayment for things Tom bought for his parents;²⁹⁴ and
- c. repayment of Joe's debt to Tom.

ii) Joe's version of the debt

280. Joe testified after his mother. Joe graduated from the University of Western Ontario with a B.A. in 1981. He served as a police officer and also worked for the Ontario Jockey Club and the Toronto Transit Commission ("TTC"). He completed his Masters of Business administration at the University of Toronto in 1995. He then completed a Bachelors Degree in Education ("B. Ed."), and commenced employment with the Peel District School Board in October 1996.

²⁹¹ Ursula Jakobek 09/24/2004 at 118-119.

²⁹² Ursula 9/29/2004 at 114-115.

²⁹³ Ursula Jakobek 09/24/2004 at 113-117.

²⁹⁴ Ursula Jakobek 09/24/2004 at 115.

281. Joe testified that he and Tom purchased Glen Manor together in 1983. Although Tom's name was not on title, they each had a half interest in the property.²⁹⁵

282. Ursula and Tom Sr. had given or loaned Joe and Tom \$10,000 each for the purchase.²⁹⁶ Joe said that the sale of Glen Manor generated approximately \$200,000 in proceeds, which the brothers agreed, after an adjustment for renovations Joe made to the property, yielded net proceeds of \$170,000. Joe testified that half of the net proceeds, \$85,000, rightly belonged to Tom. Joe also received \$85,000 in proceeds in his own right.

283. Joe, however, did not give Tom his share. He was not in "a position to" give him the money because:

- a. in the fall of 1993, he started the MBA program and was required to pay tuition of \$19,500 per year;
- b. he purchased a new \$14,000 car for his girlfriend; and
- c. he and his girlfriend were planning their wedding.²⁹⁷

284. On cross-examination, Joe admitted that the TTC reimbursed him for approximately 80% of his tuition fees. He received reimbursement as he completed each course in his degree.²⁹⁸ In addition, he continued to receive a salary from the TTC during his MBA.²⁹⁹

285. Joe testified that he told Tom that he could not pay him the \$85,000 and that Tom helped him out because he was sympathetic towards Joe and the financial situation he was in. Even on Joe's version of events, it was difficult to see the hardship in his financial situation.

²⁹⁵ Joseph Jakobek 09/29/2004 at 37.

²⁹⁶ Joseph Jakobek at 33-34.

²⁹⁷ Joseph Jakobek 09/29/2004 at 38-40.

286. Joe testified that he told his Parents that he owed Tom money sometime between May 1993 and the end of 1994.³⁰⁰ Joe testified that he told his parents this when he was doing his B. Ed., was unemployed, and had not yet secured a job as a teacher.³⁰¹ However, this version of events cannot be true as he did not even start his B. Ed. until 1995.³⁰²

287. Joe testified that his parents were unhappy about the outstanding debt and decided to pay Tom back. Joe was to pay his parents back at a slower rate. Joe testified that he did not discuss this arrangement with Tom.³⁰³

288. Ursula testified that the debt was \$50,000. Joe testified that he owed his brother \$85,000, but that Tom told his parents they only needed to pay back \$50,000. Joe also said that his parents had paid back more than \$50,000 because they did not accept Tom's forgiveness of the loan:

I believe between my parents and Tom that once he knew my parents were paying the loan back, I believe he said to them, look, just I'll be fine with fifty (50). Don't worry about the rest of it.

...

[B]ecause although there's fifty thousand (50,000) was agreed to between my parents and Tom, in essence, more than that has been paid back, because I believe my parents, although Tom agreed to the fifty thousand (50,000), I believe my parents still felt it was wrong. And as a result, were attempting to pay back all of it.³⁰⁴

289. According to Joe:

- a. Ursula thought Joe's debt to Tom was \$50,000 and not yet paid off;

²⁹⁸ Joseph Jakobek 09/29/2004 at 132-133.

²⁹⁹ Joseph Jakobek 09/29/2004 at 132.

³⁰⁰ Joseph Jakobek 09/29/2004 48-49

³⁰¹ Joseph Jakobek 09/29/2004 at 45, 49

³⁰² Joseph Jakobek 09/29/2004 at 13.

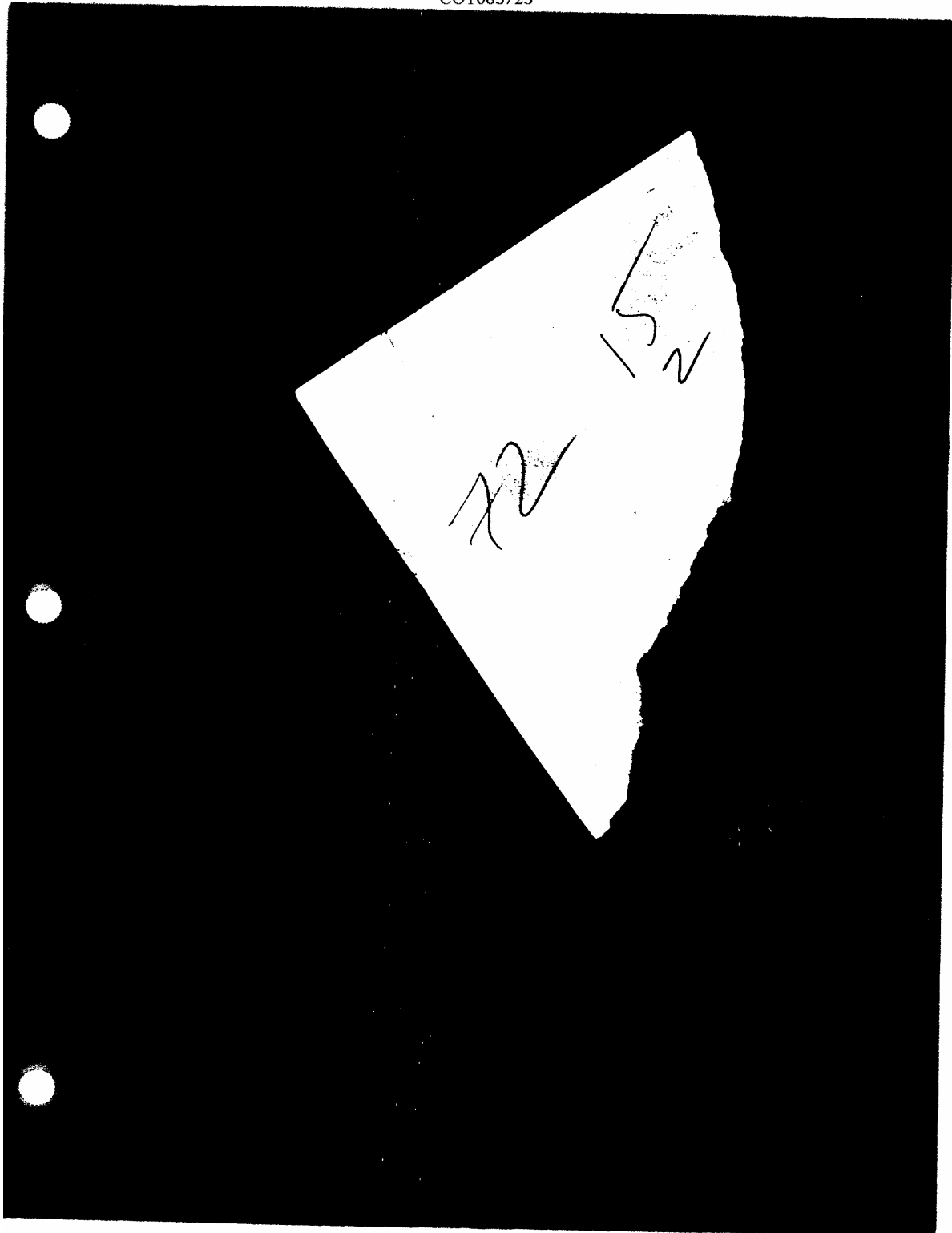
³⁰³ Joseph Jakobek 09/29/2004 at 51.

³⁰⁴ Joseph Jakobek 09/29/2004 at 53, 57.

- b. that was because Tom told his parents they need only pay him \$50,000; but
- c. his parents paid Tom \$22,000 more than that because Joe Jakobek had the records to prove it.

290. Joe testified that he had kept all the records relating to his debt to Tom, his parents payments to Tom and Joe's payments to his parents. This is what he produced:

COT085723



291. Joe, B.A., M.B.A., B. Ed., testified that this scrap of paper was “proof” of his debt to Tom and the repayments that he had made. The scribbled numbers indicated:

- a. 72 = \$72,000 (the amount his parents had paid to Tom as of around 1999);³⁰⁵
- b. 15 = \$15,000 (the amount that Joe had paid to his parents by 1999, prior to his most recent payment, in 1999);³⁰⁶ and
- c. 2 = \$2,000 (the amount of Joe’s most recent payment to his parents, a couple of weeks to a month before he testified).³⁰⁷

292. This is a truly remarkable document. According to Joe, the three scrawled numbers are proof that:

- a. his parents paid Tom \$72,000 between 1994 or 1995 or 1996 and 1999;³⁰⁸
- b. his parents paid nothing more to Tom after 1999, although they had paid more than Tom wanted them to pay, and less than they insisted on paying;
- c. Joe paid \$15,000 to his parents between 1996 and 1999;
- d. Joe paid nothing to his parents between 1999 and 2004;
- e. Joe paid \$2,000 “a couple of weeks to a month” before the slip of paper would be required for his purposes at the Inquiry.³⁰⁹

³⁰⁵ Joseph Jakobek 09/29/2004 at 58.

³⁰⁶ Joseph Jakobek 09/29/2004 at 59.

³⁰⁷ Joseph Jakobek 09/29/2004 at 70.

³⁰⁸ Joseph Jakobek 09/29/2004 at 64.

³⁰⁹ Joseph Jakobek 09/29/2004 at 125-126.

293. Joe could not remember when these payments started,³¹⁰ or whether his parents made a series of small payments or large payments to Tom.³¹¹

294. Joe testified that after his parents made a payment to Tom or he made a payment to his parents, he would write the running total down on a new piece of paper and throw out the old piece of paper.³¹² This story is inconsistent with the scrap of paper. He claimed he did not do that the month before he testified, because of what was happening at the Inquiry:

Q: So you didn't throw them out every time. This document, if we can call it a document, demonstrates that at least once you did keep a running total on the same slip of paper; doesn't it?

A: In light of what's happened here at the Inquiry, the last time I went to that paper which was just sitting in my drawer for years, I started to think, you know what, maybe I should get involved in this Inquiry and bring to the Inquiry's attention the information I had.³¹³

...

THE WITNESS: Well, with everything that's been in the papers and the discussions that I've seen on TV, there was an issue –

MADAM COMMISSIONER: Right.

THE WITNESS: -- about a loan.

MADAM COMMISSIONER: Right.

THE WITNESS: So, that paper was important for me to hold onto, was the running total. When I made the last payment, I wrote down the number two (2).³¹⁴

295. The first time the issue of the loan was raised by anyone was September 20, 2004, when Ursula mentioned it during her interview with Commission Counsel. That

³¹⁰ Joseph Jakobek 09/29/2004 at 113-114.

³¹¹ Joseph Jakobek 09/29/2004 at 114.

³¹² Joseph Jakobek 09/29/2004 at 62.

³¹³ Joseph Jakobek 09/29/2004 at 62-63.

³¹⁴ Joseph Jakobek 09/29/2004 at 68.

was only nine days before Joe testified. It was not a few weeks or a month before he testified.

296. Joe testified that he never paid his parents by cheque, he always gave them cash.³¹⁵ Thus, there would be no record of any payment he ever made to his parents.

297. Joe believed that Tom tried to forgive part of the loan in 1995 or 1996. It is noteworthy that in June 1995, at approximately the same time that Joe alleged this conversation was taking place, Joe purchased the other half of Norwood from his business partner for \$102,000.³¹⁶

298. In 1998, Joe sold Norwood to Tom for \$300,000. Tom then placed a \$247,000 mortgage on the property.³¹⁷

299. Joe testified that he had Norwood assessed prior to selling it to Tom. He was disappointed when the number of real estate agents assessed Norwood's value in the low \$200,000s.³¹⁸ Instead of placing the Norwood on the open market, he sold it to his brother Tom for \$300,000, significantly higher than its appraised value.

300. Joe testified that at the time of the Norwood sale, he and Tom did not discuss the pre-existing debt from the sale of Glen Manor. They did not adjust the purchase price to eliminate or even reduce Joe's debt to Tom.³¹⁹ Joe testified that he was not in a financial position to do so, even though he was in the process of purchasing a \$365,000 house.

301. Joe agreed that Tom gave him money at the very time that his parents were giving money to Tom to repay Joe's first debt:

³¹⁵ Joseph Jakobek 09/29/2004 at 71-72.

³¹⁶ Joseph Jakobek 09/29/2004 at 192-193.

³¹⁷ 98:3:36.

³¹⁸ Joseph Jakobek 09/29/2004 at 160-162.

³¹⁹ Joseph Jakobek 09/29/2004 at 104-105.

Q: And so you sold to Tom, a price which was much greater than any assessment that you'd received from a real estate agent?

A: Yes.

Q: So, in effect, your brother gave you an additional sum of money?

A: Yes.

Q: At a time when your parents were still insisting on paying him, because you owed him a previous debt?

A: Say that again please?

Q: At a time when your parents were still insisting on paying your brother Tom, because they were so unhappy that you owed him from a previous debt?

A: Tom was extremely generous to me, in the sale of Norwood. I was unfortunately, again, in a -- in a financial snag, and Tom basically helped me.

Q: He helped you, but at the same time, he received money from your parents?

A: Yes.³²⁰

302. The evidence of Joe and Ursula should not be accepted. Their stories are internally inconsistent and incoherent. There is a complete absence of corroboration from external documents, other than the scrap of paper. There are no documents to prove the debt and no documents to prove payment from Joe to his parents.

303. It is inconceivable that parents of modest means would so insist on giving their wealthy son significant amounts of money to pay off the debt of another son, or at all. It is inconceivable that the wealthy son would accept such payments while at the same time giving even more money to the other debtor son. It is inherently implausible the two brothers would not have settled the debt (if there was a debt to be settled) on their next property transaction. And it is preposterous that the creditor son would not remember any of it when asked repeatedly to explain the money transferred to him by his parents.

³²⁰ Joseph Jakobek 09/29/2004 at 163-164.

f) *No innocent explanation for the amount of cash being deposited into the Jakobek family accounts*

304. According to Grant Thornton:

- a. between November 1 and November 30, 1999, over \$23,000 in cash was deposited into the bank accounts and credit card accounts controlled by Tom, his parents and his grandmother;³²¹
- b. In October and November 1999, \$25,850 in cash was deposited into accounts controlled by one or more of Tom's parents or Michie. This represented 69.4% of all the deposits made to those accounts;³²²
- c. Of the cash described in (b) above, 79% of the cash deposited into those accounts was in the form of \$100 bills; and
- d. from October 1, 1999 to December 20, 2000, there were cash deposits into Tom's personal account of \$27,877 and a further \$60,872 in unidentified deposits.³²³

305. This is an exceptionally large amount of cash to be entering the accounts of a City Councillor, his retired grandmother, his retired father, and his soon to be retired mother.

306. Even assuming that Tom's parents and Michie had some cash in their residences, as they testified, there is no credible evidence that they had the kind of extraordinary cash reserves sufficient to maintain this rate of deposit.

³²¹ 106:1 at 5.

³²² 106:1 at 6.

³²³ 106:1 at 6.

g) Ursula's credibility

307. Ursula's evidence lacked credibility. Even allowing for the passage of time and the frailty of recollection that comes with advancing years, her evidence was riddled with contradictions and inconsistencies. She was a partisan witness, an advocate for her son. Her evidence should not be accepted.

308. In addition to the weaknesses highlighted above, the following evidence entirely undermines her credibility.

i) Evidence regarding sale of Elmer

309. In 1956 Ursula and Tom Sr. bought 50A Elmer ("Elmer") as joint tenants for \$13,200. On February 13, 1985, they sold the house. The legal documents for the transfer attest that they sold the house to Thomas R. Jakobek for \$2.00.

310. Each of Tom, Ursula, and Joe told wildly different stories about the consideration for this transaction and who the were parties to the transaction. None of their stories was consistent with each other or the legal documents.

311. Tom testified that he paid significantly more than \$2.00 for Elmer, despite the content of the land transfer tax affidavit. He testified that "I'm sure we gave my parents something for the house, absolutely".³²⁴ Tom admitted that the land transfer tax affidavit was incorrect and that this was done to avoid paying the land transfer tax:

the house my brother and I bought from my parents and you [are] making the point that we had paid two dollars (\$2) which is something that you do in families as a result of not having to pay property transfer tax because it's amongst family members and which is perfectly legal and what everybody does.³²⁵

312. Ursula testified that, consistent with the land transfer tax affidavit, she gave Elmer to Tom for \$2.00:

³²⁴ Tom Jakobek 09/09/2004 at 211-212.

³²⁵ Tom Jakobek 09/10/2004 at 8-9.

MADAM COMMISSIONER: ... Mrs. Jakobek, did you give him the house then, to Tom?

THE WITNESS: For two dollars.³²⁶

313. However, Ursula and Tom Sr. bought 79 Edgewood (“Edgewood”) for \$149,000 cash at the same time that they sold Elmer, purportedly for \$2.00. Ursula testified that they sold a cottage that allowed them to purchase the new house.³²⁷

314. Tom placed \$120,000 in mortgages on Elmer. The City submits that it is more likely that Tom paid more than \$2.00 for the house and that Ursula used some of the mortgage proceeds from Elmer to fund the purchase of Edgewood. Tom repeatedly testified that his parents did not routinely give him money; that they only did so once. He specifically recalled a \$10,000 gift from his father to buy a townhouse in 1983:

Because, Mr. Manes, that was the first time in my life and that's the only time I can remember in recent history, not the first time in my life -- let's get this -- I'll be very careful with my words, here.

It was significant that my father gave us ten thousand dollars (\$10,000) to buy that house. It was significant that day that he was giving -- giving us not reimbursing us, he was giving us ten thousand dollars (\$10,000) to buy our first home. And so that has -- that has locked into my head and that has remained in my head.³²⁸

315. Tom remembered the \$10,000 gift from 1983 as being “the only time I can remember in recent history” that his parents gave him money. It is unlikely that he forgot that in 1985 his parents gifted him a house he sold for \$185,000 less than two years later. Tom had no reason to inflate the sale price of his house. Tom’s evidence, which was that he deliberately swore a false affidavit to evade the land transfer tax, should be believed.

³²⁶ Ursula Jakobek 09/24/2004 at 139.

³²⁷ Ursula Jakobek 09/24/2004 at 144.

³²⁸ Tom Jakobek 09/10/2004 at 185.

316. The City submits that Ursula should not be believed on this issue. Her evidence, although consistent with the land transfer tax, was not plausible. She testified that she received none of the mortgage proceeds from Elmer. Ursula had a reason to misstate the purchase price of the house: the realization that her son, under oath, had admitted to swearing a false land transfer tax affidavit. Ursula misled the Commissioner to protect her son, Tom.

317. Ursula testified that she and Tom Sr. sold Elmer to both Jakobek and Joe.³²⁹ Tom agreed that his parents sold Elmer to him and his brother.³³⁰

318. Joe testified, however, that he never had an interest in Elmer.³³¹

ii) Evidence regarding September 1999 cheque from Michie to Tom

319. In September 1999, Michie wrote a \$5,000 cheque to Tom. The cheque bounced and was replaced with a bank draft payable to Tom. When asked why Michie was giving Tom \$5,000 in September 1999, Ursula stated under oath that the money was to pay for renovations to Tom's house because Tom was allowing another Michie grandson to live with him:

Q: ...This is a -- this is the five thousand dollar (\$5,000) cheque. And when asked about that cheque, you told Butt at line 3, page 31:

"And that cheque, I think she wrote it to Tom, because my nephew, which is her grandson as well, didn't have a job. So, Tom took him in and he renovated upstairs. So, mother, knowing it's her grandson, she felt bad for Tom, so she wanted to give Tom a cheque to help pay for a little bit of the renovation, because Bobby wasn't working."

A: Yes.

Q: And Bobby is Charlie's son?

A: Yes.

Q: And does Charlie have any other sons?

A: No.

³²⁹ Ursula Jakobek 09/24/2004 at 119, 215.

³³⁰ Tom Jakobek 09/09/2004 at 206-209; Tom Jakobek 09/10/2004 at 8-9.

³³¹ Joseph Jakobek 09/29/2004 at 37, 134.

MADAM COMMISSIONER: Who's Charlie?

ROBERT CENTA: Charlie is --

THE WITNESS: My brother.³³²

320. What is peculiar about that explanation is that precisely the same explanation was used by Tom to explain a cheque from Michie to him 14 years earlier, in 1990. At the Inquiry, Tom bristled at the suggestion that his grandmother was giving him money in 1990:

THE WITNESS: Well, Madam Commissioner, it's -- the issue was fourteen (14) years ago in 1990, and the suggestion Mr. Manes gave in his questioning was that we were moving into a \$1.4 million house with a lot of renovations in it. My grandmother had written a cheque for fifty-nine hundred dollars (\$5,900) for our kitchen cupboards.

And if a person wants to believe that story they can, but it's not correct. What I've been able to ascertain and recall or gather information, is that in -- in 1989, ma'am, we -- we lived in a home, my wife and I and we had another relative who lived in our basement rent free because of difficulties he was having. When my in-laws purchased the new house, we had the issue of what to do with a relative who was living with us, and we assured him that we would continue to look after him, and so he came to live with us. And we engaged in building an apartment in our new home, in order to accommodate him, which he continued to live in for many years rent free.

And my grandmother contributed to that. Her contribution to the renovations for that apartment are the reason for the cheque. And you know, to suggest that she gave me money is -- is a little bit of a wild sense of it. She was actually basically contributing to what she knew I was doing for her other grandson. And that's basically what it was.

And I just am repeating that, because it's a good example of -- of why it is that these family things are not as simplistic as one might normally concur.³³³

321. Ursula did not know if she was confused about the date of the renovation and did not think it was possible there was another purpose for the cheque. Ursula testified that

³³² Ursula Jakobek 09/24/2004 at 164-165.

³³³ Tom Jakobek 09/09/2004 at 8-9.

she had no idea why her mother was writing a \$5,000 cheque to Tom and said that she thought the cheque was for renovations.³³⁴

322. The Commissioner should conclude that the Jakobek family used the same excuse to explain two suspicious cheques written 14 years apart. Ursula's answer was not credible.

iii) Why didn't Ursula tell Tom that she could clear him?

323. Tom testified that he had no recollection that the November 3, 1999 American Express payment was made, in part, by certified cheques from his mother and grandmother until he received the Grant Thornton report in August 2004.³³⁵

324. Ursula acknowledged that she saw the April 2004 newspaper headlines about Dash Domi and Tom's November 1999 Disney World trip. She testified that she knew she was on that trip. She knew she had paid for that trip, not Dash Domi:

Q: And I take it, Mrs. Jakobek, that you pay particular attention to stories about your son, Tom?

A: That's right. And --

Q: And --

A: -- and they are stories.

Q: And you would have noticed, then, when there was a story on the front page of the Toronto Star, in about April of this year that suggested that your son had -- may have received cash from Dash Domi and used that cash to pay for a trip to Disney World. Do you remember that newspaper story?

A: I remember many stories, many times, in the papers.

Q: And when you saw that story about a trip to Disney World in 1999, you must have remembered that you were on that trip?

A: Yes.

³³⁴ Ursula Jakobek 09/24/2004 at 167-168.

³³⁵ Tom Jakobek 09/10/2004 at 98-99.

Q: And you must have remembered that you paid for part of that trip?

A: Yes.

Q: And you must have remembered that your mother paid for part of that trip?

A: Yes.

Q: And surely, Mrs. Jakobek, you said to your son Tom, "I've got the evidence to clear you? It wasn't Dash Domi's money, it was my money, it was your grandmother's money".

Surely you told him that?

A: No. Because the papers don't tell you the truth always anyway. Papers twist things in order to sell the newspapers. ...

Q: You had that information and surely you called your son and you said, "Tom, don't you remember? I paid for that trip. Your grandmother paid for that trip."

Surely you called him and told him that?

A: Maybe I didn't. I don't know. I don't remember.

...

Q: Wasn't it traumatic seeing your son's picture on the front page of the paper being accused, wrongfully, on your evidence, of having accepted money from Dash Domi to put on his AMEX card?

A: Well, Dash Domi testified and nobody took his word for it, why should I think they'd take my word for it.

Q: But I'm asking you whether you talked to your husband or your son about it. Wouldn't you have told your son, Tom?

MR. GREGORY LAFONTAINE: Hasn't this been asked a few times already, with respect?

MADAM COMMISSIONER: Yes.

THE WITNESS: I can't remember.

MADAM COMMISSIONER: She can't remember. Okay. She can't remember.³³⁶

325. Ursula was in a difficult position. If in fact she knew she and her mother paid for the trip, not Domi, then her failure to tell her son for over five months is inexplicable.

³³⁶ Ursula Jakobek 09/24/2004 at 188-189, 192-193.

326. On the other hand, if she acknowledged calling her son and telling him she and her mother paid for the trip, then she would prove the falsity of her son's testimony that he did not know the true source of the money until he received the Grant Thornton report in August.

327. On re-examination, Gold put a series of leading questions to Ursula in an attempt to demonstrate that she was not aware that she was on the flight that was the subject of the press reports concerning her son and Domi.³³⁷ Gold was leading a friendly witness. The responses to Gold's leading questions were entirely inconsistent with the answers given earlier by Ursula. Little weight should be given to self-serving testimony elicited through the leading questions of counsel for the son the witness is trying to protect.

h) Joe's credibility

328. Joe wanted to testify. To use his words, he insisted on testifying. He admitted that he had testified a fair number of times in court.³³⁸ However, when he was asked what he wanted to talk about his answer was elliptical and unhelpful:

Q: And I'm asking you a question, Mr. Jakobek, what is it that you're coming here to talk about?

A: A systematic understanding of what has occurred throughout a number of years which would add some relevance and insight into this particular Inquiry.³³⁹

329. Joe was a difficult witness. He arrived with a chip on his shoulder and an axe to grind. His evidence was evasive and he regularly provided complicated answers to simple questions:

MADAM COMMISSIONER: And how did they [Joe's Parents] find out [that you had not paid Tom his share of the profits]?

³³⁷ Ursula Jakobek 09/24/2004 at 195-196.

³³⁸ Joseph Jakobek 09/29/2004 9/29/2004 at 22-23.

³³⁹ Joseph Jakobek 09/29/2004 at 16.

THE WITNESS: Well, they asked me what I paid for Glen Manor, they asked me what I sold it for. They knew that there was a profit.

MADAM COMMISSIONER: Right. But, how did they know that you hadn't given any of the profit back to Tom?

THE WITNESS: I'm guessing, I can go back and say, I believe, they asked me what you doing with the money? And I said well, I've purchased Norwood. I just can't pay him the money back right now.

MADAM COMMISSIONER: Sorry, I missed that. I thought you purchased Norwood two (2) years before.

THE WITNESS: Yes.

MADAM COMMISSIONER: Okay.

THE WITNESS: Well, I'm referring to having purchased it.

MADAM COMMISSIONER: So how would they know that you hadn't given him the money back? They would know there was a profit --

THE WITNESS: Right.

MADAM COMMISSIONER: -- you've told them there was a profit. But, how would they know unless you or Tom told them, how would they know?

THE WITNESS: Well, I believe, I had conversation with my parents. They asked, did you --

MADAM COMMISSIONER: Did you pay Tom back?

THE WITNESS: -- pay Tom back?

MADAM COMMISSIONER: Did you pay Tom his half?

THE WITNESS: Yes.

MADAM COMMISSIONER: And you said, No --

THE WITNESS: No, I couldn't.

MADAM COMMISSIONER: Okay. So you told them.³⁴⁰

330. During one particularly memorable exchange, Joe expressed his reluctance to accept the authenticity of documents that appeared in his own Exhibit binder and a

³⁴⁰ Joseph Jakobek 09/29/2004 at 46-47.

document produced by his own counsel, because the document was not certified as a true copy of an original:

THE WITNESS: Thank you. Is this the document you're referring to?

CONTINUED BY DAVID BUTT: Yes.

A: Well, I would have no way of knowing, Your Honour, whether or not this is a true copy. It doesn't appear to be a certified true copy to me, nor does it appear to be the original copy to me, so how --

MR. GREGORY LAFONTAINE: For my client's benefit -- for my client's benefit, it's a document I obtained with the assistance of a colleague, who does real estate work, late, late, late yesterday afternoon. I believe the time that it was produced is on the document. It's a document that we've produced, so my client --

MADAM COMMISSIONER: Okay.

MR. GREGORY LAFONTAINE: -- need not have any concern about its authenticity.

MADAM COMMISSIONER: All right. Do you understand that? What Mr. Lafontaine is saying is that he's the one who had provided --

THE WITNESS: Yes.

MADAM COMMISSIONER: -- the Inquiry with this document. And -- and he is saying, as your lawyer, that you don't need to have any concern about the authenticity of --

THE WITNESS: Yes.

MADAM COMMISSIONER: -- the document.

THE WITNESS: But could I just ask you one (1) question?

MADAM COMMISSIONER: Sure.

THE WITNESS: I've been led to believe through my -- my past experiences, that documents when they're entered as exhibits, are supposed to be certified true copies and/or the original. These are all photocopies --

MADAM COMMISSIONER: Hmm hmm. What --

THE WITNESS: -- that I see being passed around the room, and I'm just wondering why they aren't certified true copies, or the originals. What if a

mistake was made on one (1) of these copies, through the photocopying process?³⁴¹

331. Joe was brought in as the clean up witness for the Jakobek family. His testimony was a desperate attempt to fill some of the gaping holes and reconcile some of the astonishing inconsistencies in the stories told by Tom and Ursula.

332. For example, Tom testified that his parents never gave him any money, and that all the money he received from them in 1998 and 1999 was repayment for things he did for them or money he spent on their behalf. The story was inherently implausible because of the extremely large sums of money he received from his parents in a short period of time. Thus, Ursula testified that, in addition to what Tom said, they were also repaying the Joe debt, something Tom never even hinted at in attempting to explain the large sums of money transferred to him by his parents.

333. Joe attempted to reconcile these stories by suggesting that the loan repayment was properly described by Tom as being a repayment for doing something for his parents:

The WITNESS: Well, I was paying my parents. I would periodically pay my parents.

MADAM COMMISSIONER: Okay.

THE WITNESS: But, ultimately, it was for Tom.

MADAM COMMISSIONER: Right. Okay.

THE WITNESS: This was just another example of something that Tom was being repaid for something he did which was agreeing that my parents will pay the loan off to him at a faster rate than I could.³⁴²

334. On cross-examination, he expanded on his reasoning:

³⁴¹ Joseph Jakobek 09/29/2004 at 82-83.

³⁴² Joseph Jakobek 09/29/2004 at 117.

Q: So, in your mind, I think you said this before lunch, this whole thing is just another example of your parents repaying Tom for things he did; quoted you correctly, sir?

A: Well, that is something that Tom agreed to. He agreed for me not to have to pay him but actually for my parents to pay him and I would pay my parents back.

Q: Is this, to use your words before lunch, "just another example of your parents repaying Tom for things he did"?

A: Yes.

Q: But this time Tom hadn't done anything for them, agreed?

A: No. I don't agree. Tom agreed --

Q: To accept their money?

A: Tom agreed to be paid back by my parents at a faster rate than I would have been able to pay off the money that I owed Tom.³⁴³

335. The evidence of Tom and Ursula was fundamentally inconsistent. Tom's explanation could not account for the vast sums flowing from his parents to him in the fall of 1999. Ursula came up with another explanation, but it was inconsistent with Tom's evidence that he never got money from his parents except when they repaid him for things he paid for or did for them. The City submits that Joe's tortured attempts to reconcile the evidence of Tom and Ursula failed.

³⁴³ Joseph Jakobek 09/29/2004 at 169-170.