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1. Statutory Framework for the City of Toronto

a) *Municipal Act*

1. The City of Toronto, like all municipalities in the Province of Ontario, is a creature of statute. The *Municipal Act* sets out the powers and authority of municipalities in Ontario, including the City of Toronto.¹ The City has no independent authority and must rely on the powers provided in the *Municipal Act*.

2. Parts II and IV of the old *Municipal Act* provided rules for the composition of Council, meetings of Council, and the duties and responsibilities of Council members and the Mayor. Part VI of the *Municipal Act* provided for the duties and responsibilities of executive officers of municipalities, and required the appointment of a treasurer, clerk and auditor.

3. Subsection 101(1) of the *Municipal Act* stated that, "[e]xcept where otherwise provided, the jurisdiction of every council is confined to the municipality that it represents and its powers shall be exercised by bylaw." Part XVII of the *Municipal Act* sets out specific powers given to municipalities to pass bylaws for a wide range of specific matters. Pursuant to s. 102.1(1) of the *Municipal Act*, the council of a municipality may, by bylaw, delegate to a committee of council or to an employee of the municipality any powers, duties or functions that are administrative in nature. The section goes on to make clear that council cannot delegate powers, duties or functions that are legislative or otherwise non-administrative in nature.²

b) *City of Toronto Act, 1997*

4. The *City of Toronto Act, 1997*, created the new City of Toronto by amalgamating the former Municipality of Metropolitan Toronto, the Borough of East York, the City of

¹ *Municipal Act*, R.S.O. 1990, c.M.45; Lastman 12/04/2002 at 82 -83. References to the *Municipal Act* will be to the *Municipal Act*, R.S.O. 1990, c. M.45, as amended. The new *Municipal Act, 2001*, S.O. 2001, c.25 came into force on January 1, 2003. The new act involved a comprehensive overhaul of Ontario's municipal legislation.

Etobicoke, the City of North York, the City of Scarborough, the City of Toronto and the City of York.³ In these submissions, references to the City of Toronto are references to the amalgamated City, unless otherwise specified.

5. Under subsection 2(4) of the *City of Toronto Act, 1997*, the new city stood in place of the old municipalities for all purposes.⁴ The effective date of amalgamation was January 1, 1998.⁵

6. Under subsection 2(7) of the *City of Toronto Act, 1997*, every bylaw or resolution of an old council that was in force prior to amalgamation was deemed to be a bylaw or resolution of the new city council. The bylaw remained in force in respect of the former municipality to which it applied unless and until it was repealed and replaced by the new amalgamated City.⁶

7. The *City of Toronto Act, 1997* established a Transition Team to aid in the amalgamation process. The Transition Team was to be appointed by the Lieutenant Governor in Council. The duties of the Transition Team included establishing the key elements of the new City's organizational structure and hiring certain municipal officers that had to be hired under statute.⁷

c) Bylaw powers of the City

8. The City of Toronto, like all municipalities in Ontario, generally acted by bylaw. According to the evidence of Michael Garrett, unless City staff could trace their actions to the authority and direction of Council as reflected in a bylaw, they were unable to act.⁸

² *Municipal Act*, s.102.1(3).

³ *City of Toronto Act*, 1997, S.O. 1997, c. 2, s. 2; COT043203 at COT043205.

⁴ *City of Toronto Act*, ss. 2(4), COT043203 at COT043205.

⁵ COT038754 at COT038760, 3:1:23.

⁶ *City of Toronto Act*, ss. 2(7), COT043203 at COT043206.

⁷ *City of Toronto Act*, s.18.

⁸ Garrett 12/10/2002 at 21.

9. Section 102 of the *Municipal Act* provided a general bylaw power relating to the health, safety, morality and welfare of the inhabitants. The section provided:

Every council may pass such bylaws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act and for governing the conduct of its members as may be deemed expedient and are not contrary to law.⁹

10. Part XVII of the *Municipal Act* set out specific bylaw powers of municipalities. Part XVII gave municipalities the power to pass bylaws for a wide range of specific matters.

d) Policies of the City

11. As discussed above, s. 2(7) of the *City of Toronto Act, 1997* provided that all bylaws and resolutions of a former municipality that were in force at the time of amalgamation were deemed to be a bylaw or resolution of the new City, and remained in force with respect to the former municipality to which it applied. This section, by extension, also applied to policies of the former municipalities, since policies had to be enacted by bylaw in order to be in effect.¹⁰ Staff were directed to follow their former policies until a new consolidated policy was put into place.¹¹

i) Conflict of interest policies

12. By virtue of the rule that policies from former municipalities remained in effect for those municipalities following amalgamation, the conflict of interest policies from each of the former municipalities also remained in effect. Until the new City established its own conflict of interest policy, the policies from the former municipalities applied to those municipalities. This created the potential for staff members in the same division of the new City to be governed by different conflict of interest policies.

⁹ *Municipal Act*, s. 102, COT043178 at COT043196.

¹⁰ Garrett 12/10/2002 at 17-18.

¹¹ Garrett 12/5/2002 at 156-157.

13. For example, the following employees were governed by the policies of their former municipal employer:

- a. Wanda Liczyk, City of North York;¹²
- b. Jim Andrew, Metropolitan Toronto;¹³ and
- c. Lana Viinamae, Metropolitan Toronto.¹⁴

ii) North York code of ethics policy

14. The North York code of ethics policy was issued in October 1983, and continued in effect until August 2000. Both the North York policy and the subsequent City policy pertained to all City employees (formerly City of North York employees).¹⁵ The North York code of ethics policy provided, amongst other things, that:

Recognizing responsibilities to the people, desiring to inspire public confidence and respect for Government and believing that honesty, integrity, loyalty, justice and courtesy form the basis of ethical conduct, an employee of the City of North York:

Never offers, gives nor accepts any gifts, favours or service that might tend to influence the discharge of duties;

Never uses the position to secure advantage or favour for self, family or friends;

Never discloses confidential information gained by reason of position, nor uses such information for personal gain.¹⁶

¹² COT014620, 6:3:001.

¹³ COT037273, 63:2:14a.

¹⁴ COT037273, 63:2:14a.

¹⁵ COT014620, 63:12:3a; COT037273, 63:2:14a.

¹⁶ COT014620, 63:12:3a.

iii) Metro code of conduct policy

15. The Metro code of conduct policy was issued in July 1994, and continued in effect until August 2000. Both the Metro policy and the subsequent City policy pertained to all City of Toronto employees.¹⁷ The Metro code of conduct policy provided, amongst other things, that:

Employees of the Municipality of Metropolitan Toronto are expected to exercise honesty, integrity and diligence in performing their duties for the corporation. This includes a responsibility to avoid interests, activities or influences which may conflict with the performance of business duties.¹⁸

A *conflict of interest* refers to a situation in which private interests or personal considerations may affect your judgement [sic] in acting in the best interests of Metro. It includes using your position, confidential information, or corporate time, material or facilities for private gain or advancement. A conflict may occur when an interest benefits friends, family members or a business enterprise with which your family is associated.¹⁹

The following are examples of activities which constitute unacceptable practice.

Placing yourself in a position of obligation to any person or organization which might benefit from special consideration or may seek preferential treatment.

Giving preferential treatment to relatives or friends, or organizations in which you, your family or friends have a financial interest.

Influencing decisions in respect of a Metro contract from which you, your family, friends or business associates will directly or indirectly benefit. Demanding, accepting, offering, or agreeing to accept from a person who has dealings with Metro, a commission, reward, advantage or benefit of any kind, personally or through your family or friends for your or their benefit, without the written consent of your department head or the Metropolitan Chairman, subject to the following.

It is appropriate to accept token gifts such as souvenirs or mementoes, or commemorative gifts given in recognition of service on a committee or for speaking at a conference. Expenses for tickets, accommodation and meals related to conference or committee service may be accepted with the approval of the department head or Metropolitan Chairman.

¹⁷ COT014611, 63:12:3a; COT037273, 63:2:14a.

¹⁸ COT037273 at COT037273, 63:2:14a.

¹⁹ COT037273 at COT037273, 63:2:14a.

It is inappropriate to accept personal gifts of hotel accommodations, airline or other travel tickets, loans, or labour or materials below fair market value.

When entertainment is accepted there must be an appropriate business reason. However, such entertainment would be inappropriate if it is excessive or extravagant.

Any gifts or benefits which exceed the guidelines are to be returned with an explanation of Metro's policy.²⁰

16. The new City repealed the conflict of interest policies of the former municipalities by Bylaw no. 939-2000, enacted on October 5, 2000.²¹ City Council adopted the new conflict of interest policy at its meeting held on August 1, 2, 3 and 4, 2000.²² A general communication regarding the new policy was sent out to City employees in August 2000. The policy was formally rolled out to all employees in March – April 2001, with a guide to the new policy being sent to all employees as a payroll insert during the last two pay periods of April 2001.²³

iv) City conflict of interest policy

17. The current conflict of interest policy provides, amongst other things, that:

Employees of the City of Toronto are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties for the organization. Employees are required to support and advance the interests of the organization and avoid placing themselves in situations where their personal interests actually or potentially conflict with the interests of the City.

A conflict of interest refers to a situation in which private interests or personal considerations may affect an employee's judgement [sic] in acting in the best interest of the City of Toronto. It includes using an employee's position, confidential information or corporate time, material or facilities for private gain or advancement or the expectation of private gain or advancement. A conflict may occur when an interest benefits any member of the employee's family, friends or business associates.

²⁰ COT037273 at COT037274–37275, 63:2:14a.

²¹ COT034552.

²² COT040386 at COT040386, 3:2:33.

²³ COT040377, 3:2:28 .

Employees are not allowed to use their positions to give anyone special treatment that would advance their own interests or that of any member of the employee's family, their friends or business associates.

Employees may not accept gifts, money, discounts or favours including a benefit to family members, friends or business associates for doing work that the city pays them to do. The exceptions to this are promotional gifts or those of nominal value e.g. coffee mug or letter opener with the company's logo or the occasional lunch.

Employees may not disclose confidential or privileged information about the property, or affairs of the organization, or use confidential information to advance personal or others' interests.²⁴

²⁴ COT040386 at COT040288-40289, 3:2:33.

2. Structure of City Council and its Committees

18. Section 102.1 of the *Municipal Act* provided as follows:

102.1 (1) The council of a municipality may, by bylaw, delegate to a committee of council or to an employee of the municipality any powers, duties or functions that are administrative in nature.

(2) The council may, in the bylaw, impose conditions on the exercise or performance of the delegated powers, duties and functions.

(3) Subsection (1) does not authorize the delegation of powers, duties, or functions that are legislative or otherwise non-administrative in nature, such as the power to pass bylaws, adopt estimates, levy, cancel, reduce or refund taxes, or appoint persons to and remove them from offices created by statute.²⁵

19. The City's procedural bylaw, Bylaw No. 23-1998, created six Standing Committees that reported directly to Council, as well as six community councils that also reported directly to Council on local community matters. The six Standing Committees were:

- a. Strategic Policies and Priorities Committee;
- b. Urban Environment and Development Committee;
- c. Works and Utilities Committee;
- d. Community and Neighbourhood Services Committee;
- e. Emergency and Protective Services Committee; and
- f. Corporate Services Committee.²⁶

²⁵ Municipal Act, s.102.1, COT043178 at COT043196.

²⁶ City of Toronto Bylaw No. 23-1998, 3:2:79.

20. On April 15, 1999, the procedural bylaw was amended by Bylaw No. 150-1999, which reconfigured the committee structure. The six Standing Committees reporting to Council were:

- a. Policy & Finance Committee (formerly the Strategic Policies and Priorities Committee);
- b. Administration Committee;
- c. Planning and Transportation Committee;
- d. Economic Development and Parks Committee;
- e. Works Committee; and
- f. Community Services Committee.

21. In addition, the Budget Advisory Committee reported to the Policy and Finance Committee. The six Community Councils remained in place.²⁷ In addition, there was a Striking Committee, Nominating Committee, and Audit Committee that reported directly to Council.

22. The Striking Committee was responsible for making recommendations with respect to appointments to agencies, boards and commissions, and for appointments to Committees.²⁸

23. The Nominating Committee was responsible for recommending citizen appointments to agencies, boards and commissions.²⁹

²⁷ COT043002 at COT043002, 63;19:1; City of Toronto Bylaw No. 150-1999.

²⁸ Garrett 12/10/2002 at 32; Municipal Code, Ch. 27-102.

²⁹ Municipal Code, Ch. 27-105.

24. The Audit Committee was responsible for the appointment of the City's external auditor and for the annual external audit of the City's financial statements.³⁰

25. All Committees were required to report to Council on every item that they heard. Committees were able to make recommendations to Council, but Council was the body that ultimately made decisions. Committees received information in the form of written reports from staff. On rare occasions, on important matters, staff could request that the Chair of a Committee allow staff to make an oral presentation. Members of Council could, at Committee or at Council, ask questions of a staff member, but the staff member was not directly involved in the debate. A Committee could refer a report back to staff for staff to expand upon or re-analyze a report, but any decision to adopt or not to adopt the recommendations contained in a report belonged only to Council.³¹

26. Once a report made its way through Committee to Council, Council had several options for dealing with the report. Council could:

- a. adopt the recommendations of the Committee,;
- b. amend those recommendations;
- c. receive the motion so that the report is acknowledged and placed on the records of the Clerk, but not adopted; or
- d. refer the report back to staff or Committee for more work.

27. If the report was adopted, then the actions contained in the recommendations could be contained in a bylaw, or authorized by the confirming bylaw passed by Council at each Council meeting. Staff would then act on the recommendations in the report.³²

³⁰ Garrett 12/10/2002 at 33; Municipal Code, Ch. 27-95.

³¹ Garrett 12/10/2002 at 39.

³² Garrett 12/10/2002 at 44-46.

a) Mayor

28. The *Municipal Act* provided as follows:

69. (1) The warden of a county, the mayor of a city or town and the reeve of a village or township is the head of the council and the chief executive officer of the corporation.

70. It is the duty of the head of the council,

(a) to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed;

(b) to oversee the conduct of all subordinate officers in the government of it and , as far as practicable, cause all negligence, carelessness and violation of duty to be prosecuted and punished; and

(c) to communicate to the council from time to time such information and recommend to it such measures as may tend to the improvement of the finances, health, security, cleanliness, comfort and ornament of the municipality.³³

29. Despite these provisions, the Mayor has only one vote at City Council and generally it is City Council that makes the legislative and other decisions that are non-administrative in nature. The Mayor essentially became the spokesman for Council's decisions.³⁴ Mel Lastman was Mayor of City Council from amalgamation until after this Inquiry started.

30. The City will make its submissions on the role and responsibility of Mayor Lastman for the events that were part of the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry once all the evidence for both Inquiries has been completed.

³³ Municipal Act, ss. 69(1), 70, COT043178 at COT043188.

³⁴ Garrett 12/05/2002 at 100-101.

i) Mayor's Office

31. Rod Phillips was the chief of staff in the Mayor's Office. In 1999, Alan Slobodsky was the executive assistant to the Mayor.³⁵

32. The Mayor had several assistants working in his office during his tenure, including Vince Nigro. The role of the assistants was to provide advice to the Mayor on issues relating to the City. One of the roles of the assistants was also to communicate with other Councillors, in order to help ensure that the Mayor had the requisite support for initiatives that he or she wanted approved by Council.³⁶

ii) Special Assistant – Vince Nigro

33. On January 26, 1998, Nigro was seconded as a special assistant to the Mayor shortly after amalgamation in 1997.³⁷ Nigro provided advice to the Mayor on issues arising out of the former City of Toronto.³⁸ Nigro reported to the Mayor's executive assistant, Alan Slobodsky.³⁹

34. Nigro had previously worked for one of the former Mayors of the City of Toronto, Art Eggleton, as a constituency assistant.⁴⁰ From 1984 until 1997, Nigro worked for City Home, the former City of Toronto's non-profit housing organization, as a property manager and later as the real estate coordinator.

35. Nigro took time off from the City in 1997 to help Lastman with his election campaign.⁴¹ He acted as co-director of campaign operations for Lastman's campaign.⁴²

36. Nigro left the Mayor's office in mid-April 1999 and went to work for the Toronto Economic Development Corporation ("TEDCO") as vice president of operations.⁴³ He

³⁵ Nigro 01/20/2003 at 178.

³⁶ Nigro 01/20/2003 at 144-145.

³⁷ Nigro 01/20/2003 at 174.

³⁸ Nigro 01/16/2003 at 20.

³⁹ Nigro 01/20/2003 at 178-179.

⁴⁰ Nigro 01/16/2003 at 6.

⁴¹ Nigro 01/16/2003 at 8.

⁴² Nigro 01/20/2003 at 170.

⁴³ Nigro 01/16/2003 at 22.

left TEDCO after six months, in October 1999. After six months of unpaid leave, he returned to work for the City of Toronto's Planning Department in April 2000, specifically dealing with a project involving Union Station. The Union Station matter wrapped up shortly after that, and Nigro left the City in August 2000. After he left the City, he negotiated a contract with MFP Financial Services ("MFP"), and began to work for MFP in September 2000. He continued to work for MFP until March 2002.⁴⁴

37. While Nigro was working for MFP, he had an arrangement in place with Dash Domi, a salesperson for MFP, under which they shared their commissions equally.⁴⁵

b) City Council

38. During its first term, the new City of Toronto Council consisted of fifty-seven Councillors and the Mayor.⁴⁶ The first term of Council extended from January 1, 1998 to the end of November 2000. The number of Councillors was reduced for the second term of Council to forty-four, in addition to the Mayor.⁴⁷ The second term extended from December 1, 2000 to the end of November 2003.

39. Council is the decision making body for the City of Toronto. In 1999, Council's authority was derived from s. 9 of the *Municipal Act*, which provided that the powers of a municipal corporation were to be exercised by its council.⁴⁸ Generally, Council exercised its decision making powers through bylaws. Council was also responsible for the appointment of senior officials in the City. As discussed above, the *Municipal Act* allowed Council to delegate administrative functions to committees and to staff. Council was not allowed to delegate legislative functions, and was responsible for making decisions with respect to all legislative matters, including passing bylaws, adopting

⁴⁴ Nigro 01/16/2003 at 26-28.

⁴⁵ Wolfraim 12/19/2002 at 101; Nigro 01/20/2003 at 40-41.

⁴⁶ Garrett 12/10/2002 at 18-19.

⁴⁷ *City of Toronto Act*, s. 3(1), COT043203 at COT043206.

⁴⁸ *Municipal Act*, s.9.

budgets, levying, canceling, reducing or refunding taxes, and appointing persons to and removing them from offices created by statute.⁴⁹

c) Committees of City Council

i) Strategic Policies and Priorities Committee

40. The Strategic Policies and Priorities Committee (“SPPC”) was the predecessor to the Policy & Finance Committee (“P&F”). The SPPC was responsible for:

- a. monitoring the transition, integration and evolution of the new City government;
- b. directing and monitoring the implementation of the overall transition plan;
- c. developing a Mission Statement, Corporate Strategic Plan, new Official Plan and other priority directions for the City;
- d. monitoring the implementation of strategic directions incorporated into the plans and strategies approved by Council;
- e. recommending and monitoring implementation of a Toronto Strategy for the Greater Toronto Area (“GTA”) to guide participation in the proposed Greater Toronto Services Board when it is formed;
- f. recommending and overseeing the implementation of economic development strategies, initiatives and partnerships with other GTA municipalities;
- g. recommending directions for other inter-governmental relations;

⁴⁹ *Municipal Act*, s.102.1(3), COT043178 at COT043196.

- h. considering recommendations from the Budget Committee on capital and operating estimates;
- i. recommending and managing financial priorities and fiscal policies; and
- j. overseeing strategic human resource matters for the Corporation, including labour contract negotiations and corporate restructuring, through the initial transition period.⁵⁰

41. The SPPC reported directly to Council. Its members consisted of the Mayor, the Deputy Mayor, the Chair of the Budget Committee, the Chairs of the other Standing Committees, and the Chairs of the Community Council. The SPPC was chaired by the Mayor.⁵¹ The Budget Committee reported to Council through the SPPC and was responsible for:

- a. coordinating the preparation of the capital and operating estimates;
- b. coordinating input from the Standing Committees, Community Councils and the public on the capital and operating estimates; and
- c. making recommendations on key revenue and expenditure issues facing City Council in considering the annual capital and operating estimates.⁵²

42. In 1999, two other Committees also reported to the SPPC: the Audit Committee and the Year 2000 Steering Committee. The Audit Committee was responsible for arranging for and considering the annual external audit of the City's books.⁵³ The Year 2000 Steering Committee was a special committee formed to deal with the Year 2000 issue and will be dealt with in more detail in Chapter 3.

⁵⁰ City of Toronto Bylaw No. 23-1998, s.79, 3:2:79.

⁵¹ City of Toronto bylaw No. 23-1998, s.96, 3:2:79.

⁵² City of Toronto Bylaw No. 23-1998, s.81, 3:2:79.

⁵³ City of Toronto Bylaw No. 23-1998, s. 83, 3:2:79.

ii) Policy & Finance Committee

43. Bylaw No. 150-1999, enacted April 15, 1999, amended the City's procedural bylaw, Bylaw No. 23-1998, by creating P&F to take the place of the SPPC.

44. P&F was responsible for setting financial priorities and recommending the annual budget. In addition, it was responsible for monitoring budget performance and recommending in-year changes to vary City spending from the approved budget. Its additional responsibilities included:

- a. the Corporate Strategic Plan;
- b. corporate intergovernmental and international activities;
- c. the annual budgets of the City's agencies, boards and commissions;
- d. tax policies; and
- e. matters cutting across different departments and agencies, boards and commissions.⁵⁴

45. Bylaw No. 150-1999 set out the specific responsibilities of P&F. Its responsibilities included:

- a. coordinating a Corporate Strategic Plan for the City in consultation with the other Standing Committees;
- b. recommending and managing financial priorities and fiscal policies including revenues;
- c. recommending and overseeing the preparation of the Corporate capital and operating estimates;

⁵⁴ COT038154 at COT038154-38155. See also City of Toronto Bylaw No. 150-1999, s. 82.

- d. recommending and monitoring Corporate intergovernmental relations;
- e. recommending directions for other intergovernmental relations;
- f. recommending directions for cross-departmental matters and matters cutting across more than one agency, board or commission of the City;
- g. recommending and monitoring Corporate international activities;
- h. recommending assessment and tax policies;
- i. recommending in-year operating and capital expenditure variances and any expenditures not included within approval capital or operating allocations; and
- j. considering and recommending the capital and operating budgets of the City's agencies, boards and commissions, including any financial matter, as necessary.⁵⁵

46. P&F would also become involved if the matters at issue related to several different departments.⁵⁶

47. P&F comprised the Mayor, the Deputy Mayor, one member of each of the other standing committees who was not a Chair of that committee, and four members of Council who were not members of any other standing committee or of the Audit Committee.⁵⁷

⁵⁵ City of Toronto Bylaw No. 150-1999, s. 82.

⁵⁶ Garrett 12/10/2002 at 28.

⁵⁷ Municipal Code, Ch. 27-98.

48. In 1999, in addition to Mayor Lastman, who was the Chair of P&F, and the deputy mayor, Councillor Ootes, P&F was composed of Councillors Brown, Chong, Disero, Jakobek, Kelly, Moeser, Nunziata, Pantalone and Rae.⁵⁸

iii) Budget Advisory Committee

49. The Budget Advisory Committee reported to Council through P&F. It assisted P&F by coordinating the preparation of the annual capital and operating budget and reviewing other matters having a significant impact on a future budget.⁵⁹

50. The Budget Advisory Committee was composed of seven members of Council, including two members from P&F and one member from each of the other Standing Committees.⁶⁰

51. In 1999, the Budget Advisory Committee was composed of the Chair, Councillor Tom Jakobek (“Jakobek”), and Councillors Chong, Balkissoon, Chow, Kinahan, Pitfield and Shiner.⁶¹

iv) Administration Committee

52. The Administration Committee was responsible for:

- a. human resources, labour relations, occupational health and safety, access, equity and human rights;
- b. information technology and corporate communications;
- c. purchasing policies and fleet management;
- d. acquisition and disposal of City property; and

⁵⁸ COT043044 at COT043045, 3:1:45.

⁵⁹ COT038154 at COT038156.

⁶⁰ Municipal Code, Ch. 27-92.

⁶¹ COT043002 at COT043003, 63:19:1.

e. administrative matters of the Treasurer, Solicitor and Clerk.⁶²

53. In 1999-2000, in addition to the Mayor, there were ten members of the Administration Committee. The Chair was Councillor Berardinetti, and the Vice Chair was Councillor Bussin. Councillors Adams, Altobello, Balkissoon, Holyday, Mahood, Miller, Minnan-Wong and Moeser formed the rest of the Committee.⁶³

54. The membership of the Administration Committee was reduced to eight members in addition to the Mayor at the end of 2000.⁶⁴

⁶² COT038154 at COT038155.

⁶³ COT043002 at COT043003, 63:19:1.

⁶⁴ Municipal Code, Ch. 27-98.

3. Chief Administrative Officer

55. The *Municipal Act* provided the following:

72. The council may by bylaw appoint a chief administrative officer, who,

(a) shall have such general control and management of the administration of the government and affairs of the municipal corporation and perform such duties as the council by bylaw prescribes; and

(b) shall be responsible for the efficient administration of all its departments to the extent that he or she is given authority and control over them by bylaw.⁶⁵

56. Essentially, the Chief Administrative Officer (“CAO”) was responsible for the administrative and operational aspects of the government of the City. His or her powers and duties were derived from Bylaw No. 2-1998, and he or she was the most senior official in the City.⁶⁶ On January 6, 1998, the City adopted Bylaw No. 2-1998 to prescribe the duties and responsibilities of the CAO:

- a. The CAO was the senior official of the City, provided organizational leadership to staff, and was responsible for the efficient and effective delivery of services;
- b. The CAO was the head of the administrative and operational aspects of the government of the City of Toronto and was responsible to the Council for the proper administration of the affairs of the City, including organizational restructuring, in accordance with the bylaws adopted by Council;

⁶⁵ Municipal Act, s. 72, COT043178 at COT043189.

⁶⁶ Bylaw No. 2-1998 became Chapter 169 of The Toronto Municipal Code. Bylaw No. 2-1998, COT038160 at COT038161-38162, 3:1:35; Chapter 169, Toronto Municipal Code; COT041583 at COT041585-41586, 3:1:36.

- c. The CAO was responsible for providing effective advice and support to the Mayor and Council in developing and implementing the policies, plans and programs of Council;
- d. The CAO managed the human, fiscal and physical resources of the City;
- e. The CAO appointed, promoted, demoted, suspended and dismissed, subject to the provisions of any personnel regulations adopted by Council or collective agreements applicable to employees of the City, all employees of the City except the first level of senior management and statutory officials;
- f. The CAO recommended to Council the appointment and dismissal of first level senior management and statutory officials of the City;
- g. In addition to the powers set out in this bylaw, the CAO possessed all of the powers, duties and responsibilities of the Chief Administrative Officers, known as the City Managers, of the former Cities of York, Etobicoke, and Scarborough; and of the Chief Administrative Officers of the former municipalities of The Borough of East York and The Municipality of Metropolitan Toronto; and of the City Administrator for the former City of North York; and of the Board of Management, acting as a Board or as individual Commissioners, of the former City of Toronto;
- h. The CAO carried out such additional duties and exercised such additional responsibilities as the Council, from time to time, prescribed; and
- i. Nothing in this bylaw should be deemed to empower the CAO to exercise or encroach upon the powers of Council or its committees or upon the statutory duties of its officers.

a) Michael Garrett

57. Michael Garrett was the first CAO of the new City of Toronto. Prior to becoming the CAO of the new City of Toronto, he was CAO of the Regional Municipality of Peel from 1989 – 1997.⁶⁷ He was hired in November of 1997. Garrett's original contract was renewed in July of 2000 for a further five year term. His contract was terminated in June of 2001.⁶⁸

58. Garrett was hired by the Transition Team established by the Province of Ontario during the lead up to amalgamation. The Transition Team had been empowered to hire senior staff for the new City. City Council was deemed to have taken all steps to appoint Garrett as CAO under ss. 18 and 19 of the *City of Toronto Act, 1997*.⁶⁹

59. The City will make its submissions on the role and responsibility of Garrett for the events that were part of the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry once all the evidence for both Inquiries has been completed.

b) Special delegated Year 2000 responsibilities

60. The CAO was given special purchasing authority as part of the City's Year 2000 Business Continuity Plan. The City's Year 2000 Business Continuity Plan was set out in Clause No. 2 of Report No. 24 of the Strategic Policies and Priorities Committee, and was adopted by Council on November 25, 26 and 27, 1998.⁷⁰ Council adopted the recommendation that:

[T]he CAO be given approval to enter into agreements in support of the [Year 2000 Project] for the full amount of expenditures, until June year 2000, reporting on a regular basis to the Strategic Policies and Priorities Committee.⁷¹

⁶⁷ Garrett 12/05/2002 at 6.

⁶⁸ Garrett 12/05/2002 at 26.

⁶⁹ COT038160 at COT031860, 3:1:35.

⁷⁰ COT015898, 3:2:51.

⁷¹ COT015898 at COT015900, 3:2:51.

61. The CAO would exercise his authority to enter into agreements in support of the Year 2000 Project on the recommendation of the Year 2000 Steering Committee. The report stated:

The Year 2000 Program will be required to enter into agreements to implement solutions to ensure Year 2000 readiness on a timely basis to enable the City to meet the immovable deadline. These requests will be forwarded to the Year 2000 Steering Committee for review. Based on its recommendation, the CAO will enter into the necessary agreements. This information will be reported to Council on a regular basis.⁷²

62. The special Year 2000 authority delegated to the CAO was reflected in the Year 2000 Delegated Approval Form.⁷³ The form had to be filled out whenever the CAO used his special authority approve a purchase. The form required the approval of the requesting department, the Year 2000 Project Director, the Year 2000 Steering Committee, the Purchasing and Materials Management Division, and finally the CAO.

63. The special purchasing authority could only be exercised in cases where the normal purchasing process could not be followed due to time constraints or where the City had to contract with a sole source provider.⁷⁴

⁷² COT015898 at COT015906, 3:2:51.

⁷³ COT030456, 3:1:6.

⁷⁴ Garrett 12/10/2002 at 110-111.

4. The Finance Department

64. The Finance Department (“Finance”) was headed by the Chief Financial Officer and Treasurer (“CFO and Treasurer”), who was responsible for the financial management of the City. There were seven divisions in Finance:

- a. Accounting Services;
- b. Budget Services;
- c. Development, Policy and Research;
- d. Pensions, Payroll and Employee Benefits;
- e. Purchasing and Materials Management;
- f. Revenue Services; and
- g. Treasury and Financial Services.⁷⁵

65. Each division was headed by a Director who reported directly to the CFO and Treasurer.

66. Each of these seven divisions had separate and distinct roles and responsibilities.⁷⁶ These divisions were not interchangeable, and did not overlap in their functions or personnel. Indeed, they operated almost as stand alone entities, with little or no interaction. Although general information sharing took place at a high level through a biweekly meeting of the CFO and Treasurer with his or her directors, there

⁷⁵ COT043002 at COT043004, 63:19:1.

⁷⁶ Brittain Affidavit, para. 4, 07/09/2003 at 144; COT072793, 52:1:2.

was no real coordination between those divisions involved at various times and in various ways in the computer leasing program.⁷⁷

67. Prior to amalgamation, Finance had deputy positions that added a layer of management below the Commissioner which, like the Commissioner, cut across the various divisions within a department. This allowed the deputy a more global perspective on the activities of the department. At the time of amalgamation, these deputy positions were cut from the management structure in all departments. Within Finance, for instance, there was no one individual other than the CFO and Treasurer who was:

Riding over all of these divisions, or could, in fact, ride over all these other divisions. So accounting people dealt with accounting issues, budget people dealt with budget issues, purchasing people dealt with purchasing issues and there was no mechanism, no organizational structure to allow that kind of thing to occur.⁷⁸

68. Finance was responsible for the financial management of the City. The draft Mission Statement of the Finance Department, dated April 1999, described the department's role:

The Finance Department provides sound financial management and advice to the City ensuring effective use of the Corporation's financial resources by maintaining financial accountability; and by developing and implementing effective financial strategies; and providing timely, accurate and efficient services to departments, agencies, boards and commissions.

This mission is carried out under a broad range of financial services including accounting; budgeting, financial planning, insurance and risk management, investment and debt management, revenue collection (taxes, water, parking tags), payroll, pension and employee benefits administration, purchasing and materials management and policy development and research.⁷⁹

⁷⁷ Liczyk 11/04/2003 at 9-10; Liczyk Affidavit, para. 19, 11/03/2003 at 11.

⁷⁸ Colley 09/04/2003 at 109.

⁷⁹ COT025144 at COT025147, 5:2:19.

69. The former CFO and Treasurer, Wanda Liczyk, testified that Finance generally acted as a support function for other departments, as requested by the department. Staff in Finance would typically wait for other departments to ask for advice, and then respond to those requests. Liczyk testified that the volume of work in Finance following amalgamation prevented it from taking a more pro-active role in projects undertaken by other departments.⁸⁰

a) Chief Financial Officer and Treasurer - Wanda Liczyk

70. The *Municipal Act* provided that:

77. (1) The council shall appoint a treasurer.

71. Bylaw No. 4-1998, adopted by Council on January 6, 1998, ratified the appointment of Wanda Liczyk as the CFO and Treasurer for the new City of Toronto. The bylaw also set out the duties and responsibilities of the CFO and Treasurer:

- a. In addition to all duties imposed upon a Treasurer and a collector by the *Municipal Act* and any other statutes and all amendments thereto, and by any bylaw of the Council, the Chief Financial Officer and Treasurer shall have full charge and control of and be fully responsible for the conduct of the Finance Department for the City.
- b. The Chief Financial Officer and Treasurer shall possess all of the duties and responsibilities of the Treasurers for the former cities of Etobicoke, North York, Toronto, Scarborough and York, the Borough of East York and the Municipality of Metropolitan Toronto.
- c. All other collectors for the City shall report to the Chief Financial Officer and Treasurer.

⁸⁰ Liczyk 11/18/2003 at 44-45.

- d. The Chief Financial Officer and Treasurer shall carry out such additional duties and exercise such additional responsibilities as Council may from time to time prescribe.
- e. Where this bylaw conflicts with the provisions of any other bylaw setting out the powers and duties of a municipal official, this bylaw prevails to the extent of the conflict.⁸¹

72. The CFO and Treasurer, as a statutory position, reported directly to Council as requested by Council or as required by statute or bylaw. For other matters, the CFO and Treasurer reported to the CAO.⁸² Liczyk's employment agreement provided that the CFO and Treasurer was to follow the objectives that were established from time to time by Council or the CAO.⁸³

73. Liczyk's employment agreement also included a provision related to conflict of interest, that provided:

The responsibility rests with the Employee to recognize and to avoid circumstances that may give rise to (or give the appearance of giving rise to) conflict of interest situations. He/She acknowledges that conflict of interest or the perception of one does not necessarily involve monetary gain, but may arise in a variety of ways.⁸⁴

74. Liczyk was also subject to the provisions of the conflict of interest policies of the City, as were all City employees. As noted above, until the new City passed a conflict of interest policy, Liczyk continued to be subject to the conflict of interest policy of the former City of North York. Most importantly, that policy provided that :

Recognizing responsibilities to the people, desiring to inspire public confidence and respect for Government and believing that honesty, integrity, loyalty, justice

⁸¹ COT038163 at COT038163-38164.

⁸² Liczyk Affidavit, para. 12, 11/03/2003 at 9.

⁸³ COT032638 at COT032638, 63:5:18.

⁸⁴ COT032638 at COT032642, 63:5:18.

and courtesy form the basis of ethical conduct, an employee of the City of North York:

Never offers, gives nor accepts any gifts, favours or service that might tend to influence the discharge of duties;

Never uses the position to secure advantage or favour for self, family or friends;

Never discloses confidential information gained by reason of position, nor uses such information for personal gain.⁸⁵

75. Liczyk qualified as a chartered accountant in 1984, and joined the City of North York the next year as a budget analyst. She then rose in just six years to become, by 1991, the youngest Commissioner of Finance and Treasurer in Ontario, and the first woman to hold such a position. In 1996, she added the position of City Administrator to her responsibilities, while retaining her role as Treasurer.⁸⁶

b) Accounting Services Division

76. The Accounting Services Division (“Accounting Services”) of the Finance Department was responsible for:

- a. preparing the annual financial statements of the City;
- b. paying of all City liabilities;
- c. providing services to City departments in responding to reporting requirements and processing accounts payable for the departments;
- d. ensuring that City transactions were in compliance with provincial and federal legislation; and

⁸⁵ COT014620, 63:12:3a.

⁸⁶ Liczyk Affidavit paras. 1-2, 11/03/2003 at 5-6.

- e. the City's tax remittances and returns.⁸⁷

i) Director of Accounting Services - Al Shultz

77. Al Shultz was the Director of Accounting Services from 1998 until April 2003.⁸⁸ Shultz's major responsibilities involved accounts payable and disbursements, accounting records and financial reporting, financial systems administration and accounts receivable, excluding taxes, water and sewage and parking tags.⁸⁹ In 1999, Shultz had a staffing complement of 144 staff members.⁹⁰

ii) Manager, Financial Reporting - Ken Colley

78. Ken Colley was the Manager, Financial Reporting in the Accounting Services Division. He was appointed to his position after a job competition following amalgamation. Prior to his appointment, Colley had worked as the Director of Accounting in the former City of North York since 1987.⁹¹ He was responsible for managing the financial reporting process for the City of Toronto. He reported directly to Shultz. His responsibilities included:

- a. initiating and maintaining reporting systems designed to ensure that operating performance can be accurately measured and evaluated;
- b. managing the maintenance of all corporate accounting records;
- c. ensuring that all required accounting reports and statements were prepared in accordance with accounting policies prescribed for Ontario municipalities; and

⁸⁷ COT072793 at COT072793, 52:1:2.

⁸⁸ Shultz Affidavit, para.1, 45:2.

⁸⁹ COT040288 at COT040288, 20:1:34.

⁹⁰ COT072793 at COT072793, 5:1:2.

⁹¹ Colley Affidavit, para. 2, 09/02/2003 at 234.

- d. providing sound technical advice and assistance, as required, to operating management within assigned department.⁹²

79. Accounts payable was a separate area of responsibility within Accounting Services. At the relevant time there were four managers of accounts payable. Colley was not one of those managers, and had no responsibility for accounts payable related matters.⁹³

80. As Manager, Financial Reporting, Colley was responsible for four different units, or areas of specific responsibility. Alex So ("So") was a one-person unit responsible for tax reporting. He reported to Louisa Ting, who was one of two supervisors reporting directly to Colley.⁹⁴

81. Colley did not play any role in managing, monitoring, or administering the leases. Beginning in June 2000, Colley was responsible for reflecting the leasing transactions in the City's financial records. He worked with the Contract Management Office staff in the Information and Technology Division to determine how leasing costs should be charged, and to which department they should be charged. He was the "point person" in the Finance Department for day-to-day accounting questions related to leasing, although the leasing program was administered and monitored by staff in the CMO.⁹⁵

iii) Manager of Financial Accounting Systems and Policy - Chris Cowell

82. Chris Cowell was the Manager of Financial Accounting Systems and Policy in Accounting Services. She was hired in July 1998. Cowell was responsible for managing the financial aspects of the SAP system.⁹⁶ Prior to becoming Manager of Financial

⁹² COT074828 at COT074828.

⁹³ Colley 09/03/2003 at 125.

⁹⁴ Colley 09/04/2003 at 35-36.

⁹⁵ Colley Affidavit, para. 7, 09/02/2003 at 235-236.

⁹⁶ Cowell 06/23/2003 at 7-8.

Accounting Systems and Policy, Cowell was employed by the City of Etobicoke as Budget Manager.⁹⁷

c) Budget Services Division

83. The Budget Services Division (“Budget Services”) of the Finance Department was responsible for providing Council and management staff with advice and information to ensure the financial integrity of the City and the optimal balance between efficient and effective service levels and levels of taxation and user fees.⁹⁸

84. Budget Services was responsible to ensure funding was available for budgeted items. The Treasury and Financial Services Division would only be involved in this process if capital debt charges were going to be incurred through the use of debenture financing. As Brittain explained:

[A]nything coming out of the capital budget process that required the issuance of debt would entail debt charges, and that would fall in my area, but, that would be at the conclusion of the capital budget process as to what the likely debenturing requirements would be for 2000, for example.⁹⁹

85. Val Sequeiro was a manager in Budget Services. Ruby Sawh reported to him. Both were involved in budget issues relating to the leasing program.¹⁰⁰ While Accounting Services produced regular budget related reports for use by City departments in managing their financial affairs, it was Budget Services who worked with departments to attempt to explain budget variances.¹⁰¹

⁹⁷ Cowell 06/23/2003 at 8.

⁹⁸ COT072793 at COT072793-72794, 52:1:2.

⁹⁹ Brittain 07/29/2003 at 81-82.

¹⁰⁰ Colley 09/04/2003 at 138-139.

¹⁰¹ Colley 09/04/2003 at 163-164.

86. In 1999, the Director of Budget Services was Glenn Vollebregt (“Vollebregt”), who had a staffing authority for up to 43 staff.¹⁰²

d) Purchasing and Materials Management Division

87. The Purchasing and Materials Management Division (“PMMD”) of the Finance Department had two essential functions: purchasing and materials management. PMMD was responsible for the purchasing process for all goods and services made for all City departments and for designated agencies, boards and commissions, above the departmental direct purchase limit,¹⁰³ which is discussed below. The materials management function was responsible for the storage and warehousing of goods within the City.¹⁰⁴

88. There were six sections within PMMD, all of whom reported directly to the Director of PMMD:

- a. Client and Support Services;
- b. Materials Management and Stores;
- c. Purchasing Construction Services;
- d. Purchasing Professional Services; and
- e. two Purchasing Goods and Services sections.¹⁰⁵

89. In fulfilling the purchasing function, PMMD issued the call documents, such as requests for tender, requests for proposals, or requests for quotations, and ensured that proper purchasing policies and procedures were followed. The expertise and the

¹⁰² COT072793 at COT072793, 52:1:2.

¹⁰³ The departmental direct purchase limit is \$7,500; Pagano 02/24/2003 at 105; COT036900, 20:2:26; Shultz 06/23/2003 at 40.

¹⁰⁴ Pagano 02/24/2003 at 105.

technical knowledge underlying the acquisition of the good or service lay with the department making the acquisition, not with the generalist PMMD.¹⁰⁶

90. In 1998, PMMD administered approximately 1,540 requests or calls. It issued over 27,000 purchase orders and contracts.¹⁰⁷ The total value of contracts in 1998 was approximately \$462 million. In the years 2000 and 2001, the total value of contracts handled by PMMD exceeded one billion dollars.¹⁰⁸

i) Director - Lou Pagano

91. Lou Pagano was appointed Director of PMMD in April 1998 and continues to hold that position today.¹⁰⁹ Prior to that time, he occupied a similar position as Director of the Warehousing group in the former City of Toronto.¹¹⁰ At all relevant times, he reported directly to the CFO and Treasurer.

92. According to Pagano's job profile, he was responsible for managing and providing leadership and direction to PMMD for the City, including overall direction for purchasing, materials management, client and support services, policy and research, standards and specifications development and quality control.¹¹¹ Pagano was expected to prepare, analyze and present PMMD information and reports to Council, senior management and various standing committees and taskforces. This information included the awarding of contracts, consultant activity, and sole source purchases. Pagano was also expected to ensure maximum recovery for obsolete/surplus goods by developing innovative disposal methods.¹¹²

93. Some of Pagano's specific responsibilities included:

¹⁰⁵ COT043002 at COT043006, 63:19:1.

¹⁰⁶ Pagano 02/24/2003 at 121-122, 103-131.

¹⁰⁷ Pagano 02/24/2003 at 147; 20:1:46.

¹⁰⁸ Pagano 02/24/2003 at 149.

¹⁰⁹ Pagano 02/24/2003 at 110.

¹¹⁰ Pagano 02/24/2003 at 108.

¹¹¹ COT040410 at COT040410, 20:1:35.

¹¹² COT040410, 20:1:35.

- a. acting as Purchasing Agent for the City departments and designated agencies, boards and commissions;
 - b. ensuring that Council bylaws, policies and directives and applicable legislation were followed in all purchases made for the City and designated ABC's subsidiaries by developing strategic purchasing and materials management policies that met Corporate and Council objectives;
 - c. ensuring that all purchases were made in accordance with the purchasing bylaw and proper authority was received in the awarding of contracts; and
 - d. ensuring that there was a fair, open and accessible process in accordance with current purchasing practices, bylaws, and applicable legislation by developing a system that enabled all vendors to participate in the bidding process, eliminated conflict of interest and was a process that is open and transparent.¹¹³
94. In 1999, Pagano had authorization for 108 staff members.¹¹⁴ The managers of each of the six sections in PMMD and an administrative assistant reported directly to him.¹¹⁵

ii) David Beattie, Frank Spizarsky and Anne Corbett

95. David Beattie was employed by the City of Toronto as a buyer in the Purchasing Goods and Services section following amalgamation. Prior to being employed by the new City, Beattie had been a buyer for the former City of Toronto from 1985 to amalgamation.¹¹⁶ He held the position of buyer until September 1999, at which time he was promoted to the position of Supervisor, Client Services, in PMMD.¹¹⁷

¹¹³ COT040410 at COT040410, 20:1:35.

¹¹⁴ COT072793 at COT072794-72795, 5:1:2.

¹¹⁵ COT040410 at COT040410, 20:1:35.

¹¹⁶ Beattie Affidavit, para. 3, 03/31/2003 at 55.

¹¹⁷ Beattie Affidavit, para. 3, 03/31/2003 at 55.

96. As a buyer, Beattie reported to the Manager of the section, Frank Spizarsky. Spizarsky was away from the office on sick leave extensively in 1999, and in his absence, Beattie reported to Anne Corbett, who was the Acting Manager in Spizarsky's absence.¹¹⁸ The manager of the section reported directly to the Director of PMMD, Pagano.

97. Beattie's primary responsibilities included processing the acquisition of computer supplies and equipment, office equipment, communications and sound equipment, signage, periodicals and books, and police supplies.¹¹⁹

e) *Treasury and Financial Services*

98. The Treasury and Financial Services Division ("Treasury") of the Finance Department provided corporate financial planning, policy and strategic advice through the CFO and Treasurer to Council and its Committees, the CAO and departments, agencies, boards and commissions.¹²⁰ Treasury consisted of five sections:

- a. Treasury Services;
- b. Insurance and Risk Management;
- c. Administrative Services; and
- d. two Financial Planning sections.¹²¹

99. The Administrative Services section provided administrative services for the entire Finance Department, but reported to the Director of Treasury.¹²²

¹¹⁸ Beattie Affidavit, paras. 5-6, 03/31/2003 at 55.

¹¹⁹ Beattie Affidavit, para. 9, 03/31/2003 at 55.

¹²⁰ COT072793 at COT072795, 5:1:2.

¹²¹ COT031892 at COT031892; Brittain Affidavit, para. 5, 07/10/2003 at 144-145.

¹²² Brittain 07/10/2003 at 178.

100. The Insurance and Risk Management group focused on executing the City's insurance program. Treasury Services managed the City's borrowing and cash management function.¹²³ The Financial Planning groups were responsible for the City's capital financing plan. Once Council determined and approved how much it wanted to spend in the current and each of the next four years, Treasury Services would research and review the best financing options to pay for those plans.¹²⁴ Options could include any combination of debentures or other external borrowing, use of reserve funds, or leasing.

101. The two Financial Planning sections were separate and distinct. One section dealt with internal financial planning matters, and the other dealt with external financial planning matters. The internal financial planning section focused on the capital financing plan and alternative forms of financing, as well as providing analytical financial advice and support to other departments in areas other than those pertaining to the budget process.¹²⁵ At the relevant times, Robert Hatton was the Manager of the external financial planning group, and Donald Altman was the Manager of the internal financial planning group.¹²⁶

i) Director - Len Brittain

102. Len Brittain was appointed Director of Treasury in April 1998.¹²⁷ He reported directly to the CFO and Treasurer, Liczyk.

103. During the Year 2000 process, Brittain was responsible for coordinating the Year 2000 preparations of the Finance Department computer systems. He was also responsible for additional contract staff from the Information & Technology Division of the Corporate Services Department during that time.¹²⁸

¹²³ Liczyk 11/03/2003 at 260.

¹²⁴ Liczyk 11/03/2003 at 204.

¹²⁵ Liczyk 11/03/2003 at 260.

¹²⁶ COT031892 at COT031892.

¹²⁷ Brittain Affidavit, para. 3, 07/09/2003 at 144.

¹²⁸ Brittain Affidavit, para. 6, 07/09/2003 at 145; Brittain 07/30/2003 at 40-41.

104. According to Brittain's draft job profile, his overall responsibility as Director of Treasury involved:

[R]esponsib[ility] for managing and providing leadership and direction to the Treasury and Financial Services division for the City of Toronto. Directs all manners of risk management, debt issuance and management. Monitors the financial position of the City's subsidiaries. Provides the administrative support function for the Finance Department, including budget preparation, in-year variance reporting, financial controls and human resource management.¹²⁹

105. Brittain was specifically responsible for:

- a. improving the City's financial practices and overall financial health including identifying new revenue sources and funding alternatives and performance benchmarking with other organizations;
- b. developing corporate strategies to help ensure the ongoing funding to maintain the City's assets in current or better condition; and
- c. developing long-term capital financing policies and strategies and identifying and implementing innovative capital financing approaches for annual capital budgets and various capital programs to minimize the City's cost of capital financing and interest rates.¹³⁰

106. In 1999, Brittain had an authorized staffing level of 31, but had not completely filled that complement.¹³¹ The managers of the five sections in Treasury, an administrative assistant, and a clerical assistant, reported directly to Brittain.

¹²⁹ COT072821 at COT072821, 52:1:1.

¹³⁰ COT072821 at COT072821, 52:1:1.

¹³¹ COT072821 at COT072821, 52:1:1; Brittain 07/09/2003 at 160-161.

ii) Manager, Financial Planning - Donald Altman

107. Donald Altman was appointed Manager of one of the Financial Planning sections of Treasury on July 15, 1998.¹³² Altman's section dealt with financial planning issues that were internal to the City. Altman reported directly to Brittain.

108. Altman's major responsibilities included developing financial planning policy, providing financial consulting services, and initiating and responding to requests for a variety of studies and projects. The responsibilities included:

- a. providing the City with effective financial planning and control;
- b. developing and maintaining policies and procedures for all financial planning of the City; and
- c. initiating and responding to requests for special management and consulting studies throughout the organization including special estimates, economic analysis and financial studies.¹³³

109. As Manager of Financial Planning, Altman had three staff members working under him: two senior financial analysts and a junior financial analyst.¹³⁴ Altman had his full complement of staff in place as of February or March of 1999.¹³⁵

iii) Manager, Treasury Services Martin Willschick

110. Martin Willschick was a manager in Treasury Services responsible for managing all of the investments for the City, debt issuance and credit rating agency relationships, among other duties.¹³⁶

¹³² Altman 07/03/2003 at 245.

¹³³ COT072819 at COT072819, 49:1:7.

¹³⁴ COT031892 at COT031892.

¹³⁵ Altman 07/03/2003 at 250.

¹³⁶ Brittain 07/30/2003 at 24.

iv) Senior Financial Analyst - Nadir Rabadi

111. Nadir Rabadi held the position of Senior Financial Analyst in Treasury from January 13, 1999 until July 15, 1999.¹³⁷ He reported directly to Altman.

112. Through a mutual arrangement between Budget Services and Treasury, Rabadi continued working with Budget Services until the budgets for 1999 were approved by Council at its meeting of March 2, 3 and 4, 1999, and for about ten days after that until the 1999 budget process had been wound up.¹³⁸

¹³⁷ Rabadi Affidavit, para. 2, 06/24/2003 at 123.

¹³⁸ Rabadi was then appointed to the position of Supervisor of Financial Services Unit, Support Services Division in The Works and Emergency Services Department. Rabadi Affidavit, paras. 1 and 2, 06/24/2003 at 123.

5. Corporate Services Department

a) *Commissioner*

113. Council appointed the position of Commissioner of Corporate Services. The Commissioner of Corporate Services reported directly to the CAO.

114. Bylaw No. 37-1998, adopted on February 6, 1998, set out the duties and responsibilities of the Commissioner of Corporate Services, which included that:

- a. The Commissioner was responsible for the direction and control of all departmental and organizational units responsible for providing corporate services.
- b. The Commissioner carried out such additional duties and exercised such additional responsibilities as Council from time to time prescribed.
- c. Where this bylaw conflicted with the provisions of any other bylaw setting out the powers and duties of a municipal official, this bylaw prevailed to the extent of the conflict.¹³⁹

115. In 1999, the Commissioner of Corporate Services was responsible for seven divisions:

- a. the City Clerk's Office;
- b. Corporate Communications;
- c. Court Services;
- d. Facilities and Real Estate;

¹³⁹ COT038180 at COT038180.

- e. Fleet Management Services;
- f. Human Resources;
- g. Information & Technology; and
- h. Legal Services.

116. The Executive Director or Director of each of those divisions reported directly to the Commissioner. In addition, in 1999, the Service Integration and Support Division and the Amalgamation Team were under the direction of the Commissioner.¹⁴⁰

117. In 2000, the Amalgamation Team no longer existed, and thus no longer reported to the Commissioner. The Court Services Division had been added as a division under the direction of the Commissioner. Although the City Clerk, head of the City Clerk's Office and the City Solicitor, head of the Legal Services Division, reported to the Commissioner, they also reported directly to Council for statutory and legislative matters.¹⁴¹

118. The Commissioner of Corporate Services was the lead Commissioner for the City with regards to the Year 2000 Project. The Director of the Year 2000 Project reported directly to the Commissioner of Corporate Services.¹⁴²

i) January 1998 to June 1999 – Margaret Rodrigues

119. Council appointed Margaret Rodrigues as the first Commissioner of Corporate Services for the new City of Toronto by Bylaw No. 37-1998.¹⁴³ She held that position from January 1998 to May of 1999.¹⁴⁴

¹⁴⁰ COT043002 at COT043005, 63:19:1.

¹⁴¹ COT043007 at COT043009.

¹⁴² Rodrigues Affidavit, para. 7, 11/20/2003 at 11.

¹⁴³ COT038180 at COT038180.

¹⁴⁴ Rodrigues Affidavit, para.1, 11/20/2003 at 10.

120. Prior to her appointment as Commissioner of Corporate Services for the new City, Rodrigues was Commissioner of Corporate Services for the former City of Toronto, and was a member of the Board of Management for the former City of Toronto.¹⁴⁵

ii) June 1999 to January 2000

121. From June 1999 to January 2000, there was no appointed Commissioner of Corporate Services for the City. For the period of May 1999 until July 1999, the CAO, Garrett, acted in the place of the Commissioner of Corporate Services.

iii) July 1999 to January 2000 - Brenda Glover, Acting Commissioner

122. From July 1999 to January 2000, Brenda Glover (“Glover”) was the Acting Commissioner of Corporate Services. Glover acted as Commissioner for all divisions of the Corporate Services Department with the exception of the Information and Technology Division. Glover was the Executive Director of Human Resources, a division of the Corporate Services Department, before and during the period in which she acted as Commissioner of Corporate Services.¹⁴⁶

iv) July 1999 to January 2000 - Wanda Liczyk, Acting Commissioner for the Information and Technology Division only

123. During the period that Glover was Acting Commissioner of Corporate Services, Liczyk acted as Commissioner of Corporate Services for the Information and Technology Division only. Because of Liczyk’s involvement with the Year 2000 Steering Committee and with the Year 2000 Project in general, the CAO decided that Liczyk would be best suited to head the Corporate Services Information and Technology Division.¹⁴⁷

¹⁴⁵ Rodrigues 11/20/2003 at 14.

¹⁴⁶ COT056955 at COT056955; COT043044 at COT043046.

¹⁴⁷ Garrett 12/05/2003 at 49.

v) February 2000 to present – Joan Anderton

124. Joan Anderton (“Anderton”) accepted the position of Commissioner of Corporate Services effective February 14, 2000.¹⁴⁸ Prior to working for the City of Toronto, Anderton was the Director of Corporate Services for the City of Winnipeg, which was roughly the equivalent position to the Commissioner of Corporate Services for the City of Toronto.¹⁴⁹

b) Information and Technology Division

125. The Information and Technology Division (“I&T”) was a division of the Corporate Services Department. There were ten units in I&T, each with a director who reported directly to the Executive Director of the Division, who in turn reported to the Commissioner of Corporate Services.¹⁵⁰

126. I&T was responsible for providing information facilities, data sources, standards, products and services to the City. I&T was also responsible for maintaining information and technology services within the City, and providing support for those services. I&T also developed long term strategies to maximize the effective and efficient use of information and technology.¹⁵¹

i) Executive Director, I&T - Jim Andrew

127. Jim Andrew (“Andrew”) acted as Executive Director, I&T from May 22, 1998 to February 3, 2001.¹⁵² He reported directly to the Commissioner of Corporate Services. When Anderton joined the City in February 2000, Andrew was responsible for briefing the new Commissioner on all areas under his supervision including, most importantly, the computer leasing program he and his staff had implemented. It is now clear, on the evidence, that Andrew failed to provide Anderton with accurate and relevant information

¹⁴⁸ Anderton 11/25/2003 at 10-11.

¹⁴⁹ Anderton 11/25/2003 at 7-8.

¹⁵⁰ COT056955 at COT056955.

¹⁵¹ COT031653 at COT031655, 63:9:26.

¹⁵² Andrew Affidavit, para. 7, 09/24/2003 at 11-12.

regarding the limits Council had imposed on his ability to place hardware and software on lease with MFP.

128. According to his job profile, Andrew was:

[R]esponsible for the overall strategic applications of I&T and creating I&T solutions and strategies that will support the achievement of business goals and initiatives for the City of Toronto across and within all departments and advancement of the corporate vision.¹⁵³

129. His job profile described the following specific accountabilities:

- a. contributing to the development of corporate strategic vision by advising Council and senior management in all departments on all matters relating to I&T management;
- b. identifying and putting a plan in place to resolve strategic information and technology management issues;
- c. setting the overall strategic direction of the Division by establishing goals and objectives that are aligned with the overall strategic planning initiatives of Corporate Services and the City;
- d. developing a multi-year plan that is reflective of future directions, responsive to immediate business needs and ensures the organization has the appropriate common IT infrastructure that it is aligned to the business initiatives;
- e. responsible for the preparation, presentation, monitoring and justifications of operating and capital budgets;

¹⁵³ COT061826 at COT061826, 66:1:10.

- f. conducting short- and long-term financial planning for the development of budgets and establishing financial management systems to ensure department budgets are implemented in accordance with Council direction and the budget plan;
- g. ensuring that the immediate critical technological, business and human resources issues of IT are addressed and proactively identifying opportunities where I&T will improve the departments' business;
- h. ensuring the adequacy and effectiveness of all hardware, software, telecommunications, support equipment, systems, etc., necessary for providing I&T service across the Corporation by directing the research, evaluation, selection and maintenance of equipment; and
- i. building relationships with external contacts and representing the City to industry, federations and other jurisdictions on matters relating to Information and Technology.¹⁵⁴

130. Andrew had ten direct reports, including the Director, Year 2000 Project.¹⁵⁵ He had 281 staff corporately, and 200 additional staff within the various departments of the City.¹⁵⁶

131. Following Andrew's departure, James Ridge ("Ridge") was appointed Acting Executive Director, I&T in February 2001. Ridge has since left the City to take up employment in British Columbia.¹⁵⁷

ii) Director of the Year 2000 Project - Lana Viinamae

132. Lana Viinamae ("Viinamae") was the Director of the Year 2000 Project from June 1998 to June 2000.¹⁵⁸ Viinamae had joint reporting responsibilities through Rodrigues

¹⁵⁴ COT061826 at COT061826.

¹⁵⁵ COT061826 at COT061826, 66:1:10.

¹⁵⁶ COT061826 at COT061826, 66:1:10.

and Andrew.¹⁵⁹ Prior to becoming the Director of the Year 2000 Project, Viinamae worked for the former Metropolitan Toronto from December 1988 to June 1998. The last position she held was Senior Manager of Applications and Infrastructure.¹⁶⁰

133. As Director of the Year 2000 Project, Viinamae was responsible for solving the Year 2000 problem as it related to the continuity of systems, services, equipment, contractual obligations and relations with external organizations and the public in all City departments, agencies, boards and commissions.¹⁶¹

134. The job profile described Viinamae's responsibilities to include:

- a. establishing and directing a Year 2000 Project Office to audit the extent and associated risks of the Year 2000 problem and assisting departments and agencies, boards and commissions to develop and implement action plans;
- b. preparing and implementing a City-wide strategy, and identifying the required financial, human and technical resources to address Year 2000 issues;
- c. establishing monitoring mechanisms to report department and ABC progress with Year 2000 implementation, including preparation of reports to the CAO and Council;
- d. ensuring that suppliers of equipment and services that may be affected by Year 2000 have identified the risk and taken appropriate corrective measures;

¹⁵⁷ Ridge Affidavit, para. 1, 06/19/2003 at 68.

¹⁵⁸ Viinamae Affidavit, para. 4, 10/15/2003 at 7.

¹⁵⁹ Viinamae Affidavit, para. 10, 10/15/2003 at 9; COT031541 at COT031541, 63:5:22, COT002073, 63:5:23.

¹⁶⁰ Viinamae 10/15/2003 at 73.

¹⁶¹ COT031541 at COT031541, 63:5:22.

- e. identifying and mitigating any liabilities on the part of the City that might result from disruptions or failures of systems and services; and
- f. liaising with vendors, other levels of government, external experts, etc. to ensure that all implications of Year 2000 were fully known and acted upon.¹⁶²

iii) Contract Management Office

135. The Contract Management Office (“CMO”) came into existence in early 2000.¹⁶³ The CMO had three broad responsibilities:

- a. I&T procurement,
- b. issuing tender documents in the I&T area; and
- c. managing the leasing program.¹⁶⁴

136. The CMO was set up to manage centrally the City’s new leasing program as part of I&T. Viinamae was responsible for setting up and overseeing the CMO.¹⁶⁵

137. The CMO was the office where all departments had to go if they had any IT requirements. The Contract Management Office would ensure that the IT requirement met with corporate standards and they would handle the acquisition.¹⁶⁶

iv) Manager, Contracted Services - Kathryn Bulko

138. Kathryn Bulko (“Bulko”) became the Manager, Contracted Services in the CMO on January 18, 2000, as the result of a job competition.¹⁶⁷ Prior to that position, she

¹⁶² COT031541 at COT031541, 63:5:22.

¹⁶³ Bulko 08/11/2003 at 91-92.

¹⁶⁴ Bulko 08/11/2003 at 94.

¹⁶⁵ Andrew 10/07/2003 at 18-19; Viinamae 10/15/2003 at 86.

¹⁶⁶ Hart 06/12/2003 at 160.

had been the Project Manager for the Y2K City Wide Initiatives – Desktops from January 1999 to January 2000. Prior to that, Bulko was a Client Services Specialist in I&T from May 1996 to January 1999.

139. The job profile for Manager, Contracted Services described the following responsibilities:

- a. preparing requests for proposals for I&T products and services;
- b. working with Legal Services to ensure that all contracts adhered to the spirit of the law and City policies;
- c. ensuring that Corporate I&T Planning and Architecture reviewed the request for compliance to Corporate Standards prior to issuance;
- d. negotiating and administering contracts and agreements for contracted products and services with providers;
- e. preparing reports for Council on I&T contracts;
- f. pro-actively monitoring the performance of vendors/suppliers to contract terms and conditions; and
- g. providing information on I&T contracts for budgetary and strategic purposes.¹⁶⁸

v) Contract Administration, Coordination and Approvals Supervisor - Line Marks

140. Line Marks (“Marks”) assumed the position of Supervisor, Contract Administration, Coordination and Approvals in the CMO in November 2000, following a

¹⁶⁷ Bulko 08/11/2003 at 6.

job competition. She began to work full-time in the CMO in March of 2001. Prior to that, Marks was the Year 2000 Project Coordinator in the Year 2000 Project Office. This position developed from her earlier role, since August of 1998, as Viinamae's Program Assistant in the Year 2000 Project Office.¹⁶⁹

141. Marks reported to Bulko, the Manager, Contracted Services. The job profile for Supervisor, Contract Administration, Coordination and Approvals described the following responsibilities:

- a. compiling and issuing tenders, reviewing tender submissions, coordinating the award of contracts;
- b. administering consultant agreements;
- c. obtaining necessary sign-offs and approvals;
- d. preparing payment certificates, contract documents and agreements;
- e. coordinating and scheduling contracts annually;
- f. liaising with PMMD and the Legal Services Division on policies and procedures;
- g. administering financial control of capital and operating budget expenditures;
- h. monitoring contractor performance to ensure compliance with contract;
- i. identifying operating and contractual deficiencies and taking appropriate action; and

¹⁶⁸ COT061998 at COT061998.

¹⁶⁹ Marks Affidavit, paras. 2-3, 06/18/2003 at 280.

- j. supervising and directing the work of the Contract Administration unit.¹⁷⁰

vi) Technology Leasing Administration Coordinator and Approvals Supervisor - Paula Leggieri

142. Paula Leggieri (“Leggieri”) became the Technology Leasing Administration Coordinator and Approvals Supervisor in the CMO on April 1, 2000.¹⁷¹ She was advised on October 25, 2002 that her position was being eliminated.¹⁷² Leggieri went on sick leave on November 26, 2002, and did not return to work at the City.¹⁷³

143. Leggieri reported to the Manager, Contracted Services, Bulko. The job profile for Technology Leasing Administration Coordinator and Approvals Supervisor described the following responsibilities:

- a. negotiating and administering all technology lease agreements with leasing vendor;
- b. developing, implementing and monitoring administrative procedures and practices related to the technology leasing program;
- c. administering financial control of capital and operating budget expenditures;
- d. preparing payment certificates and agreements;
- e. obtaining all necessary approvals/sign-offs;
- f. liaising with Finance; and

¹⁷⁰ COT059004 at COT059004.

¹⁷¹ Bulko 06/17/2003 at 254.

¹⁷² Leggieri 06/17/2003 at 33.

¹⁷³ Leggieri 06/17/2003 at 52.

- g. supervising and directing the work of Leasing Program staff.¹⁷⁴

144. Leggieri previously worked for the Year 2000 Project Office under Viinamae. As the Year 2000 Project Office wound down, Leggieri moved to her position in the CMO.¹⁷⁵

vii) Acting Director - Michael Franey

145. The position of Director, Computer Operations and Telecommunications Services was originally filled by Viinamae, who obtained the position as the result of a job competition. Because Viinamae was filling the position of Director of the Year 2000 Project Office, Michael Franey ("Franey"), who had also participated in the job competition, was named Acting Director, Computer Operation and Telecommunications Services.¹⁷⁶ Franey continued as the Acting Director until September 2002, when he was permanently appointed to the position.

146. Franey reported directly to the Executive Director, I&T, Andrew. The job profile described Franey's main responsibilities to include:

- a. providing direct or contracted services for the support, deployment, maintenance and upgrade of the technology infrastructure;
- b. providing overall direction, managing and controlling the analysis, planning, implementation and operation of data, voice and video communications systems within the corporation;
- c. establishing, maintaining and enforcing corporation-wide policies, procedures, resources and services that ensured the integrity, availability, reliability, performance, physical security and the prevention of

¹⁷⁴ COT059006 at COT059006.

¹⁷⁵ Leggieri 04/09/2003 at 9-10.

¹⁷⁶ Franey Affidavit, para. 1, 06/18/2003 at 211.

unauthorized access to information systems, data, networks, equipment and facilities;

- d. serving, chairing or representing the executive director and the Division on committees, task forces and other consultative and operational groups;
- e. ensuring that vendor selection and contract negotiation meet operational and City requirements; and
- f. developing appropriate procurement approaches to common infrastructure development and communicating these approaches to departments and vendors.¹⁷⁷

147. Franey had five managers and an administrative assistant reporting directly to him.

viii) Director, Application and Professional Services - Stephen Wong

148. Stephen Wong (“Wong”) has held the position of Director, Application and Professional Services since 1998. The Application and Professional Services section is currently known as Information and Application Services, the change being one in name only. Wong’s duties and responsibilities have remained the same since 1998. Wong was appointed to his position in October or November of 1998.¹⁷⁸

149. From August 1998 until July 1999, Wong was on a temporary assignment as the Project Director for the implementation of the SAP system.¹⁷⁹

150. Prior to his appointment as Director, Application and Professional Services, Wong was the Director of I&T for the former City of Etobicoke from 1995 to 1998.¹⁸⁰

¹⁷⁷ COT052123 at COT052123, 63:1:20.

¹⁷⁸ Wong 08/06/2003 at 100.

¹⁷⁹ Wong Affidavit, paras. 1-2, 07/31/2003 at 174-175.

151. Wong was responsible for the development, enhancement and sustainment of the City's major business applications, such as the tax and water system, the SAP system and the budget system.¹⁸¹ Wong was also responsible for the technical management of the City's internet and intranet.¹⁸²

ix) Brendan Power

152. Brendan Power ("Power") was employed by the Management Board Secretariat as a Manager of Corporate Contracting Services in the Provincial Government from 1993-1997. He was a Manager of Supplier Information Service for the Provincial Ministry of Government Services from 1988-1993.¹⁸³ Following his work with the provincial government, in 1997 Power joined the firm E.D.S. Canada ("EDS") to provide consulting services to the City on a contractual basis.¹⁸⁴ Power carried on business under the trade name of Brendan Power and Associates, which provided consulting services.¹⁸⁵

153. While Power was working for the provincial government, he helped to establish its leasing program in the early 1990s. Power authored the 1992 RFP which resulted in MFP becoming the province's vendor of record for leasing services. GE Capital replaced MFP as vendor of record in 1996. However, MFP still held some leases that continued to run after that point. As a function of his job with the province, Power was involved in managing the lease process, and met on several occasions with representatives of MFP, including Irene Payne ("Payne") and Rob Wilkinson ("Wilkinson"), and on one occasion, Peter Wolfraim. Payne was Power's chief contact at MFP. During the course of that period, Power developed business relationships with both Payne and Wilkinson.¹⁸⁶

¹⁸⁰ Wong Affidavit, para. 3, 07/31/2003 at 175.

¹⁸¹ Wong 07/31/2003 at 203.

¹⁸² Wong 08/06/2003 at 99.

¹⁸³ COT043171 at COT043171, 23:2:27.

¹⁸⁴ Power 03/05/2003 at 160-161, 163.

¹⁸⁵ Power 03/05/2003 at 165.

¹⁸⁶ Power 03/06/2003 at 77-79.

154. In addition, Power and Andrew have known each other for over twenty years.¹⁸⁷ From 1982 to 1983, Power and Andrew worked together at the Queen's Park Computer Centre; during this time, Andrew reported to Power.¹⁸⁸ They have maintained a "reasonably close personal relationship" since that time, playing golf on Sunday mornings and meeting occasionally for lunch.¹⁸⁹

155. In 1997, Andrew informed Power of an opportunity in the old City of Toronto as Project Manager for the implementation of a Human Resources Information System.¹⁹⁰ Power interviewed for the position, which was in the Information and Technology Division of the former Metropolitan Toronto. Viinamae, on behalf of I&T, interviewed Power for the position.¹⁹¹ At the time, Viinamae was the Manager, Client Services in the Corporate Services Department.¹⁹² Power successfully obtained this contract position.

156. He filled that role for a period of six to nine months.¹⁹³ Of his role as Project Manager, Power stated that:

Q: Okay. Tell me then about what it was that Viinamae told you that the position involved, what skills, what responsibilities?

A: Well, for that position they were looking for a project manager to finish the implementation of a Human Resources Information System that was being worked on, and one (1) of the project managers had left, so they were looking for somebody to replace her fairly quickly. So, the -- the work I did was around project managing that -- the completion of that -- of that project.

Q: And how long were you involved in that project?

A: I think it was about six (6) or nine (9) months or so, yeah.

Q: Did you have any managerial role there?

A: Just as a project manager, yeah.

¹⁸⁷ Power 03/05/2003 at 180.

¹⁸⁸ Power 03/06/2003 at 55.

¹⁸⁹ Power 03/06/2003 at 56.

¹⁹⁰ Power 03/06/2003 at 56.

¹⁹¹ Power 03/05/2003 at 161.

¹⁹² Power 03/05/2003 at 161.

¹⁹³ Power 03/05/2003 at 162.

Q: Okay. And when you say a project manager, you were managing the project and not the people in Viinamae's area?

A: Yeah, just directing people on a test level, I had no supervisory responsibility, no.¹⁹⁴

157. Throughout 1998 and 1999, Power worked as a contractor in the Year 2000 Project Office in the new City of Toronto.¹⁹⁵ At the end of this project, at Viinamae's request, Power became involved in the amalgamated City of Toronto in I&T and the Year 2000 Project Management Office ("PMO").¹⁹⁶ Viinamae asked Power to represent Metro on the newly-formed Y2K Committee, which was chaired by Frank Vizzachero.¹⁹⁷ There was no formal job competition or process by which he came to be working in the PMO.¹⁹⁸ Power eventually filled the position of External Agreements and Partners Coordinator in the Year 2000 Office.¹⁹⁹

158. As External Agreements and Partners Coordinator, Power reported directly to the Director of the Year 2000 Project Office, Viinamae.²⁰⁰ Power worked closely with Viinamae and kept her informed of all his projects.²⁰¹ He did not report to anybody at the City outside of the Y2K Project Management Office. His responsibilities included: analyzing contracts, negotiating Y2K compliance matters, and ensuring that suppliers would be paid.²⁰² One of his roles and responsibilities in this capacity was to establish a process for reviewing information technology related to RFPs and RFQs to ensure that they contained provisions for addressing Y2K issues and making equipment Y2K compliant.²⁰³

¹⁹⁴ Power 03/05/2003 at 162-163.

¹⁹⁵ Power 03/05/2003 at 172.

¹⁹⁶ Power 03/05/2003 at 164, 172.

¹⁹⁷ Power 03/26/2003 at 262-263.

¹⁹⁸ Power 03/05/2003 at 176.

¹⁹⁹ Power 03/05/2003 at 178.

²⁰⁰ Power 03/05/2003 at 180; Power 03/26/3004 at 271; COT002151.

²⁰¹ Power 03/06/2003 at 42.

²⁰² Power 03/06/2003 at 34.

²⁰³ Power 03/05/2003 at 194.

159. Power's main responsibility was to provide leadership to all departments, agencies, boards and commissions in addressing the Year 2000 issue as it applies to agreements and partners. His major responsibilities included:

- a. preparing and maintaining Year 2000 guidelines and standards related to the assessment of all agreements and partnerships and the remedying of Year 2000 non-compliant agreements and partnerships;
- b. coordinating and assisting in the preparation and maintenance of the project and contingency plans of departments, agencies, boards and commissions as they related to the Year 2000 issue in agreements and partnerships;
- c. advising the Director on the allocation of funds to cover any increased costs associated with revised agreements and partnerships;
- d. monitoring and reporting to the Director the status of the agreements and partners component of the Year 2000 Program in a manner consistent with the evidential requirements of potential litigation against the City; and
- e. assisting as required in the management of the Year 2000 Project Office and the execution of the communication plan.²⁰⁴

160. In the spring of 1998, Power worked on the preliminary report to Council, which involved assessing the needs of the Y2K Project Management Office and establishing a budget.²⁰⁵ He was not involved in the analysis section; he received information from Viinamae and drafted the report accordingly. A final report went to Council in November 1998, which resulted in an authorized budget of \$149 million for the Y2K Project Management Office.²⁰⁶ Power testified that his involvement in the final report was essentially the same as it had been for the preliminary report, although he was more

²⁰⁴ COT002151 at COT002151.

²⁰⁵ Power 03/06/2003 at 40-41.

involved in ensuring that the information he received was correct, and he spoke to the relevant departments.²⁰⁷

161. During the time in which he performed work for the City, Power remained an independent contractor working for the City through EDS. At no time was Power an employee of the City of Toronto. Power sent time sheets to EDS reflecting the work he had done at the City, and EDS billed the City. Power had his time sheets signed by the person to whom he reported.²⁰⁸

c) Legal Services

162. The Legal Services Division (“Legal Services”) was part of the Corporate Services Department. There were eight different practice groups within Legal Services:

- a. Real Estate,
- b. Employment Law,
- c. Planning and Administrative Law,
- d. Prosecutions,
- e. two Municipal Law groups; and
- f. two Litigation groups.

163. There was also an administrative unit. Each practice group had a director who reported to the City Solicitor.

²⁰⁶ Power 03/06/2003 at 42.

²⁰⁷ Power 03/06/2003 at 42-43.

²⁰⁸ Power 03/26/2003 at 113-115.

i) City Solicitor - H.W.O. Doyle

164. H.W.O. Doyle (“Doyle”) was the City Solicitor from February 5, 1998 until his retirement on February 5, 2002.²⁰⁹ He was appointed to the position of City Solicitor by Council by Bylaw No. 29-1998.²¹⁰

165. Prior to his position with the new City, Doyle worked for the Municipality of Metropolitan Toronto. He was Metropolitan Solicitor from 1989 until amalgamation.²¹¹

ii) Brian Loreto

166. Brian Loreto (“Loreto”), now deceased, was a solicitor in the Municipal Law section at Metro Hall. He started working for the City of Toronto immediately following amalgamation in 1998. Prior to working for the City, he had been a solicitor for the City of North York since 1993.²¹²

167. In March 1999, the City retained the firm of Fasken Campbell Godfrey (“Faskens”) as outside counsel. The retainer agreement between the City and Faskens stipulated that Faskens should seek instructions from the City Solicitor for matters relating to City corporate governance, priorities and policies. Loreto was designated as the Solicitor’s representative for such instructions.²¹³ On transactional matters, Faskens was to seek instructions from Viinamae, as Year 2000 Project Office Director, or her designate, with a copy to Loreto.²¹⁴ Loreto indicated that the Year 2000 Project was seen as being time sensitive and it was seen as more effective to have Faskens deal directly with the Year 2000 Project Office. Loreto understood that most instructions to Faskens on Year 2000 issues came from Power and that the primary contact at Faskens would be Mark Fecenko.²¹⁵

²⁰⁹ Doyle Affidavit, para. 1, 04/07/2003 at 81.

²¹⁰ COT038176.

²¹¹ Doyle Affidavit, para. 3, 04/07/2003 at 82.

²¹² Loreto Affidavit, para. 1, 04/01/2003 at 204.

²¹³ Loreto Affidavit, para. 4, 04/01/2003 at 205-206.

²¹⁴ COT006447 at COT06447-6448, 26:1:2.

²¹⁵ Loreto Affidavit, para. 5, 04/01/2003 at 206-207.

iii) Lorraine Searles-Kelly

168. Lorraine Searles-Kelly (“Searles-Kelly”) was a solicitor in the Metro Hall Municipal Law section of Legal Services. She worked in the same group as Loreto.

d) Legal Services Municipal Law sections

169. The Municipal Law sections were responsible for negotiating and preparing contracts, providing oral and written legal opinions, and preparing bylaws.²¹⁶ One Municipal Law section was located at City Hall, under the direction of Mary Ellen Bench. That section was responsible for working with the City Clerk’s Office, Finance, and with economic development. The second Municipal Law section was located at Metro Hall, under the direction of Jim Anderson. That section worked with roads, waterworks, waste disposal, I&T and other services.

i) Retainer of outside counsel

170. Legal Services provided legal services and advice to Council, its Committees, departments, agencies, boards and commissions.²¹⁷ Legal Services did not initiate the decisions and transactions for which it provided legal services, but responded to instructions from and actions taken by Council and by other departments. Legal Services reacted to the requests and demands of its client groups. The Division did not have a policy or procedure of investigating contracts or transactions done by departments unless it was asked to do so.²¹⁸ Once a transaction or decision was undertaken, Legal Services would provide all legal services associated with the transaction, unless outside counsel was used.²¹⁹

171. On occasion, Legal Services deferred entirely to outside legal counsel for certain matters. Very large projects that were beyond the capacity of Legal Services could be handled by outside legal counsel through retainer agreements. In those cases, outside

²¹⁶ Doyle Affidavit, para. 5, 04/07/2003 at 83.

²¹⁷ Doyle Affidavit, para. 6, 04/07/2003 at 83.

²¹⁸ Loreto 04/02/2003 at 247.

²¹⁹ Doyle Affidavit, para. 8, 04/07/2003 at 84.

counsel would report directly to the client department. Where the City retained outside counsel, Legal Services would continue to provide advice as per the retainer agreement, usually for matters of City policies, priorities or corporate governance.²²⁰

172. In March 1999, the City retained Faskens as its outside legal counsel to provide legal services on Year 2000 issues as Legal Services did not have sufficient internal resources to handle this project. Faskens was selected as outside counsel following a competitive selection process.²²¹ It was Doyle's evidence that the legal services connected with the Year 2000 Project were unique. It was the first time Legal Services had referred legal matters to outside counsel without a member of the Division retaining any meaningful involvement.²²²

173. Bylaw No. 39-1998 required the City Clerk and the CFO and Treasurer to sign on all documents necessary to give effect to matters approved by Council.²²³ The Clerk and the CFO and Treasurer could delegate their signing authority with proper Council approval. All contracts, in order to be validly signed, required the signatures of the City Clerk and the CFO and Treasurer (or their authorized delegates), as well as the corporate seal of the City of Toronto. In addition, the City Clerk's Office would review and sign the authorization statement placed on contracts approved by City Council.²²⁴

174. There was a practice in place whereby the City Solicitor approved a contract "as to form" prior to the contract being signed by the City Clerk. The approval "as to form" was done by placing a stamp on the contract that noted the contract as approved "as to form". It was Doyle's evidence that the approval as to form meant that Legal Services was satisfied that the parties were correctly named, all the pages were included, there

²²⁰ Doyle Affidavit, para. 8, 12, 04/07/2003 at 84, 85-86.

²²¹ Loreto Affidavit, para. 3, 04/01/2003 at 205.

²²² Doyle Affidavit, para. 18, 04/07/2003 at 88-89.

²²³ Doyle Affidavit, para. 14, 04/07/2003 at 87.

²²⁴ Doyle 04/07/2003 at 126-128.

was a place for the contract to be executed and the authorization stamp and the approval as to form stamp were affixed to the contract.²²⁵

175. Approving contracts “as to form” was a practice at the City. There was no legal or statutory requirement to do it. Not all contracts were approved “as to form” by Legal Services.²²⁶

176. It was Loreto’s evidence that in general, when approving a contract “as to form”, Legal Services would approve that the terms and conditions of the contract were standard, normal terms that were not prejudicial to the City. The approval “as to form” did not consider the subject matter of the contract.²²⁷ After being approved as to form, the contract would be sent to the City Clerk’s Office for signing by the City Clerk, and for review and approval of the authorization statement.

177. The City Solicitor attended all Council meetings, and a representative from Legal Services attended all Committee meetings, in order to provide legal advice to the Council or Committee.²²⁸ The Solicitor provided advice when called upon, and the Committee or Council made decisions.

e) City Clerk’s Office

178. The *Municipal Act* required that the Council appoint a clerk, and set out the mandatory duties of the clerk.²²⁹

179. The City Clerk’s Office was a division of the Corporate Services Department. The head of the City Clerk’s Office was the City Clerk. There were six sections within the Clerk’s Office:

²²⁵ Doyle Affidavit, para. 16, 04/07/2003 at 88.

²²⁶ Loreto 04/01/2003 at 262.

²²⁷ Loreto 04/01/2002 at 262-263.

²²⁸ Doyle Affidavit, para. 7, 04/07/2003 at 83-84.

²²⁹ *Municipal Act*, s. 73.

- a. Secretariat, Planning and Distribution;
- b. Council and Support Services;
- c. Corporate Access and Privacy;
- d. Corporate Records System and City Archives;
- e. Elections;
- f. Legislative Services; and
- g. Protocol.

180. Each section was headed by a Director, each of whom reported directly to the City Clerk.²³⁰

181. The City Clerk reported directly to City Council on Council related matters. For all other matters, the City Clerk reported to the CAO.²³¹

182. Under the *Municipal Act*, the Clerk was required to keep a detailed record of all Council meetings, keep copies of all bylaws, and keep such records available to the public.²³²

183. Bylaw No. 3-1998, which became part of Chapter 169 of the Municipal Code, set out the duties of the City Clerk as follows:

In addition to all duties imposed upon the Clerk by the Municipal Act and any other statutes and by any bylaw of the Council, the Clerk shall have full charge and control of and be fully responsible for the conduct of the Clerk's Division for the City of Toronto.²³³

²³⁰ COT056955 at COT056955.

²³¹ Hart 06/12/2003 at 171.

²³² *Municipal Act*, ss. 73-76, COT043178 at COT043189-43191.

²³³ COT041583 at COT041587, 3:1:36.

184. According to the City Clerk's Division 2000 Operating Plan and Budget, the role of the Clerk's Office was to:

- a. support the governance structure and process through responsibility for the legislative process and related activities of City Council, Community Councils, Council Committees and other deliberative bodies, including the conduct of municipal elections, implementing freedom of information and privacy legislation compliance programs, and managing city protocol services;
- b. deliver key front-line public services, including issuing licences to the public for births, deaths and marriages, as well as burial permits, and for charitable gaming, and maintaining the assessment rolls; and
- c. deliver critical corporate services, including corporate records and archives and printing, mail and distribution services.²³⁴

185. The Clerk's Office maintained the minutes of all Council meetings and Committee meetings. Formal Council minutes were prepared by the Clerk's Office after the conclusion of Council meetings, and were confirmed by City Council at a subsequent meeting.²³⁵ Council minutes did not reflect the specific order in which each event recorded in the minutes occurred. The minutes were a summary of the final resolution of each item on the agenda for Council.²³⁶

i) Execution of contracts

186. As discussed above, Bylaw No. 39-1998 authorized the Clerk and the CFO and Treasurer (or their designate) to sign documents necessary to give effect to matters

²³⁴ COT060786 at COT060788.

²³⁵ Watkiss Affidavit, para. 2, 86:1:12.

approved by Council. In addition there was a practice whereby the Clerk would sign an authorization statement which was a measure to ensure that Council had in fact, approved the contract. Doyle gave evidence that the Clerk's office ensured that authority for the contract could be found in a report that had been adopted by Council.²³⁷

f) Fleet Services

187. The Fleet Management Services Division ("Fleet Management Services") was a part of the Corporate Services Department. There were six sections in the division, each of which was led by a Manager. The managers reported to the Director of Fleet Management, who in turn reported to the Commissioner of Corporate Services.²³⁸

188. Fleet Management Services was responsible for the management and maintenance of the vehicles operated by the City of Toronto. The division was responsible for the trusteeship and maintenance of all City vehicles covered under the City's Commercial Vehicle Operators Registration and all vehicles and equipment with a replacement value exceeding \$5,000 with wheels and axles, excluding Police, Fire, Ambulance and TTC vehicles, and excluding vehicles operated by the City's agencies, boards and commissions.²³⁹

g) City Auditor – Jeffrey Griffiths

189. The *Municipal Act* required that Council appoint an auditor whose duties, in addition to those set out by Council, included auditing the municipality's financial statements.²⁴⁰

²³⁶ Watkiss Affidavit, para. 4, 86:1:12.

²³⁷ Doyle 04/07/2003 at 128.

²³⁸ COT056955 at COT056955.

²³⁹ COT041370 at COT041372, 14:2:82.

²⁴⁰ *Municipal Act*, ss. 86-87.

190. On February 6, 1998, Council adopted Bylaw No. 30-1998, to appoint and delineate certain duties and responsibilities of the City Auditor. Under the bylaw, Jeffrey Griffiths (“Griffiths”) was appointed as City Auditor for a term of three years. The City Auditor was given full charge and control of the conduct of the Audit Department for the City.²⁴¹

191. Griffiths had been the Director of Audits for the Municipality of Metropolitan Toronto from 1986 until 1998. In 1998, he was appointed Acting Toronto Auditor. Following amalgamation, he became the City Auditor for the City of Toronto.²⁴²

192. The City Auditor was responsible for the City’s internal audit function, and reported to the Audit Committee. The City Auditor was independent of the management structure of the City, and reported to Council through the Audit Committee.

193. The City Auditor was responsible for performing audits on the City’s agencies, boards and commissions. In addition, the City Auditor performed forensic audits and compliance audits for City Council, and responded to special requests from Council.²⁴³

194. The external firm of Ernst & Young was responsible for the City’s external audit. The external auditor reported directly to Council regarding the financial statements of the City.²⁴⁴

²⁴¹ COT038178.

²⁴² Griffiths Affidavit, paras. 5, 7, 09/09/2003 at 7-8.

²⁴³ Griffiths 09/09/2003 at 25-26.

²⁴⁴ Griffiths 09/09/2003 at 24.

6. Procurement process at the City of Toronto

a) Council controlled all spending at the City

195. Council controlled all spending at the City. It had the sole authority to approve both budget allocations and transaction commitments. This should have been understood by all senior managers at the City, as a first principle of municipal management.²⁴⁵ This meant, in practice, that before anyone at the City entered into any contractual commitment or paid any account, Council must have approved both the budget out of which that expenditure would come, and the specific transaction. Both approvals were required. It was not sufficient that a department have only budget approval for a specific item.²⁴⁶

196. Thus, any department wishing to procure goods or services or enter into a financial commitment needed first to have sufficient funds in its approved budget to initiate the procurement exercise, followed by Council approval (either direct or delegated) to enter into the specific transaction resulting from the competitive bid process. These requirements were set out expressly in the Financial Control and Purchasing bylaws.

b) Financial Control Bylaw

197. The City's Financial Control Bylaw established financial controls over all allocation of funds (budgets), approval of corporate programs, commitment of funds, and payment of accounts. Immediately following amalgamation the City passed an interim financial control Bylaw, No. 7-1998, adopted by Council on January 6, 1998 ("Financial Control Bylaw").²⁴⁷ The interim bylaw remained in force until it was replaced

²⁴⁵ Garrett 12/10/2002 at 75.

²⁴⁶ Garrett 12/10/2002 at 78 and 171-172.

²⁴⁷ COT032007, 3:1:37.

on March 2, 2000 by Bylaw No. 152-2000 (“2000”).²⁴⁸ The Financial Control Bylaw was therefore in effect throughout all of 1999.

198. Section 2 of the Financial Control Bylaw provided that “Council had the sole authority to allocate funds to corporate appropriations and projects and for approving corporate programs and objectives.” This meant that Council made all budget decisions with respect to the allocation of funds and the approval of particular programs.²⁴⁹ Section 3 required that “the commitment of funds and payment of accounts of the City shall be carried out in accordance with the provisions of this bylaw”.²⁵⁰

199. The Financial Control Bylaw required two distinct Council approvals to be obtained before goods or services could be acquired:

(2) budget approval - section 4 required Council to approve annual budget amounts, and in so doing to determine “the sums required for every purpose”,²⁵¹ and

(3) transaction approval - section 8 required specific Council approval for the actual transaction or expenditure to acquire the goods or service:

No commitment shall be made, no debt shall be incurred, no expenditure shall be made and no account shall be paid by or on behalf of the City except with the approval of Council or in accordance with the authority granted in accordance with the provisions of this bylaw.²⁵²

200. Thus, as described by Garrett:

[I]t was always a two stage process. The first stage is making the estimates, or putting together a budget of what you expect you’ll need for the coming year and

²⁴⁸ COT077855 at COT077859.

²⁴⁹ Garrett 12/10/2002 at 76.

²⁵⁰ Bylaw No. 7-1998, s. 2, COT032007 at COT032009, 3:1:37.

²⁵¹ Bylaw No. 7-1998, s. 4, COT032007 at COT032010, 3:1:37.

²⁵² Bylaw No. 7-1998, s. 8, COT032007 at COT032010, 3:1:37.

the projects you expect to undertake in the course of the year. Once there's a consent to that, by Council, in the budgets, you have the authority to proceed through normal purchasing processes to acquire that service or to buy that asset".

201. The second stage involved obtaining Council approval for the recommended transaction or commitment coming out of that purchasing process.²⁵³

202. Given the size and complexity of the City, the Financial Control Bylaw permitted Council to delegate its transaction approval authority. In particular, pursuant to s. 9, the CAO was permitted to make a commitment in respect of any corporate expense not exceeding \$500,000 in any one instance provided that Council had already given budget or project approval for that purpose. Moreover, the CAO was given the authority in s. 11 to delegate this authority to City staff, and to limit that authority to particular classes of commitments.²⁵⁴ Garrett did this in 1998 and 1999 by delegating to Commissioners as follows:

[A]ll spending commitments made in accordance with approved purchasing practices, except consulting services: up to \$500,000. You may delegate some or all of this commitment authority at your discretion. [The Purchasing Director] will have the authority to award contracts up to \$500,000: above \$500,000, in the interim, only Council will have that authority ...Funds must be in the approved operating and/or capital budgets (interim or final), or have specific Council approval.²⁵⁵

c) Purchasing Bylaws

203. The City's Purchasing Bylaw governed the second stage of approval required, after budget approval had been obtained, but before an expenditure was made or a contract awarded. Procurement was carried out through a competitive process, in order to ensure that the City received the best value for its money, and because the City, as a governmental body, had a responsibility to create a transparent process for vendors and

²⁵³ Garrett 12/10/2002 at 78-79.

²⁵⁴ Bylaw No. 7-1998, s. 9 and 11, COT032007 at COT032010 and COT032011, 3:1:37.

suppliers.²⁵⁶ The purchasing bylaw established the procedure and authority for the calling of bids and the award of contracts through this competitive process.

i) Interim Purchasing Bylaw

204. Council adopted the Interim Purchasing Bylaw No. 57-1998, on March 6, 1998 (“Interim Purchasing Bylaw”). The preamble of the bylaw stated that it was “necessary and expedient to establish a procedure and authority for the calling of bids and the award of contracts pending the development and adoption of comprehensive bylaws establishing financial controls and procurement policies.”²⁵⁷

205. The Interim Purchasing Bylaw established levels of transaction approval for the award of contracts as follows:

- a. quotation and tender calls in the amount of \$500,000.00 or less – awarded by the CAO or designate, pursuant to the provisions of the Financial Control Bylaw as discussed above;
- b. quotation and tender calls over \$500,000.00 and up to \$1.0 million – awarded by unanimous vote of the Bid Committee upon the recommendation of the Director of Purchasing, provided that the award is to the lowest bidder who meets the specifications and requirements set out in the request for quotation or tender and the terms and conditions of the contract are determined at that time,²⁵⁸ and

²⁵⁵ COT036868, 3:1:13; Garrett 12/10/2002 at 80-81.

²⁵⁶ Garrett 12/10/2002 at 88-89.

²⁵⁷ Bylaw No. 57-1998, COT031536 at COT031536, 3:2:48.

²⁵⁸ Bylaw No. 57-1998, s. 5(3), COT031536 at COT031538-31539, 3:2:48.

- c. quotation and tender calls over \$1.0 million – awarded by Council upon the recommendation of a Standing Committee or Community Council to which the bid was referred.²⁵⁹

206. Council adopted the Interim Purchasing Bylaw to ensure that the procurement process could continue without interruption throughout the amalgamation process. The bylaw allowed Council to satisfy itself that procedures were in place that would ensure:

[A]n open, fair and competitive process providing reasonable access to potential bidders, and the opportunity to supply goods and services or carry out construction contracts on behalf of the City through a fair, transparent, open and competitive process which [was] fairly administered.²⁶⁰

207. The Interim Purchasing Bylaw established a process that would provide Council with the assurances that the awarding of low dollar value contracts essentially became administrative decisions that could be delegated to staff.²⁶¹ Such delegation, however, did not abrogate the need for the use of a competitive bid process to ensure the best price for those contracts.

ii) Final Purchasing Bylaw

208. The Interim Purchasing Bylaw was in force from March 6, 1998 until March 2, 2000. On the latter date, Bylaw No. 151-2000 came into effect (“Final Purchasing Bylaw”) and replaced the interim bylaw.

209. The Final Purchasing Bylaw provided any department head could spend \$10,000 without going through the purchasing process and involving PMMD in the process (Department Direct Purchase Limit).²⁶²

²⁵⁹ Bylaw No. 57-1998, s. 6, COT031536 at COT031539, 3:2:48.

²⁶⁰ COT031528 at COT031530, 3:1:7.

²⁶¹ COT031528 at COT031530, 3:1:7.

²⁶² Bylaw 151-2000, s.1, COT036845 at COT036846, 54:2:44.

210. The Final Purchasing Bylaw defined the “Purchasing Agent” as the Director of PMMD, including his or her designate.²⁶³ The Purchasing Agent was authorized to enter into contracts without issuing a call or request in certain situations, including sole source situations. In addition, the Purchasing Agent was authorized to make awards arising from calls or requests provided that the amount of the award was within the commitment authority delegated to staff, and that funding or budget approval had been approved by Council.²⁶⁴

211. The Final Purchasing Bylaw gave authority to the Standing Committee to enter into a contract without seeking Council approval if the amount of the contract was greater than \$1 million and equal to or less than \$5 million.²⁶⁵ The Standing Committee was required to report to Council for information purposes, but did not need Council approval to enter into the contract.

212. The Final Purchasing Bylaw was in force from March 2, 2000 until July 6, 2000, when it was replaced by Bylaw No. 462-2000.²⁶⁶ Bylaw 462-2000 delegated transaction approval

- a. to the Bid Committee where the amount of the contract was equal to or less than the budget approval by Council and equal to or less than \$2 million;²⁶⁷ and
- b. to the Standing Committee was allowed to award contracts where the amount of the contract was between \$2 million and \$5 million.²⁶⁸

213. Council transaction approval was still required for contracts above \$5 million.

²⁶³ Bylaw No. 151-2000, s. 1, COT036845 at COT036446, 54:2:44.

²⁶⁴ Bylaw No. 151-2000, ss. 4(2), COT036845 at COT036848, 54:2:44.

²⁶⁵ Bylaw No. 151-2000, ss. 9(3), COT036845 at COT036852-36853, 54:2:44.

²⁶⁶ COT038217, 3:2:49.

²⁶⁷ Bylaw No. 462-2000, s. 8(2)(b), COT038217 at COT038224, 3:2:49.

²⁶⁸ Bylaw No. 462-2000, s. 9(3)(a), COT038217 at COT038225, 3:2:49.

214. Finally, on March 8, 2001, Bylaw No. 179-2001 was enacted, establishing the delegated authority for transaction approval to the Bid Committee to a maximum amount of \$2.5 million and to the standing committees at amounts between \$2.5 million and \$5 million.²⁶⁹

d) Role of Bid Committee

215. The Bid Committee referred to above was established by the Interim Purchasing Bylaw, and was continued under the Final Purchasing Bylaw. The Bid Committee for a particular bid was composed of the CAO, the CFO and Treasurer, the City Clerk and the department head who initiated the call or request for that particular bid. Each of the members of the Bid Committee was allowed to send a designate to represent them on the Committee, and in general did send a staff member. Don Altman was the CFO and Treasurer's representative at the Bid Committee.²⁷⁰ Garrett also sent a designate to the Bid Committee during his tenure.²⁷¹ There was no evidence given as to whether a designate attended the Bid Committee on behalf of the City Clerk.

216. The City Clerk (or designate) acted as the chair of the Committee, but did not have a vote in the Committee's decision making process. The Committee could seek the advice of the City Solicitor when required.²⁷²

e) Sole source policy

217. The concept of sole sourcing was first formally defined in The Final Purchasing Bylaw. Under s. 4(3), the Purchasing Agent was authorized to enter into a contract without issuing a call or request under certain circumstances. These included:

When an event occurred that was determined by a department head of the CAO to be a threat to public health, the maintenance of essential City services, the

²⁶⁹ Bylaw No. 179-2001; COT038236.

²⁷⁰ Altman 07/03/2003 at 280.

²⁷¹ Garrett 12/10/2002 at 93.

²⁷² Bylaw No. 151-2000, s.6, COT036845 at COT036850, 54:2:44.

welfare of persons or of public property or the security of the City's interests and the occurrence requires the immediate delivery of goods or services and time does not permit for an award, other than by the Purchasing Agent;

When competition in respect of the goods and services is precluded because of the existence of a sole source, patent rights, copyrights, secret processes, control of basic raw materials or similar restrictions;

When, in the opinion of the Purchasing Agent, a fluctuating market for goods and services exists and the issuance of a Request of a Call would adversely affect the interests of the City given rising market prices.²⁷³

218. If the amount of the sole source contract was more than the \$500,000 limit that had been delegated to the Purchasing Agent through the Financial Control Bylaw, s. 4(4) required that it be reported to Council through the Administration Committee at the earliest opportunity.²⁷⁴

219. The sole source provisions remained the same in Bylaw No. 462-2000.

f) Bid process

220. The City conducted a competitive bid process through the use of calls for tenders, and requests for quotations (RFQ) or requests for proposals (RFP). Tenders were used for projects with a fixed price, where the Call for the tender contained all of the material terms, conditions and specifications to be met for the project, aside from price.

221. RFQs were typically used where the City was seeking offers to supply specified goods or services at a fixed price. PMMD used a Request for Quotations ("RFQ") when a department knew what it wanted to purchase and could provide a description of what it was looking to acquire. PMMD would issue the RFQ and respondents would provide quotations (prices) based on the description of the acquisition. The terms 'quotation' and 'respondent' were generally used with respect to RFQs.

²⁷³ Bylaw No. 151-2000, ss. 4(3)(b), COT036845 at COT036848.

²⁷⁴ Bylaw No. 151-2000, ss. 4(4), COT036845 at COT036849, 54:2:44.

222. RFPs were used to obtain offers to supply goods or services as a basis for negotiations for entering into a contract.²⁷⁵ PMMD used a Request for Proposals (“RFP”) when a department required a solution to a certain problem, which could be solved in different ways. The RFP would establish criteria to be met by the proposed solution, and the proposals submitted were scored against the criteria. In general, the City would award the contract to the highest scoring proponent.²⁷⁶

223. The Interim Purchasing By-Law only contemplated the use of an RFQ or Tender. It made no mention of an RFP. This concept was first defined in the Final Purchasing Bylaw.

²⁷⁵ Bylaw No. 151-2000, s. 1, COT036845 at COT036845, 54:2:44.

²⁷⁶ Pagano 02/24/2003 at 142; Pagano, 03/05/2003 at 103-104; Beattie Affidavit, para. 12, 03/31/2003 at 57-58.