

- 1. OVERVIEW..... 2
- 2. JAKOBEK HAD AN INAPPROPRIATE RELATIONSHIP WITH DOMI ..... 4
- 3. JAKOBEK IMPROPERLY OBTAINED DRAFT LEASING DOCUMENTS AND GAVE THEM TO DOMI..... 6
- 4. JAKOBEK HAD AN INAPPROPRIATE RELATIONSHIP WITH ANDREW..... 9
- 5. JAKOBEK IMPROPERLY ATTEMPTED TO DISSUADE ANDREW FROM PARTICIPATING IN THE KPMG INVESTIGATION ..... 10
- 6. JAKOBEK OBSTRUCTED THE WORK OF THE INQUIRY ..... 11

## 1. Overview

1. The City reasonably expected Jakobek to act in the public interest. The City submits that Councillors:

must perform their duties in a manner that maintains and enhances public confidence and trust in the integrity, objectivity and impartiality of the City. Trust and mutual respect are the cornerstones of any relationship between the public and its government. Furthermore, as an organization entrusted with public funds, the City is obligated to ensure the protection and appropriate use of all its resources and assets.<sup>1</sup>

2. There can be little more important than having governments that demonstrate integrity. Municipal governments cannot function efficiently if their integrity is doubted. Public confidence is promoted by integrity in government. Public confidence is undermined where Councillors prefer private or personal interests to the public good.

3. Jakobek failed to meet the standard. His conduct diminished public confidence and trust in the integrity of the City. In particular, Jakobek should be criticized for:

- a. having an inappropriate relationship with Domi, including accepting an improper payment from Domi;
- b. inappropriately requesting and obtaining draft leasing procurement documents and providing at least one such document to Domi;
- c. having an inappropriate relationship with Andrew;
- d. improperly attempting to dissuade Andrew from participating in an internal City investigation into the MFP leases; and

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<sup>1</sup> City of Ottawa, "Code of Conduct" (September 2002) as reproduced in M. R. O'Connor et al. *Conduct Handbook for Municipal Employees and Officials* 2d ed. (Toronto: Butterworths, 2003) at 16.

- e. deliberately obstructing the work of this Inquiry and misleading the Commissioner.

## 2. Jakobek had an inappropriate relationship with Domi

4. Jakobek developed an inappropriate relationship with Domi. The City has made extensive submissions on this point in Chapter 18. The City does not intend to repeat them here. However, the City relies on that evidence in support of its submissions that Jakobek should be criticized for:

- a. accepting an improper \$25,000 payment from Domi in recognition for having moved the Jakobek Amendment, which gave MFP the room to negotiate a more lucrative five-year lease deal;<sup>2</sup>
- b. preferring the interests of MFP and himself to those of the City and moving the Jakobek Amendment to allow MFP to negotiate a more lucrative five-year lease deal;<sup>3</sup>
- c. flying to Philadelphia with Domi on a private jet to watch an NHL playoff game, all courtesy of MFP, less than one month before the release of the computer leasing RFQ;<sup>4</sup>
- d. permitting Domi to telephone him regularly at home and on his cell phone - such special access creates the reasonable perception that MFP obtained an unfair advantage over other competitors;<sup>5</sup>
- e. having at least 76 cell phone conversations with Domi between May 4, 1999 and July 4, 2000 - such special access creates the reasonable perception that MFP was obtaining an unfair advantage over other competitors. Such special access included at least:

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<sup>2</sup> See Chapter 18, parts 5, 6.

<sup>3</sup> See Chapter 8.

<sup>4</sup> See Chapter 18, part 4.

<sup>5</sup> See Chapter 18, part 2.

1. 11 conversations in May 1999, the month Domi and Jakobek went on the Philadelphia junket, Jakobek asked for and obtained the draft RFQ, and the City released the RFQ; and
  2. 14 conversations with Domi in the blackout period between June 11, 1999, when MFP submitted its bid, through the date of the Jakobek Amendment and July 27, 1999, when Council awarded MFP the computer leasing contract.<sup>6</sup>
- f. inviting Domi to play golf with Andrew and Liczyk at a private club on September 2, 1999, less than one month before the lease terms were extended from 3 to 5 years; and
- g. inviting Domi, Andrew and Liczyk to his house for drinks after the golf game.<sup>7</sup>

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<sup>6</sup> See Chapter 18, part 2.

<sup>7</sup> See Chapter 21, part 3.

### 3. **Jakobek improperly obtained draft leasing documents and gave them to Domi**

5. Councillors should not be involved in the drafting of procurement documents or their review in draft form, which are quintessential roles for a professional public service. To ensure that the procurement process is fair and is seen to be fair, Councillors should not receive draft procurement documents before they are released to the public.<sup>8</sup> Jakobek inappropriately requested and obtained draft procurement documents on at least two occasions.

6. For the reasons set out in Chapter 6, the Commissioner should conclude that Jakobek requested and received a copy of the draft RFQ on May 17, 1999 from Andrew. Despite Jakobek's denials, Andrew would never have sent the draft to Jakobek unprompted.<sup>9</sup> Jakobek did not need the draft RFQ for legitimate City business; there was no proper reason for him to have it.

7. The RFQ was not the only draft procurement document that Jakobek requested and obtained. Jakobek also requested and obtained a copy of the draft fleet leasing RFP from Liczyk. A copy of the draft fleet leasing RFP ended up in MFP's files.<sup>10</sup>

8. Liczyk gave evidence that she was scheduled to attend a meeting on January 27, 2000 with Jakobek and another city staff person in Jakobek's office.<sup>11</sup> The subject line of the appointment in Liczyk's calendar read "Tom J...Vehicle Leasing RFP."<sup>12</sup> Liczyk believed that Jakobek asked her to bring a copy of the draft fleet leasing RFP to the meeting. She asked Brittain to give her a copy of the draft fleet leasing RFP and to write his name and telephone number on the top of the document so that Jakobek could contact Brittain directly if he had any further questions.<sup>13</sup> She took the draft to the

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<sup>8</sup> See Chapter 6, part 4.

<sup>9</sup> See Chapter 6, part 4.

<sup>10</sup> COT029201, 99:1:75; Wolfram 12/18/2002 at 205.

<sup>11</sup> Liczyk Affidavit, para 257, 11/03/2003 at 97-98.

<sup>12</sup> COT013673, 63:4:1a.

<sup>13</sup> Liczyk Affidavit, para 258, 11/03/2003 at 98.

meeting and gave it to Jakobek. Counsel for Jakobek did not cross-examine Liczyk at all.

9. Brittain confirmed Liczyk's evidence. He was part of the team preparing the fleet leasing RFP. He recalled that he received a telephone call from Liczyk on January 27, 2000, asking him for a draft of the fleet leasing RFP. He printed a copy of the draft fleet leasing RFP, took it to Liczyk's office, and gave it to her. She asked him to put his name and telephone number on the RFP, which he did. He used his internal City phone number 2-5380. Brittain did not recall whether he and Liczyk had any discussions about what she needed the RFP for.<sup>14</sup> Brittain confirmed that the copy of the draft fleet leasing RFP found in MFP's files had his name and phone extension in his handwriting on the top right-hand corner.<sup>15</sup> Counsel for Jakobek did not cross-examine Brittain at all.

10. Jakobek denied requesting or receiving a copy of the draft fleet leasing RFP from Liczyk.<sup>16</sup> Jakobek asserted that since the document produced from MFP's files did not have his "name and title on the top right or left-hand corner" and because the document did not "come . . . down in an official capacity", it would not have been given to him.<sup>17</sup>

11. The evidence of Liczyk and Brittain was not challenged on cross-examination. Jakobek's denials are formalistic and self-serving.

12. The City submits that the Commissioner should conclude that:

- a. Jakobek asked for and received a copy of the draft fleet leasing RFP in the manner described by Liczyk; and
- b. the draft fleet leasing RFP ended up in MFP's files because Jakobek gave the draft to Domi.

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<sup>14</sup> Supplementary Brittain Affidavit, paras. 2-7, 07/28/2003 at 55-57.

<sup>15</sup> Supplementary Brittain Affidavit, para 6, 07/28/2003 at 56.

<sup>16</sup> Jakobek 09/08/2004 at 27-28.

<sup>17</sup> Jakobek 09/08/2004 at 28-29.

13. Liczyk testified that it was inappropriate for a vendor to have a copy of a draft procurement document before it was released.<sup>18</sup> The Commissioner should criticize Jakobek for inappropriately providing the draft fleet leasing RFP to MFP.

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<sup>18</sup> Liczyk 11/06/2004 at 128-129.



#### 4. Jakobek had an inappropriate relationship with Andrew

14. The City has reviewed the evidence regarding the relationship between Jakobek and Andrew in Chapter 21. The City does not intend to repeat its view of that evidence. However, the City relies on that evidence in support of its submissions that Jakobek should be criticized for:

a. asking Andrew for inappropriate favours including to:

1. accompany Jakobek to Dyna Lync 2000 to help him purchase computers for Jakobek's house;
2. drive from Whitby to Jakobek's home in the Beaches to show Jakobek's children how to use the CD-burner; and
3. comment on a consultant's report for information and technology issues at the Toronto East General Hospital.<sup>19</sup>

b. attempting to curry favour with Andrew by:

1. inviting him to at least two hockey games, including a playoff hockey game at which they ran into Domi; and
2. inviting Andrew to play golf at a private club with Domi and Liczyk during the month that MFP extended the lease terms from 3 to 5 years.<sup>20</sup>

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<sup>19</sup> See Chapter 21, part 3.

<sup>20</sup> See Chapter 21, part 3.

**5. Jakobek improperly attempted to dissuade Andrew from participating in the KPMG investigation**

15. Andrew testified that Jakobek:

- a. called Andrew on October 9, 2001, the day before Andrew's KPMG interview, and told Andrew that he was about to make the biggest mistake of his life by going forward to this interview with KPMG;<sup>21</sup> and
- b. subsequently told Andrew that Andrew had made a mistake by going to the KPMG interview and that he should not have gone to the interview.<sup>22</sup>

16. Counsel for Jakobek cross-examined Andrew on these points, but Andrew was firm in his recollection.<sup>23</sup> Jakobek testified that he did not recall telling Andrew that he should not attend the interview or participate in the KPMG interview process.<sup>24</sup>

17. The City submits that Andrew's precise recollection should be preferred. The conversations described by Andrew were memorable and their content would have stuck in his mind. Andrew's version of events is entirely consistent with the way Jakobek approached the KPMG investigation: Jakobek, not wanting to make the mistake he cautioned Andrew about, refused to be interviewed by KPMG.

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<sup>21</sup> Andrew 10/08/2003 at 10-11.

<sup>22</sup> Andrew 10/08/2003 at 17.

<sup>23</sup> Andrew 10/09/2003 at 50-67.

<sup>24</sup> Jakobek 09/08/2004 at 25-26.

## 6. Jakobek obstructed the work of the Inquiry

18. The City submits that the Commissioner should criticize Jakobek for deliberately obstructing the work of the Inquiry. The City has extensively reviewed the evidence supporting these submissions in Chapters 5 and 18:

- a. Jakobek deliberately misled Commission Counsel and the Commissioner about the quality and nature of his relationship with Domi;<sup>25</sup>
- b. Jakobek collaborated with Domi in an ultimately futile attempt to mislead and convince the Commission that Jakobek was not on the flight to Philadelphia;<sup>26</sup>
- c. Jakobek actively encouraged witnesses and potential witnesses to lie to the Commission to back up his story that he was not on the flight to Philadelphia;<sup>27</sup>
- d. while in the witness box, Jakobek fabricated an entire story surrounding the circumstances leading to Roebuck's letter to the *Toronto Star*, which attempted to deflect blame from himself to his lawyer;<sup>28</sup> and
- e. Jakobek misled Commission Counsel and the Commissioner about the source of the funds deposited into his American Express Account on November 3, 1999, in his Affidavits sworn October 15, 2003,<sup>29</sup> and December 2, 2003,<sup>30</sup> and his failure to make meaningful inquiries to determine the source of those funds.<sup>31</sup>

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<sup>25</sup> See Chapter 5, part 5 and Chapter 18, part 3.

<sup>26</sup> See Chapter 5, part 4 and Chapter 18 part 4.

<sup>27</sup> See Chapter 18, part 4.

<sup>28</sup> See Chapter 18, part 4.

<sup>29</sup> 86:1:1

<sup>30</sup> 86:1:2.

<sup>31</sup> See Chapter 18, parts 8, 9.