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1. Overview

1. Jim Andrew failed as a senior manager because he took no meaningful steps to protect the City's interests from the rogues at MFP. In fairness, Andrew's conduct must be assessed in light of the significant challenges he faced in the post-amalgamation City and under the pressure of the looming Year 2000 deadline. In the end, however, Andrew's failings were caused less by his significant work demands and more by his inappropriate relationship with MFP. Having been wined, dined and entertained by MFP and its agents, he came to view MFP as the partner MFP promised to be; he failed to protect the City from the predator it faced. Andrew's failings in dealing with the computer leasing matter are three-fold:

- a. he placed himself in a conflict of interest by accepting inappropriate entertainment;
- b. he failed to take steps necessary to understand the most basic concepts of leasing and leasing costs; and
- c. he abdicated responsibility for this important project by either delegating inappropriately and/or failed to supervise his delegates at all.

2. Andrew, like all senior City managers, operated in the chaos that followed amalgamation. His Division was responsible for integrating seven different information technology systems and 430 computer sites. I&T had to support the integration of seven financial, human resources and payroll information systems. I&T had to integrate the information technology platforms of seven municipalities by establishing common platforms and applications, and consolidating data centres and standardizing network platforms. Andrew faced all of these challenges with fewer staff and managers.

3. Andrew operated under significant budget pressures arising from provincial downloading and Council's commitment to not increasing property taxes. He faced an additional challenge posed by the looming Year 2000 deadline. He inherited the legacy

of the former municipalities' failure to address the Year 2000 problems in a timely fashion.

4. The City does not expect its Executive Directors to be perfect, especially under such conditions. Executive Directors are not expected to micro-manage every report from or project in their division. They must be able to rely on and trust their staff. Nevertheless, Andrew failed to protect the City from the misfeasance of MFP.

5. Andrew failed to exercise good judgment in maintaining appropriate professional boundaries between himself and others:

- a. he accepted entertainment of all descriptions too frequently from all suppliers, especially MFP;
- b. he accepted entertainment that was too extravagant by any measure;
- c. he had too frequent contact with MFP and had contact at inappropriate times with MFP and its agents;
- d. he provided inappropriate personal favours for and received inappropriate benefits from Jakobek; and
- e. he failed to maintain appropriate boundaries between himself and Lyons and provided Lyons with confidential information.

6. In addition, he failed to discharge his responsibilities as a senior manager in five primary ways:

- a. he failed to ensure that the I&T completed any business cases or other project management tools before the City issued the computer leasing RFQ;

- b. he delegated primary responsibility for drafting the RFQ, drafting the report to Council, and negotiating the contract documents with MFP to Power, who lacked the skills and expertise necessary to protect the City's interests, who was a friend of Andrew's and whom Andrew did not interview;
 - c. he failed to supervise Power in any meaningful way or to ensure that he was otherwise properly supervised;
 - d. his conception of a leasing program, which Council never approved, locked the City into obligations with MFP for an indefinite duration, for an indefinite amount of equipment, at an unknown cost, which jeopardized the City's interests;
 - e. when he became aware of the possibility of putting all computer equipment on five year leases, he failed to take any steps to understand who, if anyone, at the City agreed to such a fundamental change in lease terms; and
 - f. he did not understand the connection between end of term lease costs and the total cost of leasing.
7. The City did not expect any of its staff, including its senior staff, to foresee every risk, to follow up on every email, or to double check every fact that was presented to them. The City recognized the extraordinary demands that were placed on its entire staff, particularly during periods of robust change. However, the City reasonably expected more from Andrew, even allowing for all the challenges he faced. The City reasonably expected him to exercise better judgment regarding his relationships with suppliers, lobbyists, and City Councillors. The City reasonably expected him to take some reasonable steps to protect the City from a self-interested supplier such as MFP.

2. The City's reasonable expectations of Andrew

a) General accountability

8. From May 22, 1998, to February 3, 2001, Andrew was the most senior I&T official for the amalgamated City of Toronto.¹ He reported to the Commissioner of Corporate Services, and ultimately to the CAO.² Andrew agreed that he made the final decision with respect to information technology issues, except where those decisions required approval of Council.³

9. Andrew's job profile identified his "overall accountability" and articulated "specific accountabilities" for his position.⁴ The Executive Director was responsible for the overall strategic application of information technology and for the creation of information technology strategies and solutions:

[The Executive Director] is responsible for the overall strategic application 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 corporate vision. Is vital to the future of information management and technology as an agent of change within the organization.⁵

b) Specific accountability

10. Andrew was specifically accountable for directing and managing the Division, both internally in terms of strategic vision and labour relations, and externally with other City departments and suppliers.⁶ He was responsible for the strategic oversight of information technology at the City of Toronto:

¹ Andrew 10/01/2003 at 215; Andrew Affidavit, para. 7, 09/24/2003 at 11-12.

² Andrew 10/01/2003 at 215.

³ Andrew 10/01/2003 at 215.

⁴ COT077299, 63:12:45.

⁵ COT077299, 63:12:45.

⁶ COT077299, 63:12:45.

[The Executive Director] contributes to the development of the Corporate strategic vision, by advising Council and senior management in all departments on matters relating to I&T management. Identifies and puts a plan in place to resolve strategic information and technology management issues.⁷

11. Andrew explained that I&T had difficulties fulfilling this City-wide responsibility.⁸ He testified that the decentralized nature of I&T impeded the development of a centralized corporate model for the City departments.⁹

12. Andrew was responsible for setting the strategic direction of I&T by establishing goals and objectives aligned with the City's strategic planning initiatives.¹⁰ To meet this responsibility, Andrew assumed responsibility for establishing standards for the amalgamated City of Toronto.¹¹ These included technology standards generally, a database standard, an email standard, and a word processing standard. He agreed that he was responsible for providing overall strategic direction for individual technology projects undertaken by various departments.¹²

13. Andrew was responsible for directing the development and implementation of operational and security policies and standards.¹³ Andrew considered this responsibility to be part of the objectives of his strategic plan, which included establishing information technology standards and security standards that could be used City-wide.¹⁴

14. Andrew was responsible for establishing a multi-year plan to ensure the City had appropriate technology;

[The Executive Director] develops a multi-year plan that is reflective of future directions, responsive to immediate business needs and ensures the

⁷ COT077299, 63:12:45.

⁸ Andrew 10/02/2003 at 8.

⁹ Andrew 10/02/2003 at 9.

¹⁰ COT077299, 63:12:45.

¹¹ Andrew 10/02/2003 at 10.

¹² Andrew 10/02/2003 at 11.

¹³ COT077299, 63:12:45.

¹⁴ Andrew 10/02/2003 at 15.

organization has the appropriate common IT infrastructure that is aligned to the business initiatives.¹⁵

15. Andrew also had financial responsibilities. He was required to prepare, present, monitor, and justify the operating and capital budgets for I&T.¹⁶ Andrew agreed that budgeting was a daily responsibility for a senior executive in his position.¹⁷ He acknowledged that it was a challenge to keep current with respect to the business needs of all the City departments and how these departmental needs would affect information technology considerations.¹⁸

16. Andrew testified that his job required day-to-day decisions about how to staff and finance projects.¹⁹ He explained that I&T did not have sufficient resources to discharge its responsibilities. He felt that I&T had an inadequate budget and insufficient numbers of staff.²⁰ However, Andrew agreed that he occasionally used consultants to fill needs, and that funding for the consultants sometimes came from other City departments, such as Works and Emergency Services.²¹

c) Qualities reasonably expected of a senior executive for the City of Toronto

i) Sense of public service

17. Andrew agreed that he was expected to have a keen sense of public service. He understood that he was ultimately responsible to the taxpayers and citizens of the City²²

¹⁵ COT077299, 63:12:45.

¹⁶ COT077299, 63:12:45.

¹⁷ Andrew 10/02/2003 at 13.

¹⁸ Andrew 10/02/2003 at 13-14.

¹⁹ Andrew 10/02/2003 at 16.

²⁰ Andrew 10/02/2003 at 16-17.

²¹ Andrew 10/02/2003 at 21.

²² Andrew 10/01/2003 at 216.

both for recommendations he made to committees or to Council, and for his final decisions.²³

ii) Good judgment

18. Andrew agreed that he was expected to have good judgment. He defined good judgment as the ability to make good decisions on behalf of the City of Toronto and its staff.²⁴ Andrew further agreed that the City expected him to exercise good judgment even in a changing environment lacking in clear rules or policies.²⁵ Accordingly, good judgment included the ability to make decisions that reflected integrity, common sense, and fairness even in the absence of written policies and guidelines.²⁶ Andrew testified that, if he or any other senior executive was unsure of the correct decision to be made in any given situation, then good judgment required asking another senior colleague for advice.²⁷

iii) Leadership by example

19. Andrew agreed that he was expected to demonstrate leadership by setting an example through his own behaviour.²⁸ Andrew agreed that he was regarded as a role model with respect to acceptable behaviour by the 300 employees who reported to him.²⁹

iv) Establishing clear lines of accountability

20. Andrew agreed that he bore ultimate responsibility for all I&T projects. He testified that he accomplished this by establishing clear lines of accountability through

²³ Andrew 10/01/2003 at 216.

²⁴ Andrew 10/01/2003 at 217.

²⁵ Andrew 10/01/2003 at 218.

²⁶ Andrew 10/01/2003 at 218.

²⁷ Andrew 10/01/2003 at 218-219.

²⁸ Andrew 10/01/2003 at 219.

²⁹ Andrew 10/01/2003 at 219.

his managers.³⁰ These lines of accountability extended down the hierarchy within I&T and across to other departments.³¹

21. Andrew was required to delegate certain tasks and responsibilities to other employees. Andrew agreed that after he delegated a task or responsibility, he was obliged to provide advice and guidance to his employees, and to supervise and follow up accordingly.³² Part of Andrew's job was to determine the actual skill set and expertise of those to whom he delegated responsibility.³³ This allowed Andrew to evaluate the appropriate level of follow up. Thus, another part of Andrew's job was to balance the appropriate level of delegation with the necessary amount of supervision.

d) Knowledge expected of a senior executive

i) City organizational structure

22. Andrew agreed that he was expected to know and understand the City's organizational structure. Such knowledge included a general understanding of which departments had responsibility for which services.³⁴ It also included a complete understanding of the types of decisions that he could make without higher approval.³⁵

ii) Approval process and due diligence

23. Andrew agreed that he was expected to know and understand the City's approval process. He testified that this was one of the working skill sets of his position and required him to know when to report to a committee, when to report to Council, and the proper form for such reports.³⁶

24. Andrew testified that, regardless of any personal involvement in drafting a report, a signatory to a report is responsible for ensuring that it contains all the relevant

³⁰ Andrew 10/01/2003 at 220.

³¹ Andrew 10/01/2003 at 221.

³² Andrew 10/01/2003 at 221.

³³ Andrew 10/01/2003 at 222.

³⁴ Andrew 10/01/2003 at 223.

³⁵ Andrew 10/01/2003 at 223.

³⁶ Andrew 10/01/2003 at 224.

information necessary to support the recommendations.³⁷ The corollary of this responsibility was that the signatory must ensure the report does not contain any inaccurate information, and that the information contained within the report was properly analyzed.³⁸

25. The senior executive signing the report was obliged to perform some level of due diligence with respect to the report's fairness and accuracy.³⁹ Andrew agreed that the process by which such due diligence was conducted was left to the good judgment of the senior executive.⁴⁰ The range of methods used by senior executives at the City included:

- a. holding meetings at the outset of the process with all potential contributors to the report;
- b. reviewing every draft;
- c. direct involvement in the drafting process; and
- d. communicating regularly with the contributors and drafters of the report.⁴¹

26. It was not necessary for a senior executive to adopt all of these methods. However, the senior executive should have ensured that she or he had a level of understanding that enabled him or her to ask probing questions about the draft report to the people who prepared the report to ensure that the report could withstand rigorous scrutiny.⁴²

³⁷ Andrew 10/01/2003 at 225.

³⁸ Andrew 10/01/2003 at 225.

³⁹ Andrew 10/01/2003 at 226.

⁴⁰ Andrew 10/01/2003 at 226-227.

⁴¹ Andrew 10/01/2003 at 227-228.

⁴² Andrew 10/01/2003 at 229.

iii) Procurement process

27. Andrew agreed that he was expected to know and understand the City's procurement process. Indeed, all senior managers were expected to know which acquisitions could be made with budget approval only.⁴³ Further, senior managers were expected to know which acquisitions required a tendering process, as well as the range of possible tendering options.

28. Andrew agreed that he was expected to know the difference between RFPs and RFQs.⁴⁴ Accordingly, he was expected to know which approvals were required for each tendering process.⁴⁵ While pure procurement process issues were entrusted to PMMD, Andrew agreed that he was required to have sufficient knowledge to ask intelligent questions of PMMD.⁴⁶ Andrew should also have been in a position to anticipate when the involvement of Legal Services would be required.⁴⁷ Andrew agreed that Legal Services did not watch over or police the procurement process to ensure that departments complied with procurement requirements. In fact, Legal Services was not involved unless invited to participate by the procuring department.⁴⁸

iv) Project management

29. Andrew testified that he had a rudimentary familiarity with project management skills and tools.⁴⁹ He agreed that project management involved: identifying the need, determining the best way to address the need, and setting out the conclusions.⁵⁰ This methodology should be set out in a comprehensive and transparent business plan. The business plan should include:

- a. the size and nature of the project;

⁴³ Andrew 10/01/2003 at 229.

⁴⁴ Andrew 10/01/2003 at 230.

⁴⁵ Andrew 10/01/2003 at 230.

⁴⁶ Andrew 10/01/2003 at 230.

⁴⁷ Andrew 10/01/2003 at 231.

⁴⁸ Andrew 10/01/2003 at 231.

⁴⁹ Andrew 10/02/2003 at 25.

⁵⁰ Andrew 10/02/2003 at 25-26.

- b. the operational challenges;
- c. the staffing and other resources required for the project,
- d. the cost of the project;
- e. the financing of the project (which required consulting Finance to determine the most suitable financing option);
- f. the timing of the project;
- g. the method of acquiring the goods and/or services; and
- h. the process of bringing the project to the market (which required consulting PMMD to determine the tender process).⁵¹

30. However, Andrew agreed that project managers retained the discretion to involve other service providers in the City.⁵² Such discretion would necessarily be exercised on smaller projects, and also on larger projects with respect to the nature and extent of the consultation with Legal Services or PMMD.⁵³

31. Andrew agreed that if the project required approval of any of the City's political bodies, then the project manager would be involved in reporting to a committee and then to Council.⁵⁴ He confirmed that I&T generally reported to the Administrative Committee, which was chaired first by Councillor O'Brien, and later by Councillor Berardinetti.⁵⁵ However, if the project involved the capital budget, then I&T would report to the Budget Committee. Andrew testified that he did not know why I&T reported to

⁵¹ Andrew 10/02/2003 at 26-28.

⁵² Andrew 10/02/2003 at 29.

⁵³ Andrew 10/02/2003 at 29.

⁵⁴ Andrew 10/02/2003 at 30.

⁵⁵ Andrew 10/02/2003 at 30.

P&F about the computer leasing project.⁵⁶ He recalled that Liczyk informed him that the project would go to P&F and that he relied on her information.⁵⁷

32. I&T used project charters as a specific project management tool.⁵⁸ Andrew agreed that project charters were a useful method of defining accountability framework for a project.⁵⁹ Project charters considered and analyzed the project at the outset of the process.⁶⁰ A project charter identified the department and/or division in charge of the project.⁶¹ It spelled out the accountability of specific individuals and the timeframe within which these individuals would report to each other.⁶² The project charter named the departments and divisions affected by the project. Finally, it defined the scope, objectives, and deliverables of the project, and established timelines, budgets, and resources.⁶³ Andrew testified that project charters were not required by any City directive.⁶⁴ However, he agreed that whether the relevant considerations were codified in a project charter or not, he was responsible for ensuring that someone analyzed the project in that way.⁶⁵

⁵⁶ Andrew 10/02/2003 at 32.

⁵⁷ Andrew 10/02/2003 at 32.

⁵⁸ Andrew 10/02/2003 at 35.

⁵⁹ Andrew 10/02/2003 at 35.

⁶⁰ Andrew 10/02/2003 at 44-45.

⁶¹ Andrew 10/02/2003 at 37.

⁶² Andrew 10/02/2003 at 39.

⁶³ Andrew 10/02/2003 at 42.

⁶⁴ Andrew 10/02/2003 at 46.

⁶⁵ Andrew 10/02/2003 at 46.

3. Conflict of Interest: Andrew's ethical breaches and lack of judgment

a) Expectations of Andrew according to his employment agreement

33. Andrew's employment agreement contained a section on conflict of interest which assigned responsibility to Andrew for recognizing and avoiding conflict of interest situations:

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 acknowledges that conflict of interest or the perception of one does not necessarily involve monetary gain, but may arise in a variety of ways.⁶⁶

b) Expectations of Andrew according to the conflict of interest policy

i) The conflict of interest policies

34. Two consecutive conflict of interest policies governed Andrew's term as Executive Director, I&T, at the City. For substantially all of his tenure, Andrew was subject to the Metropolitan Toronto Code of Conduct. The Metro Code of Conduct was issued in July 1994, and continued in effect until a new policy was issued. In August 2000, the amalgamated City issued a conflict of interest policy that replaced the former Metro Code of Conduct.⁶⁷

35. The conflict of interest policy and the good judgment of senior executives were the only protection that the City had against bias and the appearance of bias. Both the Metro Code of Conduct and its successor the City conflict of interest policy specified that the standards of conduct were particularly relevant for decision makers.⁶⁸ There are many aspects of this policy that are relevant to Andrew's conduct during the RFQ

⁶⁶ COT014614 at COT014615, 63:2:3a.

⁶⁷ COT014611, 63:12:3a; COT037273, 63:2:14a.

⁶⁸ COT037273 at COT037273, 63:2:14a; COT014611 at COT014611, 63:12:3a.

process, including the rule that City employees may not accept gifts or favours for themselves or family members.⁶⁹

ii) The Metro Code of Conduct

36. The three most important excerpts from the Metro Code of Conduct are reproduced below. The Metro Code of Conduct contained a short policy statement that neatly summarizes the standards expected of a City employee.

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.⁷⁰

37. The Metro Code of Conduct defined “conflict of interest” as follows:

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.⁷¹

38. The Metro Code of Conduct contained examples of activities which constitute unacceptable practice, such as the following:

1. Placing yourself in a position of obligation to any person or organization which might benefit from special consideration or may seek preferential treatment.
2. Giving preferential treatment to relatives or friends, or organizations in which you, your family or friends have a financial interest.
3. Influencing decisions in respect of a Metro contract from which you, your family, friends or business associates will directly or indirectly benefit.

⁶⁹ COT014611 at COT014611, 63:12:3a; COT037273 at COT037275, 63:2:14a.

⁷⁰ COT037273 at COT037273, 63:2:14a.

⁷¹ COT037273 at COT037273, 63:2:14a.

4. 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.
 - a. 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.
 - b. It is inappropriate to accept personal gifts of hotel accommodations, airline or other travel tickets, loans, or labour or materials below fair market value.
 - c. When entertainment is accepted there must be an appropriate business reason. However, such entertainment would be inappropriate if it is excessive or extravagant.⁷²

39. The Metro Code of Conduct also expressly stated that any gifts or benefits which exceeded the guidelines were to be returned with an explanation of Metro's policy.⁷³

iii) The City conflict of interest policy

40. The City conflict of interest policy stated:

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.⁷⁴

41. The City conflict of interest policy defined "conflict of interest" as follows:

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,

⁷² COT037273 at COT037274-37275.

⁷³ COT037273 at COT037275.

⁷⁴ COT014611 at COT014611, 63:12:3a.

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.⁷⁵

iv) Andrew's general practice

42. In practice, Andrew governed his conduct by a much more relaxed definition of conflict of interest. Andrew testified that he followed the rule that if there was no active tender situation, then there was no conflict of interest.⁷⁶ Indeed, he admitted that he had forgotten about many of the guidelines contained in the conflict of interest policy.⁷⁷ Ironically, as a senior executive, Andrew was responsible for discussing the entire conflict of interest policy with his employees. Managers and supervisors who needed assistance interpreting the rules with respect to specific situations were advised to speak to the executive director for their department.⁷⁸

43. Andrew admitted that the nature and number of events that he attended in his capacity as Executive Director, I&T, could be perceived as personal benefits and that such attendance could give rise to the perception that he breached the City's conflict of interest policy.⁷⁹

44. Andrew rarely sought approval for any of the entertaining by suppliers he enjoyed. Anderton testified that she did not know how much entertaining Andrew accepted prior to the Inquiry and that Andrew never told her about it or asked for her permission to attend.⁸⁰

⁷⁵ COT014611 at COT014611, 63:12:3a.

⁷⁶ Andrew 09/24/2003 at 237.

⁷⁷ Andrew 09/24/2003 at 237.

⁷⁸ COT014611 at COT014613, 63:12:3a.

⁷⁹ Andrew 09/25/2003 at 50.

⁸⁰ Anderton 11/25/2003 at 145.

c) Qualities expected of a senior executive

i) A conflict of interest policy cannot be a complete code

45. The City of Toronto's conflict of interest policy specifically stated that the rules and examples contained within it did not exhaust the situations in which conflicts of interest might arise.⁸¹ Andrew agreed that conflict of interest guidelines cannot provide a detailed code for every possible situation.⁸² The good judgment of City staff was a necessary complement to a conflict of interest policy. City staff were required to behave in a manner that could only be perceived as neutral towards all potential suppliers. Suppliers have always tried to court and market their products and services to decision makers. Senior City officials were expected to have the good judgment to draw the appropriate lines around both the quality and the quantity of such contact.⁸³ Accordingly, a senior executive was expected to know that all dealings with potential suppliers should be at arms-length and that the appropriate distance should always be maintained in professional situations. Such distance required, *inter alia*, that senior executives refuse offers of entertainment, and refrain from asking for personal favours at any time.

46. In his affidavit, Andrew explained that many Councillors, senior executives, and other City staff attended similar events and received similar benefits.⁸⁴ However, there is no evidence to suggest that any of these individuals were entertained as often or as lavishly as was Andrew. He listed numerous City Councillors and officials that he observed at the same events that he attended, including Garrett, Jakobek, Halstead, Anderton, Liczyk, and Viinamae. The City submits that Andrew was responsible for his own actions and that his knowledge of the City's conflict of interest policy and his own better judgment should have, at the very least, forced him to inquire into the propriety of these events. Andrew was required to know and draw the appropriate lines around supplier relations, and not to blindly rely on his superiors and colleagues to assess his conflict of interest philosophy.

⁸¹ COT014611 at COT014611, 63:12:3a.

⁸² Andrew 10/08/2003 at 111-112.

⁸³ Andrew 10/08/2003 at 113.

⁸⁴ Andrew Affidavit, paras. 80-84, 09/24/2003 at 42-44.

ii) The role of the City in ensuring a fair tendering process

47. A key objective for the City of Toronto was to encourage competition and create a level playing field for suppliers and potential suppliers. Andrew agreed that a fair competitive process was extremely important in the public sector to ensure taxpayers were receiving value for their money, and to persuade taxpayers that decision makers in government acted with integrity.⁸⁵ He agreed that backroom dealings and coziness between City officials and suppliers undermined taxpayers' faith in municipal government.⁸⁶ The tendering rules about blackout periods and timing, together with the conflict of interest and confidentiality rules, represented an attempt to ensure a level playing field that encouraged competition among suppliers. As a senior executive at the City of Toronto, Andrew knew the importance of a fair tendering process.⁸⁷

d) Andrew was asked or offered to do personal favours for Jakobek

i) Andrew and Jakobek established a comfortable relationship

48. In 1999 and 2000, Andrew and Jakobek were in regular telephone contact. The telephone records demonstrated that, between January 1999 and February 2001, Andrew and Jakobek exchanged phone calls 222 times; the majority of these calls were initiated by Andrew.⁸⁸ Andrew defined regular contact as once per month and probably once per week.⁸⁹ Over time, Andrew's relationship with Jakobek developed, and Jakobek became comfortable asking Andrew for help with his computer concerns. Despite the fact that Andrew gave up his personal time on numerous occasions to assist Jakobek with his computer concerns, Andrew testified that he did not consider these occasions to be favours.⁹⁰

49. Jakobek asked Andrew to help him fix his office computer. He requested Andrew's help with learning new software. Andrew agreed that it was not part of his job

⁸⁵ Andrew 10/07/2003 at 210-211.

⁸⁶ Andrew 10/07/2003 at 211.

⁸⁷ Andrew 10/07/2003 at 212.

⁸⁸ Andrew 09/24/2003 at 176-177.

⁸⁹ Andrew 10/07/2003 at 57.

⁹⁰ Andrew 10/07/2003 at 60.

description to help Councillors learn new software, and that there were many other individuals in I&T whom Jakobek could have asked for help.⁹¹

50. On September 2, 1999, at Jakobek's request, Andrew accompanied Jakobek to Dyna Lync 2000 Inc., an information technology service provider, to help him purchase computers for his home.⁹² Although Andrew viewed this interaction as helping Jakobek rather than doing him a favour, he agreed that it was an unusual request from a Councillor.

Q: Was there ever another Councillor at the City of Toronto in the time of your employment, who asked you to take up some vacation time to attend with him to assist him in making a personal purchase of computer equipment?

A: No, there was not.

Q: Or anything like that?

A: No, there was not.

Q: Never another Councillor who wanted you to take time away from your family or personal pursuits to do him a computer favour?

A: No, I -- there was not.⁹³

51. Andrew testified that Jakobek approached him and asked him to recommend some technology for his family.⁹⁴ Andrew recommended Dyna Lync, and Jakobek asked him to accompany him to the store.⁹⁵ Jakobek did not recall Andrew accompanying him to Dyna Lync. Andrew recalled that they went to Dyna Lync in the morning and then played golf with Domi and Liczyk in the afternoon at the Hunt Club.⁹⁶ Later, Jakobek complained that the computers were slow, and Andrew suggested that he should upgrade to a high speed internet provider.⁹⁷ Jakobek also asked Andrew to come to his

⁹¹ Andrew 10/07/2003 at 60.

⁹² Andrew 10/07/2003 at 61.

⁹³ Andrew 10/07/2003 at 67.

⁹⁴ Andrew 09/24/2003 at 166-167.

⁹⁵ Andrew 09/24/2003 at 169.

⁹⁶ Andrew 09/24/2003 at 168-169.

⁹⁷ Andrew 09/24/2003 at 170.

house to show his children how to use their CD burner.⁹⁸ In order to do this, Andrew drove from his home in Whitby to Jakobek's home in the Beaches.⁹⁹

52. Andrew did not feel awkward or uncomfortable helping Jakobek with these requests.¹⁰⁰ However, he admitted that he was not in a position to refuse Jakobek's requests, and that Jakobek had the status to influence whether Andrew was promoted or fired.¹⁰¹ Andrew also testified that many City staff were intimidated by Jakobek and feared his wrath.

Q: But no one liked being on Mr. Jakobek's wrong side; correct?

A: Well, I was on it a few times, it's not very pleasant, I can tell you.

Q: You didn't enjoy it?

A: I did not enjoy it.

Q: Right. And so in general terms, I take it, you would do what you could do within permissible limits to avoid being on Mr. Jakobek's wrong side; correct?

A: Well, you tried to work with Mr. Jakobek.

Q: Right. And so if it meant giving up a Saturday morning to go to his house, that, to you, wasn't a big deal; is that what I hear you saying, sir?

A: It was not a big deal.

Q: And, likewise, if it meant spending a half a day or not even that long at DYNALYNC to help him pick out a computer, that wasn't a big deal in return for getting along with Mr. Jakobek?

A: It was not a big deal. Allowed us to work together.¹⁰²

ii) Jakobek invited Andrew to a hockey game

53. Jakobek once invited him to a hockey game on April 24, 1999. Prior to the hockey game, Andrew could not recall attending other social or charitable events with

⁹⁸ Andrew 10/07/2003 at 67-68.

⁹⁹ Andrew 10/07/2003 at 67.

¹⁰⁰ Andrew 10/07/2003 at 68.

¹⁰¹ Andrew 10/07/2003 at 68-71.

Jakobek, noting that the only golf tournament that they both attended was after Andrew left the City and that he could not specifically remember any charitable events that they both attended.¹⁰³ On April 24, 1999, Jakobek instructed Andrew to meet him outside of Gate 2 at the Air Canada Centre.¹⁰⁴ Then, they went to the Platinum Club for dinner. At the Platinum Club, they ran into Domi. Andrew did not think the meeting was pre-arranged but testified that it was clear that Jakobek and Domi were already acquainted.¹⁰⁵

iii) Jakobek invited Andrew to play golf on September 2, 1999

54. Jakobek invited Andrew to play golf with Liczyk and Domi on September 2, 1999 at the Toronto Hunt Golf Club.¹⁰⁶ Jakobek testified that he invited Domi to play golf because Domi had become very irritated with him over his refusal of all of MFP's invitations for events and meals.¹⁰⁷ In his testimony, Andrew clarified that Domi arranged the golf game and Jakobek chose the golf club.¹⁰⁸ He agreed that his affidavit should be revised to read that Domi invited Andrew and Liczyk to play golf.¹⁰⁹ Liczyk joined them a bit later.¹¹⁰ Jakobek was not a member of the club and invited his friend Jim McDaniel ("McDaniel"), who was a member of the club, to attend as well. According to Jakobek, he invited Andrew to make it a foursome, but when McDaniel bowed out of playing golf because of a bad shoulder, Andrew suggested Liczyk.¹¹¹ In his affidavit, Andrew explained that the game was scheduled for the afternoon.¹¹² Andrew did not contest Jakobek's reasons for the golf game.

¹⁰² Andrew 10/07/2003 at 72-73.

¹⁰³ Andrew 10/07/2003 at 75.

¹⁰⁴ Andrew 10/07/2003 at 75.

¹⁰⁵ Andrew 10/07/2003 at 75-76.

¹⁰⁶ COT013189, 63:3:3a.

¹⁰⁷ Jakobek 05/15/2003 at 67-68.

¹⁰⁸ Andrew 09/25/2003 at 7-8.

¹⁰⁹ Andrew 09/25/2003 at 9; COT015552, 63:8:46; COT013876, 63:8:47.

¹¹⁰ Andrew 09/25/2003 at 11-12.

¹¹¹ Jakobek 05/15/2003 at 70.

¹¹² Andrew Affidavit at para. 50, 09/24/2003 at 30.

55. Andrew explained that they offered to pay McDaniel for the golf game, but Jakobek assured them that he would take care of the bill.¹¹³ After the game, McDaniel left and they could not access the facilities at the golf club without him.¹¹⁴ Jakobek invited the three of them back to his house for a glass of wine. They chatted for approximately thirty minutes and then they left.¹¹⁵ Andrew testified that they did not discuss any business, and that he telephoned Liczyk after leaving Jakobek's house to remark on the fact that no business had been discussed.¹¹⁶

56. The City submits that it was inappropriate for Andrew to have accepted an invitation to golf at a private golf club with a Councillor and a supplier and then go back to the Councillor's house for a drink. Such an event contributed to an inappropriate, unprofessional relationship among Domi, Jakobek and senior City staff. Apart from the hockey game and the golf invitation, Andrew did not think that there were any other similar social invitations.¹¹⁷

iv) Andrew's ongoing contact with Jakobek

57. Andrew testified that he stayed in touch with Jakobek in 2000 and even after Jakobek left the City through brief phone conversations, occasional emails, and three dinners.¹¹⁸ Andrew believed that he attended a hockey game with Jakobek on April 22, 2000.¹¹⁹ On July 17, 2000, Andrew sent Jakobek his daughter's address and his newborn granddaughter's name so that Jakobek could send a gift for his granddaughter.¹²⁰ Andrew's daughter did not receive a gift from any other Toronto City Councillor.¹²¹ Andrew agreed that he remained in email contact with Jakobek even after Jakobek joined the Toronto East General Hospital.¹²² He also agreed that the email

¹¹³ Andrew 09/25/2003 at 9.

¹¹⁴ Andrew Affidavit, para. 50, 09/24/2003 at 30; Andrew 09/25/2003 at 12-13.

¹¹⁵ Andrew Affidavit, para. 50, 09/24/2003 at 30.

¹¹⁶ Andrew 09/25/2003 at 14.

¹¹⁷ Andrew 10/07/2003 at 77.

¹¹⁸ Andrew 10/07/2003 at 89; Andrew 10/08/2003 at 6.

¹¹⁹ Andrew 10/07/2003 at 6, 73-74.

¹²⁰ COT076849, 63:14:18; Andrew 10/07/2003 at 88.

¹²¹ Andrew 10/07/2003 at 91-92.

¹²² Andrew 10/07/2003 at 83-84.

contact had nothing to do with City Council.¹²³ On September 4, 2000, at Jakobek's request, Andrew emailed him comments on a consultant's report on information technology issues at Toronto East General Hospital.¹²⁴ Andrew testified that he provided comments because Jakobek had asked for his help, but not out of any affection that he felt for him.¹²⁵ Andrew admitted that he was best acquainted with Jakobek of all the Councillors, and that he had the most regular and personal contact with Jakobek.¹²⁶ The City submits that these interactions are further evidence of the unprofessional relationship between Andrew and Jakobek.

e) Andrew accepted entertainment offers from Ashbourne and MFP

58. The City submits that, even solely on the events at which Andrew conceded his attendance, it is obvious that he demonstrated poor judgment and received inappropriate benefits from MFP.

59. Andrew first met Ashbourne in 1997. On December 23, 1997, Andrew had lunch with Payne, Ashbourne, and Robson. This lunch is discussed in more detail, below. One month later, on January 27, 1998, Andrew met Ashbourne for lunch.¹²⁷ Ashbourne paid for this lunch. On February 5, 1998, the two met again for lunch.¹²⁸

60. In his affidavit, Andrew explained that when Ashbourne visited Andrew, Ashbourne regularly asked Andrew whether he would like tickets for an upcoming Leafs game.¹²⁹ Andrew believed that he received two hockey tickets from Ashbourne for a March 21, 1998 game.¹³⁰

¹²³ Andrew 10/07/2003 at 84.

¹²⁴ Andrew 10/07/2003 at 85; COT076861, 63:14:19.

¹²⁵ Andrew 10/07/2003 at 87.

¹²⁶ Andrew 10/07/2003 at 92-93.

¹²⁷ Andrew 09/25/2003 at 64.

¹²⁸ Andrew 09/25/2003 at 64.

¹²⁹ Andrew Affidavit, para. 19, 09/24/2003 at 16.

¹³⁰ Andrew Affidavit, para. 19, 09/24/2003 at 16.

61. In April 1998, Andrew attended the Raptors Foundation Dinner as a guest of MFP.¹³¹ Ashbourne's expense report for the month of April 1998 shows an entry for "Jim Andrew, City of Toronto Raptors Foundation Dinner" and an expense of \$1400.00.¹³² Andrew agreed that this was a personal event, not a business one.¹³³

62. On June 4, 1998, Andrew attended the MFP-sponsored Legends of Hollywood boat cruise with his daughter. Andrew classified this event as both business-related and personal.¹³⁴ The City submits that Andrew should not have attended the dinner and the cruise and that, in breach of both the Metro Code of Conduct and the City conflict of interest policy, one of his family members also received a benefit from the cruise event.¹³⁵

63. Andrew had lunch with Ashbourne, again, on July 17, 1998.¹³⁶

64. At some point in early 1999, Andrew had lunch with Ashbourne at Canoe, an expensive restaurant on top of the Toronto Dominion building.¹³⁷ In his affidavit, Andrew admitted that he may have accepted Ashbourne's invitation to attend a hockey game on February 10, 1999 in the MFP box.¹³⁸

65. The above meals and events are only those that Andrew has agreed he attended; Ashbourne's expense reports show others. It is unnecessary to resolve the conflict in the evidence on this point because even if limited to Andrew's admissions, it is clear that Andrew accepted an inappropriate level of entertainment from Ashbourne.

¹³¹ COT029054, 63:5:9; Andrew Affidavit, para. 20, 09/24/2003 at 16.

¹³² COT029054, 63:5:9.

¹³³ Andrew 09/25/2003 at 67.

¹³⁴ Andrew 09/25/2003 at 68.

¹³⁵ COT014611 at COT014611, 63:12:3a; COT037273 at COTO37275, 63:2:14a

¹³⁶ Andrew Affidavit, para. 20, 09/24/2003 at 16.

¹³⁷ Andrew Affidavit, para. 21, 09/24/2003 at 16-17; Andrew 09/25/2003 at 79.

¹³⁸ Andrew Affidavit, para. 22, 09/24/2003 at 17.

f) Andrew cultivated an inappropriate social relationship with Domi that involved personal favours and frequent access to sporting events and meals

i) The relationship between Andrew and Domi before MFP won the RFQ

66. Domi replaced Ashbourne as the MFP representative at the City of Toronto in mid-March 1999. In his affidavit, Andrew indicated that he met Domi on or around March 12, 1999.¹³⁹ He later changed this date, and testified that he may have met Domi a week earlier but that he could not recall the precise date.¹⁴⁰

67. Andrew changed his evidence again after reviewing an email dated March 7, 1999, which Andrew sent to his son suggesting that he would ask Domi to obtain tickets to a playoff hockey game through the “player’s network”.¹⁴¹ Andrew testified that, given the early stage of their acquaintance at the time of the email, Domi must have suggested to Andrew that he could obtain tickets at Andrew’s request.¹⁴² Andrew could not recall whether he followed through with his request to Domi; however, he was certain that Domi did not provide him and his son with any playoff tickets.¹⁴³ Andrew admitted that he was asking Domi for a personal favour for his son.¹⁴⁴

68. The City submits that Andrew placed himself in a clear conflict of interest by requesting a personal favour for a family member from a supplier, in breach of both the Metro Code of Conduct and the City’s conflict of interest policy.¹⁴⁵

69. On March 15, 1999, Andrew attended a Tie Domi Charity Dinner at the Royal York Hotel at Domi’s invitation.¹⁴⁶ He indicated that he attended the dinner with Licyzk and they sat at the same table, together with Domi.

¹³⁹ Andrew Affidavit, para. 37, 09/24/2003 at 23.

¹⁴⁰ Andrew 10/07/2003 at 117-118.

¹⁴¹ COT015464, 63:14:26.

¹⁴² Andrew 10/07/2003 at 119.

¹⁴³ Andrew 10/07/2003 at 121-122.

¹⁴⁴ Andrew 09/25/2003 at 103.

¹⁴⁵ COT014611 at COT014611, 63:12:3a; COT037273 at COTO37275, 63:2:14a.

¹⁴⁶ Andrew Affidavit, para. 37, 09/24/2003 at 23.

70. On March 22, 1999, Andrew believed that he attended a hockey game at Domi's invitation.¹⁴⁷

71. Jakobek invited Andrew to attend an April 24, 1999 hockey game. At this hockey game, they ran into Domi, with whom Jakobek was already acquainted. At Domi's invitation, Jakobek and Andrew joined him in the MFP box.¹⁴⁸ Although Andrew, in his affidavit, denied attending a hockey game with Domi, Jakobek, and Liczyk on April 30, 1999, he later recanted and testified that he recalled attending this game.¹⁴⁹ On May 21, 1999, shortly before the release of the RFQ, Domi and Andrew met for lunch at Al Frisco.¹⁵⁰

72. Andrew engaged in an inappropriate amount of entertainment with MFP in the months leading up to the release of the RFQ. Andrew knew that the City would be releasing the RFQ and knew that MFP would be responding to it. MFP offered him entertainment and he accepted. He asked Domi for personal favours. Andrew failed to maintain professional boundaries with MFP and placed himself in a terrible conflict of interest.

ii) The relationship between Andrew and Domi post-July 30, 1999

73. Andrew testified that after MFP won the bid, Domi continued to entertain Andrew during the period that MFP was the leasing provider at the City, but not to the extent that he had previously.¹⁵¹

74. On August 3, 1999, at Domi's request, Andrew and Bulko met Domi and Wilkinson at the Holiday Inn on King Street.¹⁵² The purpose of the meeting was to discuss the meaning of the Jakobek Amendment approved by Council on July 27, 1999.

¹⁴⁷ Andrew Affidavit, para. 38, 09/24/2003 at 23.

¹⁴⁸ Andrew Affidavit, para. 39, 09/24/2003 at 23-24.

¹⁴⁹ Andrew Affidavit, para. 40, 09/24/2003 at 24; but see Andrew 10/07/2003 at 6.

¹⁵⁰ Andrew 09/24/2003 at 280-281.

¹⁵¹ Andrew 10/08/2003 at 43.

¹⁵² Andrew Affidavit, para. 52, 09/24/2003 at 31-32.

Andrew declined an invitation to attend the Cirque du Soleil with MFP on August 14, 1999.¹⁵³

75. On September 2, 1999, Andrew, Jakobek, and Liczyk played golf with Domi at the Toronto Hunt Club. On September 23, 1999, Andrew played golf with MFP at the Glen Abbey Golf Club.¹⁵⁴

76. On October 27, 1999, Andrew met with his friend, Jack Logan, for an after-work drink at Harbour Sixty Steakhouse.¹⁵⁵ As they were leaving, they ran into Domi, who told their waiter to charge their bill to Domi's tab. Andrew indicated that they graciously accepted Domi's hospitality.¹⁵⁶ Andrew agreed that he accepted such hospitality as a personal favour.¹⁵⁷

77. Andrew demonstrated very poor judgment and placed himself in a direct conflict of interest by accepting this gift from Domi. Domi paid for a meal and/or a drink that he did not even share with Andrew. There could be no legitimate business purpose for such a gesture. There was no meaningful difference between Domi picking up that tab and Domi handing Andrew the cash equivalent. There can be no doubt that this violated the City conflict of interest policy.

78. On November 4, 1999, at Domi's behest, Andrew met with Paul Godfrey at the Café Victoria in the King Edward Hotel.¹⁵⁸ Andrew had discussed the fact that he was thinking of applying for the position of Commissioner of Corporate Services with Domi. Domi informed him that Paul Godfrey would know if the City had a preferred candidate and, if so, who it was. Accordingly, Domi set up this breakfast meeting between Andrew and Paul Godfrey. Andrew testified that there was no discussion about MFP's interest in City business at this breakfast meeting.¹⁵⁹ Andrew exercised poor judgment in

¹⁵³ Andrew 09/25/2003 at 106.

¹⁵⁴ Andrew 09/25/2003 at 17-18.

¹⁵⁵ Andrew Affidavit, para. 53, 09/24/2003 at 32.

¹⁵⁶ Andrew Affidavit, para. 53; 09/24/2003 at 32.

¹⁵⁷ Andrew 09/25/2003 at 106-107.

¹⁵⁸ Andrew Affidavit, para. 54, 09/24/2003 at 32-33.

¹⁵⁹ Andrew 09/25/2003 at 108 -115.

accepting this invitation from Domi. The invitation was part of a pattern of conduct by Domi to build trust with Andrew. Andrew failed to recognize that accepting such favours could cause Andrew to place too much trust in this supplier.

79. Andrew testified that Domi gave him a Cartier pen as a Christmas gift on December 23, 1999.¹⁶⁰ Domi did not deny this incident, but thought it took place in 2000. The value of the pen was approximately \$700. Andrew informed Domi that such a gift was inappropriate and he could not accept it. Domi picked up the pen from Andrew shortly after Christmas.¹⁶¹ Andrew testified that he did not ask Domi to pick up the pen, but instead told him that they would have to meet after the holidays so that Andrew could return the pen to him.¹⁶² Andrew was certain that this meeting occurred prior to a January 8, 2000 hockey game they attended together.¹⁶³

80. The City submits that Andrew properly recognized that the Cartier pen was an inappropriate gift. However, the fact that Domi believed it was appropriate to give Andrew an \$700 pen indicates that there was a lack of appropriate boundaries in their relationship. Andrew should have recognized that Domi was prepared to go to significant and inappropriate lengths to build a relationship with him. Moreover, Andrew went to a hockey game with Domi on January 8, 2000, despite Domi's inappropriate gift. This decision demonstrates that Andrew did not appreciate (i) how inappropriate their relationship had become, and (ii) that repeatedly accepting hockey tickets was, in essence, no different than accepting the \$700 pen.

81. On January 8, 2000, Andrew attended another hockey game at Domi's invitation.¹⁶⁴ This hockey game did not appear in Andrew's calendar.¹⁶⁵ Liczyk, her sister, and Viinamae also attended this game. They ate dinner at Harbour Sixty Steakhouse and then walked over to the Air Canada Centre for the hockey game. It

¹⁶⁰ COT052989 at COT053011, 6:3:57; COT025919, 11:1:13; Andrew Affidavit, paras. 55-56, 09/24/2003 at 34.

¹⁶¹ Andrew Affidavit, para. 56, 09/24/2003 at 34.

¹⁶² Andrew 09/25/2003 at 117.

¹⁶³ Andrew 09/25/2003 at 117-118.

¹⁶⁴ Andrew Affidavit, para. 45, 09/24/2003 at 27.

¹⁶⁵ Andrew 09/25/2003 at 26-27.

appeared that Domi paid for dinner.¹⁶⁶ After the game, they went for a drink at the Armadillo Texas Grill. Domi paid for drinks at the Armadillo Texas Grill.¹⁶⁷

82. Andrew sent an email to his friend in Scotland, John Jenkin (“Jenkin”), describing a late night with Tie Domi and other hockey players. The email, dated January 16, 2000, described how Andrew attended a hockey game with Domi and then went to a nightclub with Tie Domi and some other players until 5:00 a.m.¹⁶⁸ The email also detailed how Andrew asked Domi to have his brother Tie Domi autograph a shirt for Jenkin’s daughter.¹⁶⁹ Andrew agreed that this was a personal favour. When called upon to account for the events described in his email, Andrew testified that the portion describing a late night with Tie Domi and other hockey players was a “complete fabrication.”¹⁷⁰ However, he admitted that the other facts in the email were true. The fact that Andrew was “dining out” on stories stemming from his relationship with Domi, whether fabricated or not, is further evidence of its inappropriateness.

83. On September 28, 2000, Andrew attended a golf day with MFP, at its expense.¹⁷¹ He could not recall who attended on behalf of MFP.

iii) Andrew’s continuing relationship with Domi after he left the City

84. Andrew and Domi continued to be in telephone contact after Andrew left the City of Toronto.¹⁷² During the summer of 2001, Domi set up a meeting with Andrew in an effort to explore business opportunities for MFP at Andrew’s new place of employment.¹⁷³ Andrew believed this lunch occurred in July 2001. Andrew testified that Domi continued to call him and Andrew would return his phone calls. Most of these calls revolved around Domi’s frustration with the new City staff policies that limited

¹⁶⁶ COT025771, 13:2:2.

¹⁶⁷ COT025738, 13:2:4.

¹⁶⁸ COT015431, 63:12:18.

¹⁶⁹ Andrew 09/25/2003 at 126.

¹⁷⁰ COT015431, 63:12:18; Andrew Affidavit, para. 58, 09/24/2003 at 35.

¹⁷¹ Andrew 09/25/2003 at 43.

¹⁷² Andrew 10/08/2003 at 39.

¹⁷³ Andrew 10/08/2003 at 39.

entertainment by potential and current suppliers.¹⁷⁴ Domi did not make any further offers to Andrew to attend hockey games or similar events after he left the City, and Andrew did not attend any such events with Domi.¹⁷⁵

85. Between March 1999 and November 2002, Domi and Andrew called each other over 200 times.¹⁷⁶ The City submits that, despite Andrew's protests that they did not have a strong relationship, the number of telephone calls, the number of hockey and golf games, and the number of meals, all point to the conclusion that they shared a strong relationship. Andrew allowed Domi and MFP to take advantage of the strength of this relationship to the detriment of the City.

g) Lobbyists

86. Andrew had regular contact with lobbyists over the years.¹⁷⁷ He testified that he felt uncomfortable in his interactions with lobbyists because there were no clear rules that delineated the boundaries of these interactions.¹⁷⁸ Civil servants were left to use their good judgment. In Andrew's experience, lobbyists contacted him directly to set up meetings with their clients, whom they believed could supply or fulfill an information technology need in the City.¹⁷⁹

87. Andrew knew that a lobbyist should not have access to information that a supplier could not obtain by his or her own efforts.¹⁸⁰ He understood that in order to maintain a level playing field, senior executives and their staff must maintain equal access to information for all parties.¹⁸¹

¹⁷⁴ Andrew 10/08/2003 at 41.

¹⁷⁵ Andrew 10/08/2003 at 42.

¹⁷⁶ Andrew 09/25/2003 at 135, 137.

¹⁷⁷ Andrew 10/07/2003 at 146.

¹⁷⁸ Andrew 10/07/2003 at 146-147.

¹⁷⁹ Andrew 10/07/2003 at 151-152.

¹⁸⁰ Andrew 10/07/2003 at 180.

¹⁸¹ Andrew 10/07/2003 at 180.

h) Lyons

i) Andrew was closer to Lyons than any other lobbyist

88. Andrew agreed that he had more contact with Lyons than any other lobbyist at the City of Toronto.¹⁸² Lyons called Andrew more frequently than any other lobbyist called him. Similarly, Lyons agreed that he spoke to Andrew more frequently than he spoke to other City staff members.¹⁸³ Between January 1999 and March 2000, Andrew and Lyons exchanged over 50 telephone calls.¹⁸⁴ Andrew explained that his sense of Lyons at the City was that Lyons also contacted other City staff members more often than other lobbyists.¹⁸⁵

89. In his affidavit, Andrew acknowledged that he asked Lyons for tickets to a sporting event in November 1999.¹⁸⁶ Andrew mentioned to Lyons that he was having difficulty obtaining tickets for a Buffalo Bills game on November 14, 1999. Lyons said that he would “look around”. He later telephoned Andrew to confirm that he had two tickets to the Buffalo Bills game. Andrew swore that he offered to pay for the tickets, but his offer was rejected. Lyons agreed that he had done favours for Andrew, and that obtaining Buffalo Bills tickets was a favour.¹⁸⁷ Andrew had not had a similar conversation with any other lobbyist.¹⁸⁸ Andrew agreed that his request and acceptance of the Buffalo Bill tickets was poor judgment on his part, and that it was a conflict of interest for him to request such tickets from an influential lobbyist.¹⁸⁹ He also agreed that the situation created a perception of bias.

90. Andrew regularly attended Lyons’ charity golf tournaments.¹⁹⁰

¹⁸² Andrew 10/07/2003 at 168-169.

¹⁸³ Lyons 09/21/2004 at 201-202.

¹⁸⁴ COT063193, 63:5:1; COT063195, 63:14:33; Andrew 09/25/2003 at 164.

¹⁸⁵ Andrew 10/07/2003 at 170.

¹⁸⁶ Andrew Affidavit, para. 85, 09/24/2003 at 44-45.

¹⁸⁷ Lyons 09/21/2004 at 165.

¹⁸⁸ Andrew 10/07/2003 at 171.

¹⁸⁹ Andrew 10/07/2003 at 172.

¹⁹⁰ Andrew 10/07/2003 at 173.

ii) Lyons had a mole in the City: Mole Memo #1

91. On April 1, 1999, Lyons drafted a memo to file with respect to his work for DFS.¹⁹¹ The memo contained information specific to a senior individual in I&T .

I spoke later in the day on March 29, 1999 to a senior official in IT. Apparently they have a report that went to Council in October, 1998 and it might have been the first report on Y2K and they stated if the amount to refurbish is over a certain amount then they would buy and if it was under a certain amount then they would refurbish. The level was \$1,000.00. It was approved by the Budget Committee and Council and the matter was then referred for the implementation to the Strategic Policy and Priorities Committee.¹⁹²

92. Andrew testified that many of the Directors in I&T would have been familiar with the information contained in the memo to file.¹⁹³ He agreed that the information in the memo appeared to be from him, but denied that he provided this information to Lyons.¹⁹⁴ He did not know which director would have advised Lyons to speak to Jakobek. He also denied that he was aware that there was a problem gaining support from Treasury for the computer leasing program, but later agreed that there had been discussion of this issue among the Directors.¹⁹⁵ Andrew agreed that he was the only individual who believed that Liczyk was critical to the success of the computer leasing program because she had final approval for Finance.¹⁹⁶ He noted many inconsistencies in the memo, including the order of the committee approval process.¹⁹⁷

93. Lyons agreed that the knowledge that Liczyk was focused on the cost of borrowing, as described in his April 1, 1999 memo to file, was valuable information for his client. He agreed that DFS could use this information to prepare for subsequent meetings with Liczyk.¹⁹⁸

¹⁹¹ COT075439, 63:7:19.

¹⁹² COT075439, 63:7:19.

¹⁹³ Andrew 10/07/2003 at 182.

¹⁹⁴ Andrew 10/07/2003 at 184.

¹⁹⁵ Andrew 10/07/2003 at 184-185.

¹⁹⁶ Andrew 10/07/2003 at 185.

¹⁹⁷ Andrew 10/07/2003 at 189.

¹⁹⁸ Lyons 09/22/2004 at 54.

94. Following his April 1, 1999 memo to file, Lyons continued to exchange communications with DFS, primarily with Marentette.¹⁹⁹ On April 23, 1999, Lyons participated in a meeting with individuals from DFS, Liczyk, and Andrew.²⁰⁰ The evidence showed that DFS prepared a number of documents for this meeting, including a lengthy financial document.²⁰¹ Lyons' assistant prepared notes from this meeting. Lyons reviewed these notes prior to forwarding them to DFS.²⁰² The notes confirmed that Liczyk and Andrew were present at this meeting. Approximately one month later, Lyons faxed a letter to Marentette:²⁰³

On the questions that were raised during our discussion after the meeting with Councillor Jakobek and, in particular, on May 25, 1999 are as follows:

(a) The RFP for leasing, because it is part of the Y2K program, will go to Policy and Finance Priorities (then to Council);

(b) Who is preparing the RFP? It will be a combination of Lana Viinamae with Brenden [sic] Power working underneath her as the "drivers" and Len Brittain who is representing the finance model.²⁰⁴

95. On June 7, 1999, Lyons met with DFS. Also on June 7, 1999, Lyons placed a call to Andrew.²⁰⁵ On June 10, 1999, Lyons drafted a memo to file with respect to his meeting with DFS three days prior.²⁰⁶ This memo contained confidential City information. Lyons admitted that the source of his information could have been Andrew.

Q: Does all of this assist you in – in recollecting who it was that was the source of your information, from the IT Department, that formed the basis of your June 10th, 1999 memorandum?

A: Not really. But I mean it could have -- I mean, I'm just saying it could be Jim. It could have been others. I just can't say it was him.²⁰⁷

¹⁹⁹ COT075423, 17:1:3; COT075417, 17:1:29.

²⁰⁰ Lyons 09/22/2004 at 59-61; COT075500, 17:1:17.

²⁰¹ COT075352, 17:1:1; COT075499, 17:1:17.

²⁰² COT075432, 17:1:7; Lyons 09/22/2004 at 65.

²⁰³ COT075421, 17:1:3; COT075422, 17:1:3.

²⁰⁴ COT075422, 17:1:3.

²⁰⁵ Lyons 09/21/2004 at 202.

²⁰⁶ COT075418, 63:7:35a.

²⁰⁷ Lyons 09/21/2004 at 204.

96. On June 10, 1999 at 5:51 p.m., Lyons faxed the memo to file to Marentette.²⁰⁸ This was one day before the bids were due. The memo to file contained information obtained from a City official.²⁰⁹ Specifically, Lyons advised that the tender would be evaluated almost entirely on price. Lyons agreed that this information was valuable to DFS, and that he was able to obtain such information because of his level of contact with high level City officials and Councillors.²¹⁰

97. The June 10, 1999 memo to file began by describing the questions raised by DFS during their June 7, 1999 meeting.

Basically they wanted me to find out who was going to invite the bids. And I found out that it would be a committee chosen by Wanda Liczyk headed up by Len Brittain.²¹¹

98. Andrew testified that he did not know that the City had established a committee to invite bids.²¹² Andrew testified that Power would also have been privy to this information, and that many other individuals would have assumed that Brittain would lead the evaluation of bids.²¹³ The memo went on to state:

He also wanted to know how they weight the criteria and he basically stated that it is the cost per thousand (1,000) and it is essentially pricing. You have to look at the residuals not only for computers for three (3) years, but, also five (5) years for servers.²¹⁴

99. Andrew testified that anyone who had seen the RFQ would have known that the decisive criterion was price, including Rabadi, Power, Brittain, Jakobek.²¹⁵ Lyons also

²⁰⁸ COT075417, 17:1:29.

²⁰⁹ COT075418, 63:7:35a.

²¹⁰ Lyons 09/22/2004 at 86-87.

²¹¹ COT075418, 63:7:35a.

²¹² Andrew 09/25/2003 at 190.

²¹³ Andrew 10/07/2003 at 195.

²¹⁴ Andrew 10/07/2003 at 196.

²¹⁵ Andrew 10/07/2003 at 197.

wrote that his mole informed him that the City did not want MFP to deal directly with the suppliers:

One of the issues that MFP raises is that they can get to the line of supplies, such as hardware providers, service providers, but according to the IT Department, they don't want that to happen, they want to have the direct quotes, and maybe MFP finances the purchases.²¹⁶

100. Andrew confirmed that three people would have known this information: Domi, Kassam, and himself.²¹⁷ However, the document that appeared to be the second page of this memo to file was a list of interested bidders naming sixteen companies.²¹⁸ Andrew testified that he had not even heard of some of the companies on this list and, thus, could not have been the source of this information.²¹⁹

101. Andrew agreed that regardless of who provided this information to Lyons and at what point in time, such confidential information should not have been revealed.²²⁰

102. On balance it appears more likely than not that Andrew was the source of at least some of Lyons' confidential information. Providing such information to Lyons was entirely inappropriate.

i) Blackout period

103. The purposes of the blackout period were three-fold: to ensure that there was no appearance of favoritism; to ensure that bidders had equal access to information; and to ensure that impartiality was preserved. The City of Toronto's purchasing process did not involve or include a written blackout period, unlike at the Province of Ontario where a written term was usually included in the tender.²²¹ Nevertheless, Andrew confirmed that

²¹⁶ COT075418, 63:7:35a.

²¹⁷ Andrew 10/07/2003 at 201.

²¹⁸ COT075419, 63:7:35a.

²¹⁹ Andrew 10/07/2003 at 207.

²²⁰ Andrew 10/07/2003 at 204-205.

²²¹ Andrew Affidavit, para. 48, 09/24/2003 at 28.

he was familiar with the concept of a blackout period and that he knew the period started to run from the moment that the tender was issued.²²² Andrew understood that the only exception to the no-contact rule with respect to the tender was for the official contact person named in the RFQ.²²³ However, Andrew testified that he believed that ongoing contact with a supplier unrelated to the tender was permissible during the blackout period.²²⁴

Q: You could have it [contact with supplier] during the period when the tender had been -- was being -- was under active consideration by the bidders?

A: Yes.

Q: During the period when the responses to the tender were under active consideration by the City?

A: Yes.

Q: And any time prior to the approval?

A: Yes.²²⁵

i) Andrew's contacts with Ashbourne during 1997 blackout period

104. The City's RFQ for phone/fax quotations for the 1997 Councillors' Lease was issued on Monday, December 22, 1997. The next day, on December 23, 1997, Andrew met Ashbourne, Payne, and Robson for lunch.²²⁶ This was squarely during the evaluation period for the responses to the City's RFQ on the Councillors' Lease. Andrew testified that he had no recollection of this lunch, but agreed that they must have spoken about the Councillors' Lease.²²⁷ Ultimately, Andrew conceded that if other bidders knew that he was having lunch with MFP on the day after bidders had been asked to submit

²²² Andrew 10/07/2003 at 213.

²²³ Andrew Affidavit, para. 48, 09/24/2003 at 28-29.

²²⁴ Andrew 10/07/2003 at 214.

²²⁵ Andrew 10/07/2003 at 214-215.

²²⁶ Andrew 10/08/2003 at 63-64; COT025484, 5:2:9.

²²⁷ Andrew 10/08/2003 at 66, 68.

their faxed quotations, concerns would have been raised about the fairness of the process.²²⁸ Attending this meeting was unacceptable conduct.

ii) Andrew's contacts with Domi during 1999 blackout period

105. The tender was issued on May 31, 1999, responses to the tender were due on June 11, 1999, and the report selecting MFP as the successful bidder was approved at a Council meeting on July 27, 1999.

106. Andrew admitted that he was in contact with Domi during the computer leasing RFQ blackout period from May 31, 1999 to July 27, 1999.²²⁹ In his affidavit, Andrew recalled speaking with Domi once during the blackout period, when Domi telephoned to determine the status of the RFQ.²³⁰ Andrew indicated that he redirected Domi's phone call to Beattie and warned him to have no further contact with City staff until the contract had been awarded.²³¹ Andrew also admitted that Domi telephoned him on morning of June 11, 1999, to confirm that the MFP bid would be submitted on time.²³²

107. In fact, during June and July of 1999, Andrew and Domi were in regular telephone contact. When confronted with the cell phone records obtained for this Inquiry Andrew admitted to frequent contact with Domi and testified that it was attributable to Domi's aggressive telephone habits.²³³ The cell phone records in evidence demonstrate frequent contact between these two men; however, they do not provide a whole picture of the telephone contact between Domi and Andrew. For example, the records do not show any office to office phone calls.

108. On June 2, 1999, Andrew called Domi from his cell phone twice; the first call lasted 4 minutes and 6 seconds. Andrew also spoke to Domi the next day, June 3, 1999. Andrew had no recollection of what he discussed with Domi, but was quite

²²⁸ Andrew 10/08/2003 at 69-70.

²²⁹ Andrew 10/08/2003 at 82.

²³⁰ Andrew Affidavit, para. 48, 09/24/2003 at 28-29.

²³¹ Andrew Affidavit, para. 48, 09/24/2003 at 28-29.

²³² Andrew Affidavit, para. 48, 09/24/2003 at 28-29.

²³³ Andrew 10/08/2003 at 38.

certain that he was simply returning Domi's earlier calls.²³⁴ Domi's earlier incoming calls to Andrew's office would not be reflected in Andrew's cell phone records obtained by the Inquiry. On June 4, 1999, Domi called Andrew. Four days later, on June 8, 1999, Andrew called Domi. He explained that the purpose of this call was to obtain hockey tickets. On June 10, 1999 at 4:05 p.m., Andrew called Domi. On June 11, 1999 at 8:45 a.m., Domi called Andrew to inform him that MFP would be delivering its response to the RFQ in time.²³⁵ The phone call lasted 2 minutes and 28 seconds. In his affidavit, Andrew indicated that this was not unusual and that such communication seemed to be an "acceptable practice" in the vendor community.²³⁶ A week later, on June 18, 1999, Andrew called Domi from his cell phone twice. These phone calls were minutes apart: the first at 2:07 p.m. lasting only 43 seconds, and the second at 2:16 p.m., lasting 2 minutes and 28 seconds. Finally, on June 25, 1999 Domi called Andrew at 9:26 a.m.

109. During the month of July 1999, Domi did not contact Andrew until July 16, 1999, when he called him twice. These phone calls were also minutes apart: the first at 12:15 p.m. lasting 6 minutes and 9 seconds, and the second at 12:35 p.m., lasting only 54 seconds. Andrew testified that he would not have discussed any business with Domi at that point in time.²³⁷ He speculated that they were speaking about sports or news. Then, Domi did not call Andrew again until July 28, 1999.

110. Domi's phone call to Andrew on July 28, 1999 happened to be one day after the Council meeting during which MFP had been approved as the successful bidder. Their conversation lasted for 2 minutes and 12 seconds. Andrew maintained that he did not inform MFP that they had won the bid.²³⁸ He explained that any number of individuals could have informed MFP that they were successful.²³⁹ Andrew did not know what the conversation was about, but he speculated that Domi may have told him that he had heard MFP had won and wanted to move forward with the leasing program.²⁴⁰ Andrew

²³⁴ Andrew 10/08/2003 at 88.

²³⁵ Andrew 10/08/2003 at 86-87.

²³⁶ Andrew Affidavit, para. 48, 09/24/2003 at 28-29.

²³⁷ Andrew 10/08/2003 at 90.

²³⁸ Andrew 10/02/2003 at 190.

²³⁹ Andrew 10/08/2003 at 92.

²⁴⁰ Andrew 10/08/2003 at 92.

could not recall anyone from MFP present at the Council meeting.²⁴¹ Andrew testified to the normal notification process, which was for the PMMD to send out a letter to the successful bidder a few days after Council approval.²⁴²

111. In August 1999, Domi called Andrew three times. Andrew's cell phone records do not show that Andrew made any phone calls to Domi. Then, in September 1999, the month leading up to the extension of the lease from 3 to 5 years, Domi made 13 phone calls to Andrew's cell phone. The records show that Domi often called Andrew twice a day or more in September 1999. On September 28, 1999, Domi called Andrew three times, and on September 30, 1999, Domi called Andrew four times.

112. Andrew agreed that he was not properly attuned to the perception of bias issue during the blackout period, and that he did not exercise good judgment.²⁴³ This level of contact with a respondent during the blackout period is simply unacceptable.

113. During the blackout period, Andrew asked Domi to secure Dallas Stanley Cup playoff tickets for his son.²⁴⁴ Andrew testified that he intended to pay Domi for the tickets.²⁴⁵ At the time, Andrew did not believe that asking one of the bidders for a favour during the blackout period was inappropriate.²⁴⁶ Andrew admitted that, in hindsight, it was poor judgment to place himself in a position which may have created the perception of bias.²⁴⁷ The City submits that this was a terrible lapse in judgment and was wholly unacceptable.

²⁴¹ Andrew 10/02/2003 at 195.

²⁴² Andrew 10/02/2003 at 194.

²⁴³ Andrew 10/08/2003 at 98-99.

²⁴⁴ Andrew 10/08/2003 at 84.

²⁴⁵ Andrew 10/08/2003 at 84.

²⁴⁶ Andrew 10/08/2003 at 85-86.

²⁴⁷ Andrew 10/08/2003 at 86.

j) Andrew's contact with suppliers and other bidders

i) Dell/DFS

114. Andrew testified that he may have spoken to Marentette on the telephone, but that he had never met Simone.²⁴⁸ Certainly, Andrew confirmed that he “did not talk to [Marentette] very much on the phone”.²⁴⁹ Andrew's calendar showed a lunch meeting on April 7, 1999 with Dell.²⁵⁰ Andrew could not recall this lunch meeting. On April 23, 1999, Dell representatives attended a farewell drop-in lunch for a City staff member.²⁵¹

115. Andrew's calendar contained a golf day event for Dell/DFS at Emerald Hills on July 9, 1999, during the blackout period.²⁵² In his affidavit, Andrew indicated that he either did not attend this golf day with Dell at Emerald Hills, or he attended late and missed the golf.²⁵³ Andrew received his invitation from Mortensen.²⁵⁴ In his evidence, Simone described the day as a “shared tournament” between Dell and DFS.²⁵⁵ Andrew clarified that he was aware that Williams from DFS Global flew up from Texas for the 1999 golf tournament, but that this was a separate event from the golf day at Emerald Hills.²⁵⁶ He testified that he did not attend the golf tournament for which Williams flew up from Texas.²⁵⁷

116. DFS was the only unsuccessful bidder to schedule a debriefing session with the City of Toronto on August 20, 1999.²⁵⁸ Andrew could not recall this meeting, which Brittain also attended.²⁵⁹ Andrew could not recall any other meetings with anyone from DFS that occurred after the July 27, 1999 Council meeting.²⁶⁰ Andrew's calendar

²⁴⁸ Andrew 10/08/2003 at 116.

²⁴⁹ Andrew 10/08/2003 at 116.

²⁵⁰ Andrew 09/24/2003 at 277.

²⁵¹ Andrew 09/24/2003 at 277-278.

²⁵² COT053051 at COT053104, 63:6:11.

²⁵³ Andrew Affidavit, para. 74, 09/24/2003 at 41.

²⁵⁴ Andrew 09/24/2003 at 282-283.

²⁵⁵ Simone 04/14/2003 at 128.

²⁵⁶ Andrew 10/08/2003 at 104.

²⁵⁷ Andrew 10/08/2003 at 105.

²⁵⁸ Andrew 10/08/2003 at 107.

²⁵⁹ Andrew 10/08/2003 at 108.

²⁶⁰ Andrew 10/08/2003 at 108.

contained an entry for an April 7, 2000 breakfast meeting with Michael Dell.²⁶¹ This breakfast meeting was an information session attended by the Chief Information Officers of at least 20 other Dell clients.

ii) Bombardier Capital

117. Andrew recalled that Dick Spei (“Spei”) was the sales representative for Bombardier Capital. He could not recall anyone else.²⁶² Andrew testified that he did not have much telephone contact with Spei, and met with him only once.²⁶³ On November 23, 1999, they were scheduled to have lunch together but due to time constraints, they had coffee in the City cafeteria instead.²⁶⁴

iii) SHL

118. Andrew could not recall the name of the sales representative for SHL.²⁶⁵ He did not think that it was Debbie Eckin (“Eckin”) because he thought SHL had another leasing arm with a separate sales representative.²⁶⁶ Andrew agreed that his inability to name the SHL sales representative reflected the fact that he had very little contact by telephone or in person with the SHL sales representative from the leasing arm.²⁶⁷

119. Andrew could not recall for certain but he believed that a December 18, 1998 Christmas luncheon with Eckin occurred.²⁶⁸ On February 16, 1999, Andrew and Viinamae attended an SHL luncheon.²⁶⁹ Andrew had a lunch appointment scheduled for June 14, 1999 with Eckin from SHL.²⁷⁰ He could not discern from the document, nor

²⁶¹ Andrew 09/25/2003 at 29.

²⁶² Andrew 10/08/2003 at 116.

²⁶³ Andrew 10/08/2003 at 118.

²⁶⁴ Andrew 09/25/2003 at 22.

²⁶⁵ Andrew 10/08/2003 at 116.

²⁶⁶ Andrew 10/08/2003 at 116-117.

²⁶⁷ Andrew 10/08/2003 at 116-117.

²⁶⁸ Andrew 09/24/2003 at 266.

²⁶⁹ Andrew 09/24/2003 at 271.

²⁷⁰ COT053051 at COT053097, 63:6:11.

could he recall whether or not his assistant entered this appointment into his calendar.²⁷¹ He was not asked if he recalled attending the lunch.

iv) IBM

120. Andrew identified Larry Blight (“Blight”) as the sales representative for IBM. He testified that his contact with Blight was not as frequent as his contact with Domi, but it was still once or twice per week. The weekly contact occurred either on the phone or in person. Blight did not entertain Andrew very often.²⁷²

121. On February 4, 1999, Andrew attended an IBM Question and Answer Presentation with a dinner following the presentation.²⁷³ On April 28, 1999, Andrew had lunch with Blight and Ross Geiger from IBM.²⁷⁴ Andrew believed he expensed this lunch to the City as IBM had won the vendor prize of lunch with him at a charity IT golf tournament.²⁷⁵ IBM invited Andrew to attend at their Skydome box on June 19, 1999.²⁷⁶ Franey and Viinamae were also invited to this game. On August 17, 1999, Andrew met with Blight for an early breakfast meeting.²⁷⁷ On December 2, 1999, Andrew met Blight for a working lunch, as IBM was a supplier to the City of Toronto.²⁷⁸ Andrew believed that Blight paid for lunch. On February 1, 2000, Andrew again met Blight for a working lunch.²⁷⁹ On May 18, 2000, IBM hosted a reception for the Y2K Steering Committee.²⁸⁰ Andrew believed that Councillor O’Brien, Liczyk, Viinamae and maybe Garrett also attended.

²⁷¹ Andrew 10/08/2003 at 95-96.

²⁷² Andrew 10/08/2003 at 117.

²⁷³ Andrew 09/24/2003 at 269.

²⁷⁴ Andrew 09/24/2003 at 279.

²⁷⁵ Andrew 09/24/2003 at 279.

²⁷⁶ Andrew 10/08/2003 at 99.

²⁷⁷ Andrew 09/24/2003 at 290.

²⁷⁸ Andrew 09/25/2003 at 23.

²⁷⁹ Andrew 09/25/2003 at 28.

²⁸⁰ Andrew 09/25/2003 at 31.

v) StorageTek

122. In April 2000, Andrew attended the Masters Golf Tournament in Atlanta, Georgia at the expense of a company called StorageTek.²⁸¹ StorageTek paid for the flight, accommodation, food, and admission to the Tournament.²⁸² Andrew described this event as a “vendor’s appreciation function”. StorageTek had won a tender of approximately \$1 million to install a sophisticated storage system for the City of Toronto in early 2000.²⁸³ Andrew did not disclose this trip to the Commissioner of Corporate Services and testified that his failure to disclose the trip was a mistake in judgment.²⁸⁴ Attending this trip demonstrates a stunning lack of judgment. It was entirely inappropriate.

vi) Metastorm

123. Andrew permitted Metastorm to pay for his airfare to Scotland in late May 1999. He explained that he was planning to fly to Scotland for a soccer game and Metastorm suggested that he visit their company while he was there.²⁸⁵ He agreed and Metastorm purchased an airline ticket. Andrew then reimbursed Metastorm for the value of the charter flight that he would have taken but for Metastorm purchasing a regular flight for him. Metastorm also paid for two nights of accommodation in London.²⁸⁶ Andrew did not disclose this trip to the Commissioner of Corporate Services and testified that he should have done so.²⁸⁷ Taking this trip demonstrates a stunning lack of judgment. It was entirely inappropriate.

vii) Computer Associates

124. On July 16, 1999, Andrew attended a golf day with a software company called Computer Associates at the Glen Abbey Golf Club with Viinamae.²⁸⁸ He believed that other people from the City attended as well. Andrew also went to New York from

²⁸¹ Andrew 09/24/2003 at 256.

²⁸² Andrew 09/24/2003 at 257.

²⁸³ Andrew 09/24/2003 at 258.

²⁸⁴ Andrew 09/24/2003 at 260.

²⁸⁵ Andrew 09/24/2003 at 261.

²⁸⁶ Andrew 09/24/2003 at 261-262.

²⁸⁷ Andrew 09/24/2003 at 263.

December 13 to 16, 2000 at the expense of Computer Associates. Andrew told the Commissioner of Corporate Services about the trip.²⁸⁹

viii) Bell

125. Andrew attended the Chief of Police Dinner on May 6, 1999 at the invitation and expense of Bell Canada.²⁹⁰ On July 12, 1999, Andrew attended a golf event organized by Bell Mobility.²⁹¹ Andrew did not pay for this event. On July 13, 1999, Andrew and Viinamae attended a breakfast meeting with Joe Sivitelli from Bell Canada.²⁹² On September 12, 1999, Andrew attended the Bell Canada Open with his wife at the Glen Abbey Golf Club.²⁹³ Bell Canada paid for the tickets. Andrew testified that there was no business purpose to the event.²⁹⁴ On August 23, 2000, Andrew attended Bell Canada Rafter's Golf Day at the expense of Bell.²⁹⁵

ix) Compaq

126. Andrew could not recall the name of the sales representative for Compaq either. He believed that there were two names associated with Compaq, but he could not recall which one was the sales representative.²⁹⁶ Andrew guessed that "Tom Addovitch" was the sales representative, and later agreed that it was "Tom Valentick". He agreed that his inability to remember the name of the Compaq sales representative reflected the fact that he had very little contact with the Compaq sales representative.²⁹⁷

²⁸⁸ Andrew 09/24/2003 at 283-284.

²⁸⁹ Andrew 09/24/2003 at 264.

²⁹⁰ Andrew 09/24/2003 at 280.

²⁹¹ Andrew 09/24/2003 at 283.

²⁹² Andrew 09/24/2003 at 283.

²⁹³ Andrew 09/25/2003 at 16.

²⁹⁴ Andrew 09/25/2003 at 16.

²⁹⁵ Andrew 09/25/2003 at 37, 39.

²⁹⁶ Andrew 10/08/2003 at 117.

²⁹⁷ Andrew 10/08/2003 at 117-118.

x) Other Suppliers

127. On April 15, 1999, Andrew and Viinamae attended a lunch meeting with Will Jackson from ATS.²⁹⁸ On April 26, 1999, Andrew drove to Whitby to meet with EDS in Whitby.²⁹⁹ However, he did not think that this was a lunch meeting. Andrew's calendar shows a declined invitation to attend a hockey game with Roger Yates from Novell Canada.³⁰⁰ On June 22, 1999, Andrew played golf with Tony Aguqie, from the Economic Development Department in Metro's charity golf tournament. Andrew did not pay for this golf tournament.³⁰¹

128. On July 19, 1999, Andrew and Garrett attended a Sun Microsystems Golf Day at King Valley Golf Club.³⁰² Andrew testified that Garrett's office telephoned to ask him about the propriety of attending the Sun Microsystems Golf Day.³⁰³ Andrew informed Garrett that the City was not in an active tender situation with Sun Microsystems, and Garrett agreed to attend. On October 5, 1999, Andrew had lunch with Tom Stefanyk ("Stefanyk") from Sun Microsystems.³⁰⁴ On November 9, 1999, Andrew and Garrett attended a hockey game at the invitation of Stefanyk.³⁰⁵ Andrew testified that Garrett again contacted him about the propriety of attending the hockey game. Andrew informed him that the City was not in an active tender situation with Sun Microsystems.

129. Andrew's calendar showed a Cisco Golf Day at Oakdale Golf Club on August 9, 1999.³⁰⁶ Andrew believed that he did not attend this golf day. Andrew's calendar also showed an entry the next day for a Toshiba golf day.³⁰⁷ Andrew was certain that this event did not occur.

²⁹⁸ Andrew 09/24/2003 at 277.

²⁹⁹ Andrew 09/24/2003 at 279.

³⁰⁰ Andrew 09/24/2003 at 279.

³⁰¹ Andrew 09/24/2003 at 281-282.

³⁰² Andrew 09/24/2003 at 285.

³⁰³ Andrew 09/24/2003 at 285.

³⁰⁴ Andrew 09/25/2003 at 18-19.

³⁰⁵ Andrew 09/25/2003 at 20.

³⁰⁶ Andrew 09/24/2003 at 286.

³⁰⁷ Andrew 09/24/2003 at 287.

130. On August 16, 1999, Andrew attended the Brother Golf Tournament hosted by Lyons.³⁰⁸ He testified that he paid for himself. On September 7, 1999, Andrew attended the Mayor's Golf Tournament at Lionhead Golf and Country Club in Brampton.³⁰⁹ Andrew's calendar contains an entry for a Cognicase Golf Tournament on September 22, 1999.³¹⁰ He could not recall whether or not he attended this event.

131. On December 6, 1999, Andrew attended a hockey game with a sales representative from Cantel.³¹¹ Cantel paid for his ticket. On December 7, 1999, Andrew attended an EDS Innovations party at the Royal York Hotel.³¹² On December 10, 1999, Andrew attended a Toshiba Christmas lunch.³¹³ Andrew agreed that there were several Christmas lunches and testified that he regarded them as thank you events. On December 23, 1999, Andrew attended lunch with Sid Preese from GSI, a supplier for the City of Toronto.³¹⁴

132. On January 6, 2000, Andrew met Derek Shawn, the new account representative for EDS Innovations, for lunch.³¹⁵ EDS Innovations was a supplier to the City of Toronto, as they had purchased SystemHouse and assumed the contract.³¹⁶ They met again on February 21, 2000.³¹⁷ On June 9, 2000, Andrew met Andy Zuk, the new account representative for EDS Innovations, for lunch.³¹⁸ Andrew recalled playing golf on July 6, 2000 with the sponsors of the Mayor's Golf Day.³¹⁹

133. On July 17, 2000, Andrew attended the Brother Jeff Golf Tournament again.³²⁰ He paid for his own ticket. Andrew's calendar contained an entry for a golf day with

³⁰⁸ Andrew 09/24/2003 at 290.

³⁰⁹ Andrew 09/24/2003 at 291.

³¹⁰ Andrew 09/25/2003 at 17.

³¹¹ Andrew 09/25/2003 at 24.

³¹² Andrew 09/25/2003 at 25.

³¹³ Andrew 09/25/2003 at 24-25.

³¹⁴ Andrew 09/25/2003 at 26.

³¹⁵ Andrew 09/25/2003 at 26.

³¹⁶ Andrew 09/25/2003 at 33.

³¹⁷ Andrew 09/25/2003 at 32.

³¹⁸ Andrew 09/25/2003 at 32.

³¹⁹ Andrew 09/25/2003 at 33 but see 41.

³²⁰ Andrew 09/25/2003 at 33.

Lexmark, a supplier to the City, on July 18, 2000.³²¹ He recalled that he declined this invitation, but could not recall the reason. On July 26, 2000, Andrew attended a golf day with Questech, another supplier to the City.³²² Andrew's calendar shows an entry for a golf day with Compaq on August 17, 2000; Andrew had no recollection of the event.³²³

134. Andrew attended the Mayor's Golf Day on September 5, 2000.³²⁴ The Mayor's Golf Day was a two-day event. On October 7, 2000, Andrew and Liczyk attended a hockey game with Sierra Systems, a supplier to the City.³²⁵ Andrew did not pay for his ticket. On October 18, 2000, Andrew played golf with Dyna Lync.³²⁶ On October 20, 2000, Andrew met with EDS for lunch.³²⁷ On December 5, 2000, EDS Innovations hosted a Christmas party. On December 12, 2000, Andrew had lunch with some City staff and Toshiba.³²⁸

135. On January 12, 2001, Andrew attended a hockey game with Taranet.³²⁹ He testified that he was invited by both EDS Innovations and Taranet to the same game as they shared a box, but he chose to attend on behalf of Taranet. On February 20, 2001, the Mayor hosted a golf dinner, which Andrew attended.³³⁰ Andrew had already left the City but attended the dinner regardless.

³²¹ Andrew 09/25/2003 at 34.

³²² Andrew 09/25/2003 at 34.

³²³ Andrew 09/25/2003 at 36.

³²⁴ Andrew 09/25/2003 at 38.

³²⁵ Andrew 09/25/2003 at 43-44.

³²⁶ Andrew 09/25/2003 at 45.

³²⁷ Andrew 09/25/2003 at 45-46.

³²⁸ Andrew 09/25/2003 at 46.

³²⁹ Andrew 09/25/2003 at 47-48.

³³⁰ Andrew 09/25/2003 at 48-49.

4. Andrew's relationship with MFP: Conclusion

136. Andrew's relationship with MFP involved more frequent contact and more frequent entertainment than his relationship with any other supplier. Domi was in "significantly more" contact with Andrew than any other supplier.³³¹ When Ashbourne, Payne, Rollock, and Wilkinson were factored into the equation, there was no other bidder or supplier that Andrew had nearly as much contact with in the six month period prior to the RFQ. Andrew was closest to MFP's sales representatives, as evidenced by the fact that he requested personal favours from them but did not request personal favours from any other bidder.³³²

137. Andrew did not know if he received any other phone contact from another bidder during the blackout period; however, he could not recall a telephone approach by any other supplier.

Q: Mr. Andrew, were you receiving telephone calls, messages, voice mails, anything of that nature from any of the other sales reps, or any of the other bidders during this time frame?

A: I don't know.

Q: Think.

A: I don't know. They may have, but I don't know, I can't recall.

Q: Can you recall a telephone approach by any other supplier during that time frame?

A: No, I do not.³³³

138. Andrew agreed it was poor judgment on his part to have such a high quantity and frequency of contacts with a bidder in the period leading up to an active tender.³³⁴ However, he pointed out that he was not the only individual at the City engaged in

³³¹ Andrew 10/08/2003 at 113-114.

³³² Andrew 10/08/2003 at 118-119.

³³³ Andrew 10/08/2003 at 90-91.

³³⁴ Andrew 10/08/2003 at 122.

frequent contact and entertainment with MFP. Liczyk and Jakobek also liked MFP and did not seem concerned about protecting the RFQ process.³³⁵ Regardless of the fact that other senior City officials exercised similarly poor judgment, it remained the case that, after so many interactions with MFP, Andrew became less diligent in protecting the City's interests both during and after the RFQ process. He agreed that such numerous contacts may have lowered his guard. Andrew also conceded that he was less diligent than he would have been if the supplier remained at arms-length.³³⁶ He was no longer in a position to objectively assess MFP's bid, even if his assessment was limited to the Committee and Council Report.

Q: I suggest to you, sir, that your guard was down an [sic] that, by that point, at least, you wouldn't have been in a position to fully and completely, objectively assess whether or not, MFP's proposals for its contract with you, were good for the City, or not?

A: Well, the evaluation was done by other people than myself.

Q: I know. But, I'm suggesting to you, sir, that you didn't pay as close attention to that, as you ought to have, and as you acknowledged you ought to have, in part, because your guard was down?

A: Yes.³³⁷

139. Andrew let his guard down after MFP wined and dined him. The City expected him to protect it from predators like MFP. He failed to do so. The next section of this Chapter details the ways he failed to protect the City's interests.

³³⁵ Andrew 10/08/2003 at 123.

³³⁶ Andrew 10/08/2003 at 122-123.

³³⁷ Andrew 10/08/2003 at 124.

5. Jim Andrew failed to protect the City's interests during the computer leasing project

a) *What should have happened*

140. Andrew admitted that he did not ensure that his Division created a written strategic plan.³³⁸ He attributed the lack of a strategic plan to inadequate human resources in I&T.³³⁹ He had never worked on a tender of the size or magnitude of the computer leasing RFQ before.³⁴⁰ Andrew testified that the 1999 tender, while perhaps not large for the City as a whole, was a large tender for I&T.³⁴¹

i) *A detailed business plan*

141. Andrew testified that he neither directed anyone to prepare a project charter for the 1999 computer leasing initiative, nor ensured that someone prepared such a project charter.³⁴² He admitted that the absence of a project charter contributed to the subsequent confusion and debate about which department was responsible for the project.³⁴³

Q: Mr. Andrew, isn't it also true that you didn't even think through the issues that creating such a document would require you to do?

A: That -- that is correct.

Q: Is it any wonder that there has been considerable confusion and debate about who was responsible for what, in the absence of that kind of an accountability framework at the outset?

A: That could be.

Q: It's no wonder, is it?

A: You're right.³⁴⁴

142. A project charter is not the same as a business plan.³⁴⁵ Andrew also failed to ensure that I&T prepared a business plan for the 1999 computer leasing initiative. He

³³⁸ Andrew 10/02/2003 at 7.

³³⁹ Andrew 10/02/2003 at 8.

³⁴⁰ Andrew 10/02/2003 at 146.

³⁴¹ Andrew 10/02/2003 at 147.

³⁴² Andrew 10/02/2003 at 46-47.

³⁴³ Andrew 10/02/2003 at 47-48.

³⁴⁴ Andrew 10/02/2003 at 47-48.

agreed that, in retrospect, the 1999 computer leasing initiative required a comprehensive business plan to be prepared in advance.³⁴⁶ This comprehensive business plan should have articulated:

- a. a comprehensive hardware refresh strategy;
- b. the purposes for which City employees used technology;
- c. the needs of City employees which were not presently being served by technology;
- d. the obsolescence issues, including asset disposition and an asset management strategy;
- e. a contract management strategy; and
- f. the financing alternatives.³⁴⁷

143. I&T never prepared such a business plan for the 1999 computer leasing initiative.³⁴⁸ Andrew agreed that he was primarily responsible for ensuring that such a plan was developed, although he would have worked with Treasury with respect to the financing alternatives.³⁴⁹ Indeed, the document most closely resembling a business plan in this process was the November 1998 report to Council.³⁵⁰ This Report merely called for the replacement of all desktops and notebooks where the cost of repair exceeded \$1,000.³⁵¹

Q: Is there anything else that spoke to a major replacement of laptops and desktops and ancillary hardware and spelled out any of the issues, the need to

³⁴⁵ Andrew 10/02/2003 at 48.

³⁴⁶ Andrew 10/02/2003 at 50-51.

³⁴⁷ Andrew 10/02/2003 at 51-54.

³⁴⁸ Andrew 10/02/2003 at 54.

³⁴⁹ Andrew 10/02/2003 at 72.

³⁵⁰ Andrew 10/02/2003 at 54-55.

³⁵¹ Andrew 10/02/2003 at 54-55.

present presently unserved by the technology, the asset management strategy, the contract management strategy, anything?

A: No there was not.

Q: Nothing? Nothing before July '99 other than that Y2K approval in November '98, by means of a report to Council that said, if it's over a thousand dollars (\$1,000), in refurbishment costs, we'll replace it, that was it?

A: Correct.³⁵²

144. Council required a business plan in order to meaningfully assess the 1999 computer leasing initiative. No such plan was prepared:

Q: Okay. In other words, that meant – that meant and I understand your point that it didn't have to be done right away, but, it meant at the time you were considering the leasing RFQ and indeed by the time you decided upon a leasing RFQ, no analysis had been done, no significant analysis had been done, and no reports had been approved by Council or any of its committees, on those issues?

A: On the issues -- could you repeat that?

Q: Obsolescence issues, including asset disposition, asset management strategy, contract management strategy, the needs presently unserved by the technology, the refresh strategy?

A: I don't believe that was done.³⁵³

ii) Analysis of leasing vs. purchasing

145. Andrew failed to direct that the City conduct a meaningful analysis of the comparison of leasing and purchasing prior to the release of the RFQ.³⁵⁴ He explained to the Inquiry that he supported leasing because he understood the City lacked the funds to purchase the equipment outright.³⁵⁵

³⁵² Andrew 10/02/2003 at 55-56.

³⁵³ Andrew 10/02/2003 at 56.

³⁵⁴ Andrew 10/02/2003 at 56.

³⁵⁵ Andrew 10/02/2003 at 57.

b) Andrew's misguided vision for computer leasing

146. Andrew testified that his vision for computer leasing involved giving a vendor of record an exclusive three-year engagement during which an unlimited amount of equipment could be put on lease at as yet undetermined rates. This vision was fatally flawed, violated City policies, and failed entirely to ensure that the City leased its equipment at competitive rates.

147. Moreover, Andrew's vision was never communicated to Council, was inconsistent with the report to, and was not authorized by Council. Andrew, like any City official, can only act on and within Council authority. He had no authority to implement his vision when it was not approved by Council.

i) Andrew's vision of the 1999 tender

148. Andrew agreed that I&T was the driving force behind a leasing program.³⁵⁶ He admitted that he "championed" the idea of a technology refresh strategy to Finance and highlighted that the City would need a method of financing that strategy.

149. Andrew testified that he believed he was creating a computer leasing program that included the following components:

- a. a sale/leaseback component for the equipment purchased by the City in 1999;³⁵⁷
- b. the City would acquire exclusively Tier 1 equipment;³⁵⁸
- c. the successful vendor would receive vendor of record status for the term of the agreement;³⁵⁹

³⁵⁶ Andrew 09/24/2003 at 122-123.

³⁵⁷ Andrew 10/02/2003 at 86.

³⁵⁸ Andrew 10/02/2003 at 84 – 85.

- d. a 36 month lease term for the agreement;³⁶⁰
- e. 12,000 computers, as well as servers and ancillary software³⁶¹; and
- f. that an unlimited amount of equipment could be placed on lease during the term of the agreement.³⁶²

150. In his affidavit, Andrew swore that the term of the leasing agreement was to be 36 months.³⁶³ He understood the three year lease to be a three year “franchise” for equipment.³⁶⁴ Andrew envisioned that the successful bidder would be the vendor of record for the 36 month term of the lease.³⁶⁵ City departments could put equipment on lease at any point during the three year term, and the lease term for that equipment would run three years from the date the equipment was put on lease. Thus, I&T could put any amount of hardware or software on lease within the three year time frame, regardless of the asset value of the equipment.³⁶⁶ He stated:

[W]e saw this as a Vendor of Record that was a Corporate managed Vendor of Record, where we would centralize the acquisition process to make sure equipment that departments were requesting would come in on -- to the standard that we had selected. Basically, we became order takers for departments. So as departments needed to have additional equipment, I would have no control over what the departments would spend; they would place an order, it would go on lease and they would commit to fund that lease.³⁶⁷

³⁵⁹ Andrew 10/02/2003 at 87

³⁶⁰ Andrew 10/02/2003 at 87.

³⁶¹ Andrew Affidavit, para. 105, 09/24/2003 at 54.

³⁶² Andrew 10/02/2003 at 117.

³⁶³ Andrew Affidavit, para. 105, 09/24/2003 at 54.

³⁶⁴ Andrew 10/02/2003 at 87.

³⁶⁵ Andrew 10/02/2003 at 90-91.

³⁶⁶ Andrew 9/29/2003 at 70.

³⁶⁷ Andrew 9/29/2003 at 71.

ii) No cap on leasing expenditures

151. Andrew testified that he never intended that there would be a cap of \$43.15 million worth of hardware and software.³⁶⁸ He was not concerned about establishing a maximum expenditure for the City's departments.

152. Andrew clarified that the reason he did not contemplate an expenditure cap was because I&T did not yet know what equipment the department would need to place on lease.³⁶⁹ This lack of information about the departments needs was attributable to the failure of I&T to develop a business plan for the computer leasing initiative.

153. If this was Andrew's vision, he did not communicate that vision to Finance. Nor was the vision reflected in the report to P&F. Accordingly, Andrew acknowledged that he never obtained Council authorization for this vision. Any steps he or his staff took to implement this vision were entirely unauthorized.

iii) End of term costs

154. Andrew agreed that the City needed, from the beginning, a plan to deal with obsolescence issues, including asset disposition, and that these issues needed to be considered in comparing the costs of leasing to purchasing.³⁷⁰ He testified that he did not check publications, conduct his own analysis, or direct anyone to do either of these things with respect to the methodology for assessing the pros and cons of leasing versus purchasing.³⁷¹ He could not recall whether any of the suppliers advised him to consider end of term lease costs when evaluating the benefits of lease versus purchase, or the economics of any particular proposal. Andrew recalled DFS discussing the various leasing options at great length, but he could not specifically remember

³⁶⁸ Andrew 10/02/2003 at 103-104.

³⁶⁹ Andrew 10/02/2003 at 104.

³⁷⁰ Andrew 10/02/2003 at 52-53.

³⁷¹ Andrew 10/02/2003 at 59.

whether they discussed end of term lease costs.³⁷² He could not recall MFP ever telling him to consider end of term lease costs.³⁷³

155. As for Bombardier, Andrew could only recall discussions about the cost of leasing, which he later conceded was intricately connected to the issue of end of term lease costs.³⁷⁴

156. Andrew testified that, at the time, he did not understand the connection between end of term lease costs and the total cost of leasing.³⁷⁵ The City submits that Andrew failed to realize that end of term costs were an important issue, and failed to ensure that this issue was addressed in the successful bidder's response to the RFQ. More importantly, for a senior manager, Andrew did not ensure that someone with the relevant expertise was there to protect the City's interests. These failures put the City at significant financial risk.

iv) Practical reality of his plan

157. In the result, Andrew's vision of the computer leasing program had three elements:

- a. a single vendor of record for all computer equipment leased during the three year lease term;
- b. contractual relationships that could extend for six years; and
- c. no cap on the amount of equipment that could be placed on lease.

158. Andrew admitted that this approach locked the City to MFP for an indefinite period of time, for a limitless amount of equipment, which would be leased at unknown rates:

³⁷² Andrew 10/02/2003 at 60.

³⁷³ Andrew 10/02/2003 at 60.

Q: And then you were locked in with MFP for an indefinite duration, for an indefinite amount of equipment, at an unknown cost?

A: Correct.³⁷⁶

159. Andrew's approach is entirely inconsistent with City purchasing and financial control by-laws. Had Andrew articulated his vision to Council, it is doubtful that Council would have approved it.

160. Andrew's plan would not have protected the City's economic interests. There would be no way to ensure that the City was receiving competitive lease rates. The City would be at the mercy of MFP.

161. Andrew's plan would have awarded MFP a contract with no maximum value. This was simply not the way the City did business. Such a contract would not reflect principles of competition or fairness in the marketplace.

162. Andrew's vision was entirely ill-conceived and should not have been proposed by a properly informed and prudent Executive Director of I&T.

v) Ensuring that his understanding was reflected in the Council Report

163. Andrew's vision of the computer leasing program was not reflected in the Council Report. Andrew agreed that the Council Report did not communicate his vision of the computer leasing program.³⁷⁷ Andrew agreed that the Council Report did not reveal his vision of creating a vendor of record.³⁷⁸ He further agreed that no reasonable person would know that the likely consequence of approving the Council Report would be to implement his undisclosed vision.³⁷⁹ Andrew even admitted that his plan underlying the

³⁷⁴ Andrew 10/02/2003 at 61-62.

³⁷⁵ Andrew 10/02/2003 at 61.

³⁷⁶ Andrew 10/02/2003 at 117.

³⁷⁷ Andrew 10/02/2003 at 119.

³⁷⁸ Andrew 9/29/2003 at 71-72.

³⁷⁹ Andrew 10/02/2003 at 119.

Council Report was entirely ill-conceived.³⁸⁰ There was nothing in the Council Report that gave Andrew and the CMO the open-ended cheque they thought they had.³⁸¹

164. He admitted that the Council Report was unclear and that it was open for Council to interpret the report as recommending three year lease with MFP based on MFP's best price for \$43 million of computer equipment.³⁸² The City submits that Council clearly authorized that only \$43 million worth of equipment could be put on lease. Andrew cannot justify the excess amount put on lease by reference to a vision that was not reflected in the Council Report and was contrary to Council's resolution.

165. Andrew testified that he believed that Council selected one vendor of record and he was content with the decision.³⁸³

166. Andrew did not consider the term "vendor of record" to be synonymous with sole supplier.³⁸⁴ However, Andrew did not direct Power or anyone else involved in the evaluation process to select more than one vendor of record.³⁸⁵

vi) Report back

167. The fourth recommendation of the P&F Report obliged Liczyk and Andrew to report back to P&F.

The Chief Financial Officer and Treasurer and the Executive Director, Information Technology Division, report back to the Policy and Finance Committee periodically on new leasing proposals and financial impact for the balance of the equipment and software.³⁸⁶

168. Andrew understood that he was required to report back to P&F annually about the amount of equipment that had been placed on lease and the remaining balance

³⁸⁰ Andrew 10/02/2003 at 120.

³⁸¹ Andrew 10/02/2003 at 126-127.

³⁸² Andrew 9/29/2003 at 72.

³⁸³ Andrew 09/24/2003 at 116.

³⁸⁴ Andrew 10/02/2003 at 91.

³⁸⁵ Andrew 10/02/2003 at 92.

expected to be placed on lease.³⁸⁷ Andrew was not certain what the P&F Report intended by “new leasing proposals”, but he assumed that “new” referred to any equipment placed on lease during the last year, rather than to an entirely new tender.³⁸⁸ Andrew assumed that Liczyk intended that they would report back through the budgeting process. He did not discuss this assumption with Liczyk.³⁸⁹

vii) Reporting to Commissioner Anderton

169. Commissioner Anderton joined the City in February 2000. Andrew briefed her almost immediately after her arrival on the I&T Division and the computer leasing program.³⁹⁰ Andrew described the computer leasing program as a three-year relationship with MFP in which all information technology acquisitions would be put on lease with MFP. Anderton reasonably relied on Andrew’s description of the program. She had no idea that her direct report so fundamentally misunderstood the Council authority under which he was operating. It was not incumbent on her to independently verify his description.

c) Implementing Andrew’s plan

i) Andrew failed to designate appropriate persons to take the lead

170. Andrew admitted that I&T was responsible for taking the lead and initiating the tender process since they were in the best position to determine departmental equipment needs.³⁹¹ Andrew agreed that it was his responsibility to formally designate a lead. He testified that by September 1999 he still had not yet identified a project manager, but that Power was acting as the *de facto* lead.³⁹² The City submits that Andrew should be faulted for failing to ensure that a lead was designated at the beginning of the largest tender process in the history of I&T.

³⁸⁶ COT004630 at COT004630.

³⁸⁷ Andrew 10/02/2003 at 122.

³⁸⁸ Andrew 10/02/2003 at 122-123.

³⁸⁹ Andrew 10/02/2003 at 125.

³⁹⁰ Anderton 11/25/2003 at 14 and 33.

³⁹¹ Andrew 10/02/2003 at 128.

³⁹² Andrew 10/02/2003 at 102.

ii) Andrew assigned the drafting of the RFQ to Power

171. In his affidavit, Andrew explained that he had worked with (and for) Power at the Province of Ontario.³⁹³ He considered Power to be a “highly competent and experienced” information technology professional and manager.³⁹⁴ In his affidavit, Andrew indicated that Viinamae assigned Power the task of drafting the RFQ with his knowledge and approval.³⁹⁵ However, in his evidence, Andrew clarified that he asked Viinamae whether she could “free up” Power to work on the RFQ and whether Power could be the information technology lead on the RFQ.³⁹⁶ He testified that he decided that Power would lead the drafting of the RFQ because he believed that Power had the expertise to develop such a document.³⁹⁷

iii) Power was Andrew’s personal friend

172. Andrew testified that, by 1999, he had known Power for approximately 25 years.³⁹⁸ He considered Power to be a friend and, although they did not socialize outside of golfing together, they did golf together with some regularity.³⁹⁹

173. Andrew did not interview Power for the position as he would have with another candidate. Andrew spoke to Power about leasing during Power’s tenure with the provincial government and, based on these conversations, he felt comfortable entrusting Power with the project.⁴⁰⁰ He knew that Power had been involved while at the Province of Ontario (although he did not specify in what capacity) in two large leasing contracts that had been released for public tender.⁴⁰¹ Andrew did not ask Power about his experience with leasing tenders, nor did he ask him about his experience with the City’s approval process.⁴⁰²

³⁹³ Andrew Affidavit, para. 34, 09/24/2003 at 22.

³⁹⁴ Andrew Affidavit, para. 36, 09/24/2003 at 23.

³⁹⁵ Andrew Affidavit, para. 98, 09/24/2003 at 51.

³⁹⁶ Andrew 09/24/2003 at 213.

³⁹⁷ Andrew 10/02/2003 at 133.

³⁹⁸ Andrew 10/02/2003 at 133.

³⁹⁹ Andrew 10/02/2003 at 134.

⁴⁰⁰ Andrew 10/02/2003 at 135.

⁴⁰¹ Andrew Affidavit, para.36, 09/24/2003 at 23.

⁴⁰² Andrew 10/02/2003 at 138-139.

174. Andrew failed to discharge his responsibility to ensure that Power, the man Andrew hand-picked for the job without a competition, was qualified for this job.

iv) Lack of communication between Andrew and Power

175. In his affidavit, Andrew indicated that he had general meetings with Viinamae and Power to discuss the contents of the RFQ, including the City's technology needs, the sale/leaseback component, the three year term for hardware and software, and the vendor of record status to result from the RFQ.⁴⁰³ However, in his evidence, Andrew admitted that he rarely, if ever, had formal discussions with Power about the content of the tender document.⁴⁰⁴ He testified that he did not inform Power that the City had already purchased computer equipment that needed to be placed on lease and, accordingly, that the RFQ would have to include a sale/leaseback transaction.⁴⁰⁵ Andrew did not confirm his interpretation of the 36 month lease term with Power. He failed to explain to Power that the successful bidder would be a vendor of record for the City.⁴⁰⁶ The City submits that Andrew should be faulted for failing to impart basic information about the content of the RFQ to the individual – his delegate – charged with drafting the RFQ.

v) RFP vs. RFQ

176. Andrew knew that I&T needed to use an RFP to obtain meaningful answers to the various issues in the 1999 tender.⁴⁰⁷ He did not inform PMMD of the reasons why an RFP was needed, nor did he intervene when the tender was ultimately released as an RFQ.⁴⁰⁸ Andrew was on vacation in England and Scotland during the end stages of the tender drafting process.⁴⁰⁹ Andrew agreed that, as the project sponsor, he was

⁴⁰³ Andrew Affidavit, para. 97, 09/24/2003 at 50-51.

⁴⁰⁴ Andrew 10/02/2003 at 142.

⁴⁰⁵ Andrew 10/02/2003 at 142.

⁴⁰⁶ Andrew 10/02/2003 at 143.

⁴⁰⁷ Andrew 10/02/2003 at 148.

⁴⁰⁸ Andrew 10/02/2003 at 148.

⁴⁰⁹ Andrew 10/02/2003 at 148.

responsible for the ultimate form of the tender and that the onus was on him to speak to the PMMD about the type of tender document to be used.⁴¹⁰

177. In his affidavit, Andrew described the drafting of the RFQ as a cooperative activity:

I further understood that the drafting and fine tuning of the RFQ was to be a cooperative activity of a drafting team consisting of Mr. Power, Mr. Beattie and an analyst from Corporate Finance, Nadir Rabadi.⁴¹¹

178. Andrew admitted that he did not charge an individual with coordinating among the parties, or with acting as team leader.⁴¹² He acknowledged that cooperative activities are unlikely to succeed without one clear coordinator.⁴¹³ In this case, the coordinator should have been an individual from I&T, with a clear understanding of the needs and operational issues that were crucial to the RFQ's success. As a senior manager, there is no reason that Andrew had to act as the coordinator of the RFQ process. However, he should have ensured that someone was assigned the task and that the person responsible for the task was properly supervised.⁴¹⁴

179. Andrew testified that he was going on vacation and had a conversation with Viinamae during which he charged her with "handling his duties" during his absence.⁴¹⁵ Andrew should have ensured that Viinamae, or someone else, coordinated the RFQ drafting process during his vacation. He admitted that Viinamae could reasonably have assumed that the RFQ drafting process remained squarely in Power's hands.⁴¹⁶

⁴¹⁰ Andrew 10/02/2003 at 149.

⁴¹¹ Andrew Affidavit, para. 100, 09/24/2003 at 52.

⁴¹² Andrew 10/02/2003 at 151.

⁴¹³ Andrew 10/02/2003 at 151.

⁴¹⁴ Andrew 10/02/2003 at 152.

⁴¹⁵ Andrew 10/02/2003 at 153.

⁴¹⁶ Andrew 10/02/2003 at 153-154.

vi) Andrew created confusion by continuing to meet with suppliers

180. Andrew agreed that, after he delegated the drafting of the RFQ to Power, Andrew continued to meet with the computer equipment suppliers who provided him with valuable information about the computer leasing program.⁴¹⁷ Viinamae and Power did not participate in these meetings. It appears that Andrew did not share the information he received broadly. By continuing to participate in vendor meetings, Andrew created the appearance that he was more involved in the day to day operations than was the case.

vii) Andrew did not review the final draft RFQ

181. Andrew went on a supplier-sponsored trip to England and Scotland during the final stages of the RFQ drafting process. He departed on May 25, 1999 and returned on June 1, 1999.⁴¹⁸ Part of Andrew's trip was paid for by Metastorm, a supplier to the City of Toronto.⁴¹⁹ Given the absence of a designated lead for the project, Andrew's absence during this critical time period left a significant leadership gap.

182. In his affidavit, Andrew provided a list of items that should have been contained in the RFQ, if it was to reflect his vision of the transaction:

- a. that the transaction included a sale/leaseback component;
- b. that only Tier 1 equipment was to be leased;
- c. that the term of the agreement was to be 36 months;
- d. that the successful bidder would be the City's vendor of record for the term;

⁴¹⁷ Andrew 10/02/2003 at 170.

⁴¹⁸ Andrew 10/02/2003 at 156.

⁴¹⁹ Andrew 10/02/2003 at 165.

- e. that the subject of the RFQ would include approximately 12,000 desktops, as well as servers, notebooks, printers, software, and associated peripheral devices;
- f. that quarterly lease rates should be clearly set out by the vendor of record;
- g. that the mechanism by which bidders could change their lease rates during the lease term be sufficiently clear to enable an appropriate calculation over the term of the lease;
- h. that the City had no obligation to accept the lowest bidder;
- i. that the City had the right to reject any bid; and
- j. that if the price offered by the successful bidder was too high, then prior to that quarter the City could negotiate a reduced rate or make no purchases or choose to re-enter the marketplace.⁴²⁰

viii) Kassam's draft RFP

183. Andrew testified that he met with Domi and Kassam, and that following this meeting, Kassam gave him a draft computer leasing RFP.⁴²¹ Andrew passed Kassam's draft RFP to Power without comment.⁴²² The City submits that Andrew should be criticized for failing to exercise good judgment in this situation. Andrew should have been extremely cautious about having his staff use or rely on draft tender documents prepared by someone connected to a potential respondent to that tender.

d) Evaluating the Responses to the RFQ

⁴²⁰ Andrew Affidavit, para. 105, 09/24/2003 at 54-55.

⁴²¹ Andrew 10/02/2003 at 166.

⁴²² COT074493, 63:7:25a; COT074494, 63:7:25a.

184. The City submits that Andrew was not required to engage in a line-by-line analysis of the responses to the RFQ. That would not normally be expected of a senior manager. However, Andrew did bear ultimate responsibility to ensure that someone reviewed the responses from an I&T perspective.

185. In any event, any weaknesses in the evaluation of the responses to the RFQ were not causally linked to the problems encountered by the City. As Kerr pointed out, if the City had signed the deal that MFP offered in its response to the RFQ, the City would have obtained a good deal.

186. In addition, in the contract documents, MFP resiled from the promises it made in its response to the RFQ. Regardless of how well, or how poorly, the City analyzed MFP's response to the RFQ, MFP intended to be bound only by the contract documents it signed, not by the terms of its response.

i) Andrew claimed that he did not review or analyze responses to RFQ

187. In his affidavit, Andrew swore that he did not participate in the review or evaluation process of the responses to the RFQ.⁴²³ He indicated that he did not even see the responses to the RFQ. Later, Andrew agreed that as the most senior and knowledgeable individual with respect to the objectives of the RFQ, it did not make sense for him to withdraw entirely from the evaluation process.⁴²⁴

188. Andrew claimed that he communicated regularly with Power during the bid analysis process and the drafting of the P&F Report.⁴²⁵ Later, Andrew agreed that Power never discussed the analytical formulae or calculations that he used in evaluating the bids with him.⁴²⁶

189. Incongruously, there are numerous emails addressed or copied to Andrew during this period that pertain specifically to evaluating the bids and drafting the P&F Report,

⁴²³ Andrew Affidavit, para. 110, 09/24/2003 at 56.

⁴²⁴ Andrew 10/02/2003 at 176.

⁴²⁵ Andrew Affidavit, para. 116, 09/24/2003 at 58.

including many with attached draft reports.⁴²⁷ Andrew confirmed that he reviewed emails sent or copied to him during this analysis phase.⁴²⁸ There is an email exchange between Andrew and Rabadi that demonstrates Andrew's active involvement, albeit minimal, in the bid analysis process. Rabadi emailed Andrew and Viinamae concerning printers.⁴²⁹ Rabadi confirmed that MFP's response to the RFQ did not include printers. In this email, Rabadi also warned that the bids contained a lot of technical qualifications that he did not understand, and that he hoped I&T had considered. Andrew replied that MFP did send a price for printers and that it was the same price as the other hardware with the same residual value.⁴³⁰ He also explained that the RFQ contained all of the technical specifications of the hardware and that the City intended to lease the Dell 400 machines. Andrew could not explain how he offered this response to Rabadi's email without reading MFP's response to the RFQ, although he speculated that he obtained the information from Viinamae or Power.⁴³¹

190. Later, Andrew recommended some changes to one version of a draft P&F Report by an email addressed to Rabadi on July 3, 1999.⁴³² In this email, Andrew wrote:

Also I thought we discussed leasing servers over a longer time frame such as 5 years I did not see any reference to this.

191. It is clear that Andrew read a draft P&F Report prior to his email of July 3, 1999. This draft would have contained a reference to the \$43 million cap on the leasing program. Andrew apparently did not advert to this reference. More troubling, by email dated July 2, 1999, Rabadi confirmed that "we will receive all the equipment costing \$43 million by July 31, 1999".⁴³³ Andrew acknowledged reading Viinamae's response to this email but apparently believed that the amount of \$43 million was "merely an estimate"

⁴²⁶ Andrew Affidavit, para. 122, 09/24/2003 at 59.

⁴²⁷ See e.g. COT067473, 46:2:57; COT015442, 46:3:30 .

⁴²⁸ Andrew Affidavit, para.123, 09/24/2003 at 59.

⁴²⁹ COT013050, 46:1:23; Andrew 10/02/2003 at 175.

⁴³⁰ COT015670, 63:8:3; Andrew 10/02/2003 at 175.

⁴³¹ Andrew 10/02/2003 at 175; Andrew Affidavit, para. 130, 09/24/2003 at 62.

⁴³² COT014321, 63:8:11.

⁴³³ COT031465 at COT031465, 63:8:16.

provided to Rabadi for the purposes of his financial analysis.⁴³⁴ Andrew failed to confirm his understanding that the figure of \$43 million was an estimate and to thoughtfully and diligently review the draft P&F Reports.

ii) Andrew failed to perform necessary due diligence as co-signatory of Council Report

192. Andrew claimed that he intentionally did not review the RFQ or the responses thereto because it was the P&F Report (shared by him and Liczyk) which would be forwarded to Committee and then to Council.⁴³⁵ He wanted to avoid the perception of undue influence. Andrew was concerned that his thoughts as a senior executive would overwhelm, intimidate, and prevent the individuals on the drafting and evaluation teams from making the best decision.⁴³⁶

193. The City agrees that a senior executive that signed a report did not need to replicate the analysis contained in the report. Senior executives are responsible for too many reports, in too many areas where they lack the necessary expertise, to engage in that kind of micro-management. However, senior executives must be comfortable that the report fairly reflects the analysis underlying the report and that the report clearly articulates its recommendations.

194. Andrew stated in his affidavit that he was not aware of the drafts during the late June and early July 1999 period.⁴³⁷ However, the evidence shows that he read one or two of the drafts and made comments on one occasion.⁴³⁸ The recommendations contained in the P&F Report do not resemble Andrew's vision of the transaction. This would have been apparent to Andrew if he had engaged in any meaningful review of the P&F Report. There are many ways for a senior executive to become comfortable enough with a report to sign it. Andrew does not appear to have taken any such steps.

⁴³⁴ Andrew Affidavit, para.136, 09/24/2003 at 63-64.

⁴³⁵ Andrew Affidavit, para.118, 09/24/2003 at 58-59.

⁴³⁶ Andrew 09/29/2003 at 7.

⁴³⁷ Andrew Affidavit, para. 132, 09/24/2003 at 62.

⁴³⁸ COT014321, 63:8:11.

195. On July 9, 1999, Andrew met with Rabadi to finalize the report and forward it to the Clerk's office.⁴³⁹ Liczyk was sick that day, although Andrew and Rabadi communicated with her both by email and by telephone.

196. Andrew admitted that a signatory of a report for Council has responsibilities with respect to its content.⁴⁴⁰ Andrew testified that he had a good working relationship with Liczyk.⁴⁴¹ The City submits that Andrew should be criticized for failing to meaningfully discuss the Council Report with her. He could not recall meeting with Liczyk or speaking with her on the phone, save and except for their conversations on July 9, 1999.⁴⁴² Andrew and Liczyk had only "brief conversations" to ensure that their requested changes to the report had been made.⁴⁴³ However, Andrew testified that he had worked with Liczyk on projects before, and that this kind of limited interaction was not atypical.⁴⁴⁴

iii) Andrew did not attend July 20, 1999 P&F meeting

197. Andrew testified that he may have attended part of the P&F meeting, but that he was not present for the in-camera discussion.⁴⁴⁵ He indicated that individuals were usually requested to remain for the in-camera discussion, and that he was not.⁴⁴⁶ In his affidavit, he wrote "I was not invited to this meeting".⁴⁴⁷ However, he later conceded that it was expected that a signatory of a report that was the subject of the in-camera session would remain for the in-camera discussion.⁴⁴⁸

198. The City submits that Andrew should have attended the part of the P&F meeting where the report was discussed. If he had been at the meeting, he would have had the opportunity to participate in the events that culminated in Jakobek's motion to amend

⁴³⁹ Andrew Affidavit, para. 141, 09/24/2003 at 66.

⁴⁴⁰ Andrew 10/02/2003 at 177.

⁴⁴¹ Andrew 10/02/2003 at 179.

⁴⁴² Andrew 10/02/2003 at 178.

⁴⁴³ Andrew 10/02/2003 at 178.

⁴⁴⁴ Andrew 10/02/2003 at 183.

⁴⁴⁵ Andrew 10/02/2003 at 184.

⁴⁴⁶ Andrew 10/02/2003 at 184.

⁴⁴⁷ Andrew Affidavit, para. 145, 09/24/2003 at 67-68.

⁴⁴⁸ Andrew 10/02/2003 at 185-186.

the report. Jakobek was able to make his Amendment without the senior I&T official present – clearly, senior managers need to attend such meetings.

199. Andrew admitted that it was expected that the signatory of the report would attend the Council meeting at which the report was being considered.⁴⁴⁹ He believed that he attended the Council meeting.⁴⁵⁰

e) Negotiations: MLA and Equipment Schedules

i) Andrew failed to ensure the City's interests were protected during negotiations around the MLA or Equipment Schedules

200. Andrew testified that he had no personal involvement in the negotiation of the MLA or the individual Equipment Schedules.⁴⁵¹ He knew that these documents created contractual obligations between MFP and the City of Toronto. He also knew that Equipment Schedules set out, *inter alia*, the term of the lease and the lease rate factor.⁴⁵²

201. Given the size of the contracts at issue, the City submits that Andrew should have paid close attention to the negotiations, even if he was not present at the sessions.

202. Andrew delegated the responsibility of negotiating the MLA and Equipment Schedules to Power. Andrew left it to Power's discretion to determine when and how much legal assistance to seek out, and from whom to obtain such assistance.⁴⁵³ Andrew did not provide any advice, guidance, or caution to Power. He did not oversee or supervise Power in any significant way.⁴⁵⁴ Specifically, Andrew did not supervise the extent to which Power obtained external legal assistance, nor the extent to which Power

⁴⁴⁹ Andrew 10/02/2003 at 186-87.

⁴⁵⁰ Andrew 10/02/2003 at 188.

⁴⁵¹ Andrew 10/02/2003 at 196.

⁴⁵² Andrew 10/02/2003 at 196.

⁴⁵³ Andrew 10/02/2003 at 197.

⁴⁵⁴ Andrew 10/02/2003 at 197.

simply relied on MFP draft contracts.⁴⁵⁵ Significantly, the MFP draft contracts on which Power relied did not incorporate the terms of MFP's response to the RFQ.

203. Andrew thought that Power was experienced with contract negotiations, and believed he had negotiated contracts for the provincial government and as part of the Y2K project at the City of Toronto.⁴⁵⁶ He knew that Power had worked on the RFPs to which MFP had responded during his time at the provincial government.⁴⁵⁷ However, Andrew did not know that the Provincial Auditor in its 1998 Report had criticized some of the provincial contracts that had been negotiated with MFP, although he had heard rumours of leasing issues at the Province.⁴⁵⁸ Andrew did not speak to Power about his potential role in any of these negotiations on behalf of the Province.⁴⁵⁹

ii) Only one example of Power seeking Andrew's advice

204. On August 10, 1999, Power sent an email to Andrew seeking his advice.⁴⁶⁰ The email raised a number of outstanding issues with respect to the MLA. These issues included the equipment definition, the terms of the termination clause, the default date, and rolling windows.⁴⁶¹ The term "rolling windows" referred to Payne's efforts to extend lease terms by suggesting that the technology was outdated. Andrew imported this term from his dealings with Payne at the provincial government and shared it with Power.⁴⁶² Andrew did not email Power back, but discussed these issues in a conversation with him.⁴⁶³ Andrew testified that they usually met informally as their offices were close together.⁴⁶⁴ Andrew agreed this discussion in response to Power's email was the extent of his oversight of the negotiation process.⁴⁶⁵

⁴⁵⁵ Andrew 10/02/2003 at 197-198.

⁴⁵⁶ Andrew 10/02/2003 at 198.

⁴⁵⁷ Andrew 10/02/2003 at 198.

⁴⁵⁸ Andrew 10/02/2003 at 198-99, 202.

⁴⁵⁹ Andrew 10/02/2003 at 203.

⁴⁶⁰ COT015674, 63:8:38.

⁴⁶¹ COT015674, 63:8:38.

⁴⁶² Andrew 10/02/2003 at 207-208.

⁴⁶³ Andrew 10/02/2003 at 208.

⁴⁶⁴ Andrew 10/02/2003 at 209.

⁴⁶⁵ Andrew 10/02/2003 at 210.

205. Prior to his August 10, 1999 email, Power had not had any discussions with Andrew about his role with respect to the MLA negotiations.⁴⁶⁶ He testified that Viinamae informed him of his role papering the leasing transaction generally, and negotiating with the MLA, in particular.⁴⁶⁷ Power could not recall discussing any of the concerns raised in his email with Andrew. Specifically, Power had no recollection of attending any kind of meeting with Andrew.⁴⁶⁸ He testified that he discussed the concerns in his email with Viinamae.⁴⁶⁹

iii) Andrew did not seek legal advice for complicated sale/leaseback transaction

206. Andrew admitted that he knew that the sale/leaseback transaction was going to be complicated.⁴⁷⁰ He testified that it never occurred to him to either seek legal advice on that issue or to recommend to Power that he seek legal advice with respect to the structure of the sale/leaseback transaction.⁴⁷¹

iv) Andrew failed to challenge the extension of the leases from 3 to 5 years.

207. Andrew testified that he knew in early August 1999 that MFP and some City individuals were discussing alternatives to the 3 year fixed lease term.⁴⁷²

208. In his affidavit, Andrew swore that he learned of the Jakobek Amendment from Liczyk after the P&F meeting.⁴⁷³ Andrew interpreted the clause to mean that City Council wished to ensure that the equipment remained with the City for as long as it was economically feasible (i.e., in the best interest of the City).⁴⁷⁴

⁴⁶⁶ Power 03/24/2003 at 144.

⁴⁶⁷ Power 03/24/2003 at 141.

⁴⁶⁸ Power 03/24/2003 at 144.

⁴⁶⁹ Power 03/24/2003 at 144.

⁴⁷⁰ Andrew 10/02/2003 at 210.

⁴⁷¹ Andrew 10/02/2003 at 210.

⁴⁷² Andrew 10/02/2003 at 212-213.

⁴⁷³ Andrew Affidavit, para. 146, 09/24/2003 at 68.

⁴⁷⁴ Andrew Affidavit, para. 146, 09/24/2003 at 68.

209. At the August 3, 1999 meeting at the Holiday Inn on King Street with Domi and Wilkinson, the Jakobek Amendment was discussed. Wilkinson initially raised the issue of longer lease terms with Andrew at this meeting. Andrew suggested that Wilkinson share his information with Finance.⁴⁷⁵

210. Andrew testified that during the months of August and September 1999, discussions were ongoing with respect to the life of the assets and the financial structure of the leases between MFP, I&T, and Finance.⁴⁷⁶ However, Andrew testified that no one from I&T was acting as the point person in these discussions, and that he was not part of these discussions.⁴⁷⁷

211. Wilkinson's affidavit indicated that Andrew telephoned him on September 22, 1999.⁴⁷⁸ Andrew told him that he had heard that the meeting on September 21, 1999 with Liczyk and Brittain had gone well. Wilkinson indicated that he briefly summarized the key points of the meeting for Andrew, and then Andrew asked Wilkinson to send him a copy of his 3 year versus 5 year lease term analysis from the meeting.⁴⁷⁹ Wilkinson prepared and sent Andrew a one-page graph showing the difference between 3 year leases and 5 year leases based on the assumption that technology prices were decreasing.⁴⁸⁰ Andrew agreed that he may have made this comment to Wilkinson and that he requested the analysis, but could not recall who would have told him about the meeting.⁴⁸¹

212. Andrew testified that he was not alarmed by these discussions and models because he considered all of it to be exploratory, and relied on the fact that no decisions

⁴⁷⁵ Andrew 10/02/2003 at 212-213.

⁴⁷⁶ Andrew 9/30/2003 at 147-148.

⁴⁷⁷ Andrew 9/30/2003 at 149-150.

⁴⁷⁸ Wilkinson Affidavit, para.75, 09/16/2003 at 70.

⁴⁷⁹ Wilkinson Affidavit, para.75, 09/16/2003 at 70.

⁴⁸⁰ COT029302, 63:14:4; Wilkinson 09/18/2003 at 13.

⁴⁸¹ Andrew 9/30/2003 at 97; COT029302, 63:14:4; Andrew 10/1/2003 at 150-152.

had been made.⁴⁸² Andrew assumed that Finance would be examining the issue further.⁴⁸³

213. On October 1, 1999, at 3:47 p.m., Viinamae sent an email to Andrew, which she copied to Brittain, Pagano, Power, Spizarsky, and Liczyk.⁴⁸⁴ The email announced the extension of all lease terms to 5 years, and confirmed the approval of the first MFP Certificate of Acceptance.

214. Andrew's evidence was that Viinamae's email was the first time that he learned that the City had entered into 5 year leases.⁴⁸⁵ In his affidavit, Andrew swore that he did not follow up on this email.⁴⁸⁶ He relied on Finance to determine whether or not the 5 year lease term made sense. If so, then Andrew considered such a decision to be within its mandate, as conferred by the Jakobek Amendment.⁴⁸⁷ He testified did not consider City staff to have extended the lease terms without authority; however, he admitted that the CFO and Treasurer did not have the authority to alter City Council's authorization, which authorization was for 3 year lease terms.⁴⁸⁸

215. Andrew failed to be meaningfully involved in events which culminated in MFP extending the leases from 3 to 5 years. This decision provided little if any benefit to the City of Toronto. Andrew should have been involved in the process to protect the City's interests. He should have asked questions of other City staff and of MFP to determine who wanted the leases to be extended to 5 years.

216. Had Andrew shown even passing interest in such an important decision, he would have learned that no one at the City supported extending all leases to 5 years. He would have realized that the push to move from 3 to 5 years originated from MFP

⁴⁸² Andrew 10/1/2003 at 154.

⁴⁸³ Andrew 10/1/2003 at 154.

⁴⁸⁴ COT015649, 63:8:59; COT013087, 63:3:1a; COT013065, 63:3:1a.

⁴⁸⁵ Andrew Affidavit, para. 124, 09/24/2003 at 59-60; Andrew 9/29/2003 at 104.

⁴⁸⁶ Andrew Affidavit, para. 161, 09/24/2003 at 73.

⁴⁸⁷ Andrew Affidavit, para. 161, Andrew 09/24/2003 at 73.

⁴⁸⁸ Andrew 9/29/2003 at 114-115.

and was to MFP's sole benefit. He would have realized that nobody at the City of Toronto had made a deliberate decision to move from 3 to 5 years.

217. If Andrew had acted with even a modest level of due diligence, he likely would have realized that MFP were predators, not partners.

v) Andrew overly relied on MFP to protect the City's best interests

218. Andrew acknowledged that, in hindsight, he should have established better internal communication, defined duties and responsibilities more clearly, exerted more care and diligence over the RFQ process, and generally realized that the leasing transaction was large and complicated and taken appropriate steps because of its size and complexity.⁴⁸⁹

219. He explained that he expected that the City and its leasing provider would enter a "partnership" whereby the leasing company would provide project management assistance to the City.⁴⁹⁰

A: I believed that we were going to get a good solution and it would help us implement the leasing program.

Q: And you thought that meant that MFP was going to make sure, not only that it profited from the deal, but also that the City's best interests were taken into account at every step?

A: Yes.⁴⁹¹

220. Ultimately, Andrew's greatest operational, as opposed to ethical, failure was that he trusted MFP and therefore failed to take reasonable steps to protect the City of Toronto's interests. Andrew displayed a pattern of disinterest in detail. He compounded that disinterest by delegating responsibility to individuals who lacked both expertise and the necessary support to accomplish their objectives.

⁴⁸⁹ Andrew 10/02/2003 at 223-224.

⁴⁹⁰ Andrew 10/02/2003 at 224-225.

⁴⁹¹ Andrew 10/02/2003 at 229.

f) *The lack of financial controls in I&T*

221. As the program sponsor for the computer leasing program, Andrew was responsible for ensuring that appropriate financial controls were in place to monitor expenditures. He agreed that he was fully aware of the need for financial controls and financial information to ensure that I&T projects were carried out within certain defined parameters.⁴⁹² Andrew also knew about the Financial Control Bylaw, which governed the level of signing authority required to commit funds on behalf of the City of Toronto.⁴⁹³ This Bylaw controlled spending by assigning to senior staff the responsibility for signing significant contractual/spending commitments. Signatories were expected to properly review the documents they signed and those without signing authority were expected not to sign binding documents.

222. Andrew attempted to explain the insufficient financial controls by noting that I&T had a budget of \$35 million, the Y2K project had its own budget, and each of the City's departments had dedicated I&T funds that Andrew was not responsible for controlling or tracking.⁴⁹⁴

223. Prior to amalgamation, Metro Toronto had used a financial control system called Computron. In mid-1999, the City introduced the SAP system to replace the financial control systems of all the former municipalities.⁴⁹⁵ During the phase-in period, each Commissioner had a parallel control system in place to keep track of financial information. Andrew agreed that I&T had a financial control system in place until SAP was phased in completely, although he could not be certain if it was simply a carryover of the old system.⁴⁹⁶

224. Andrew testified that he hired Karen Graham to consolidate and track financial information for I&T and report to him regarding whether or not its \$35 million budget was

⁴⁹² Andrew 10/07/2003 at 8-9.

⁴⁹³ Andrew 10/07/2003 at 9.

⁴⁹⁴ Andrew 10/07/2003 at 10.

⁴⁹⁵ Andrew 10/07/2003 at 12.

⁴⁹⁶ Andrew 10/07/2003 at 13-14.

properly spent.⁴⁹⁷ Nonetheless, Andrew admitted that he was ultimately responsible for ensuring that I&T had the appropriate systems in place to properly manage its budget.⁴⁹⁸

225. Andrew passed responsibility for the financial controls of the MFP computer leasing program to the CMO.⁴⁹⁹ He testified that the establishment of the CMO was Viinamae's idea, and that he asked her to direct it.⁵⁰⁰ Andrew conceded that although Viinamae had no leasing experience, he delegated to her responsibility for the financial controls over the leasing program.⁵⁰¹ The inevitable conclusion is that, during the fall of 1999, no one was clearly charged with the responsibility of maintaining financial control over the leasing program. Andrew agreed that this responsibility was ill-defined, but testified that he expected that once the CMO was created, Viinamae would create controls to retroactively assess the finances of the leasing program for the previous quarter.⁵⁰² Andrew did not follow up or provide any direction in this regard.

226. In his affidavit, Andrew indicated that he anticipated that Accounting Services would "take the lead" in reporting on the financial impact for the balance of equipment and software.⁵⁰³ He suggested that they had direct access to the quantity of equipment on lease through their positions and their access to the SAP system.⁵⁰⁴ Andrew believed that these were "clearly Finance responsibilities".⁵⁰⁵

227. The first computer lease document to become part of the SAP system was a purchase requisition dated September 15, 2000.⁵⁰⁶ This was approximately one year after the City entered into lease contracts with MFP. Andrew approved and signed the

⁴⁹⁷ Andrew 10/07/2003 at 14-15.

⁴⁹⁸ Andrew 10/07/2003 at 15.

⁴⁹⁹ Andrew 10/07/2003 at 17-18.

⁵⁰⁰ Andrew 10/07/2003 at 19-21.

⁵⁰¹ Andrew 10/07/2003 at 18.

⁵⁰² Andrew 10/07/2003 at 21.

⁵⁰³ Andrew Affidavit, para. 150, 09/24/2003 at 69-70.

⁵⁰⁴ Andrew Affidavit, para. 150, 09/24/2003 at 69-70.

⁵⁰⁵ Andrew Affidavit, para. 150, 09/24/2003 at 69-70.

⁵⁰⁶ COT004684, 63:13:26.

requisition.⁵⁰⁷ The requisition sets out an open order contract for five years, commencing June 1, 2000 and ending December 31, 2005.⁵⁰⁸ Andrew testified that a clerk named Pino Fuoco (“Fuoco”) handed him the document to sign and informed him that it was a routine document from PMMD.⁵⁰⁹ Andrew did not ask any questions of Fuoco, nor did he speak to anyone in PMMD about the requisition.⁵¹⁰ He could not explain why the five year open order contract did not set off alarm bells in his head or why he signed the contract at all.

Q: So, you just signed it because a young clerk tells you that this is not a significant document, is that really your evidence, Mr. Andrew?

A: And it had come from Purchasing. And it was requested through Purchasing to sign it.

Q: But, you know, really what did Purchasing know about the contract? How was it that you expected them to know more about what the City had contracted with MFP for, than you?

A: Well, Purchasing were part of the system of tendering process.

Q: But they weren't part of the contract, they weren't part of the contract negotiations with MFP, not at all. And -- and --

A: Right.⁵¹¹

228. During his explanation of the financial controls in I&T, Andrew contradicted his earlier evidence that there was no cap on expenditures. He explained that he did not pay attention to the requisition because he believed that the SAP system would catch any equipment over \$40 million, thereby rendering the five year term irrelevant.⁵¹² At the time he signed the purchase requisition, Andrew had no idea what value of equipment had been placed on lease.⁵¹³

⁵⁰⁷ Andrew 10/07/2003 at 22.

⁵⁰⁸ COT004684, 63:13:26.

⁵⁰⁹ Andrew 10/07/2003 at 23-24.

⁵¹⁰ Andrew 10/07/2003 at 24-25.

⁵¹¹ Andrew 10/07/2003 at 26-27.

⁵¹² Andrew 10/07/2003 at 28-29.

⁵¹³ Andrew 10/07/2003 at 30.

229. Andrew testified that he had no formal training on the SAP system and did not know how to use it.⁵¹⁴ In his affidavit, Andrew swore that he had taken a variety of professional development courses, including human resource management courses.⁵¹⁵ He also obtained his Information Systems Professional designation.⁵¹⁶ However, he indicated that he did not receive training in leasing, contracts, or the SAP system. The City submits that Andrew should be admonished, as the senior executive charged with oversight of the tendering process and budget for I&T, for not seeking out training of such fundamental importance.

230. There were documents in the database that show that Andrew approved either a contract release order or a payment to MFP on two separate occasions.⁵¹⁷ He agreed that he had access to the SAP system but argued that if he had indeed released these payments then it was done with the guidance of someone else.⁵¹⁸ Eventually, Andrew agreed that it was his responsibility as a senior official to obtain the formal training required to access and understand the SAP system or to specifically delegate that responsibility to someone else in a way that maintained his ability to review the expenditures in the SAP system.⁵¹⁹

⁵¹⁴ Andrew 10/07/2003 at 35.

⁵¹⁵ Andrew Affidavit, para. 5, 09/24/2003 at 10.

⁵¹⁶ Andrew Affidavit, para. 5, 09/24/2003 at 10.

⁵¹⁷ COT067495, 63:3:1a.

⁵¹⁸ Andrew 10/07/2003 at 34-35.

⁵¹⁹ Andrew 10/07/2003 at 35-36.