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## 1. Overview

1. During her tenure at the City, Viinamae was a senior Director in multiple capacities.<sup>1</sup> In all of these capacities, the only individual senior to Viinamae in I&T was Andrew.

2. Between June 1998 and December 1999, Lana Viinamae was entrusted with an enormous undertaking: as the Director, Year 2000, she was responsible for ensuring that all the City's systems were Year 2000 compliant.<sup>2</sup>

3. Although she attempted to minimize her responsibility<sup>3</sup>, by August 1999 Viinamae had also become the I&T lead for the computer leasing transaction, the first significant transaction of its kind at the City.<sup>4</sup> She assumed this responsibility without understanding or seeking clarification of the intent, scope or parameters of the transaction. Her failure to familiarize herself with the RFQ, the Council Report or the MFP contractual documents made it impossible for her to discharge her responsibilities.

4. Viinamae was by all accounts a leasing novice: she had no leasing training or experience prior to her involvement with MFP.<sup>5</sup> Nevertheless, she failed to take any steps to educate herself about leasing, or to learn about the pitfalls and risks of leasing and leasing administration that the most basic training would have revealed.<sup>6</sup> Viinamae was entirely ill-equipped to recognize MFP as a predator or to identify MFP's entirely self-interested approach to leasing.

5. Viinamae's lack of technical knowledge about leasing was aggravated by poor

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<sup>1</sup> Viinamae 10/27/2003 at 115; Viinamae Affidavit, paras.4-6, 10/27/2003 at 7-8; COT056962, 63:6:4a.

<sup>2</sup> Viinamae Affidavit, para.4, 10/15/2003 at 7; Viinamae 10/27/2003 at 25, 99; COT043002 at COT043005, 63:19:1.

<sup>3</sup> Viinamae Affidavit, para. 29, 10/15/2003 at 16.

<sup>4</sup> Viinamae 10/28/2003 at 138-140.

<sup>5</sup> Viinamae 10/28/2003 at 32-33.

<sup>6</sup> Viinamae 10/22/2003 at 76-78.

communication skills. Both in person and in writing she was frequently incapable of asking or answering questions clearly and unambiguously. Her testimony repeatedly demonstrated this weakness.

## 2. The City's reasonable expectations of Viinamae

6. The City's reasonable expectations of Viinamae were similar to those it had of Andrew. The City reasonably expected Viinamae to:

- a. act in the City's best interests;<sup>7</sup>
- b. exercise good judgment, particularly during the City's initial formative period;<sup>8</sup>
- c. consult her fellow Directors with respect to decisions that affected the overall I&T environment;<sup>9</sup>
- d. communicate effectively with her fellow Directors and others in the City milieu;
- e. exercise her discretion properly to determine whether or not a matter should be the subject of a report to a committee, and ultimately to Council;<sup>10</sup> and
- f. prepare a business case for major acquisitions of goods or services for which she was responsible.<sup>11</sup>

7. As will be demonstrated below, Viinamae did not always meet these expectations.

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<sup>7</sup> Viinamae 10/27/2003 at 116.

<sup>8</sup> Viinamae 10/27/2003 at 116-118.

<sup>9</sup> Viinamae 10/27/2003 at 121.

<sup>10</sup> Viinamae 10/27/2003 at 136.

<sup>11</sup> Wong Affidavit, paras.12-14, 07/31/2003 at 180-181; Viinamae 10/27/2003 at 151-154.

### 3. Viinamae was not implicated in all aspects of the MFP computer leases

8. Viinamae was not involved in the July 2000 rewrites and should not be held responsible for them. She testified that she did not authorize the rewrites.<sup>12</sup> Viinamae first learned of the lease rewrites in November or December 2000, when she was confronted with unpaid invoices for rewritten schedules.<sup>13</sup> Domi did not think that Viinamae or anyone she supervised was involved in these discussions.<sup>14</sup> There is no evidence to suggest that Viinamae's version of events is untrue. The City submits that Viinamae's evidence on this point should be accepted.

9. Viinamae did not accept inappropriate entertainment offers from MFP. While she attended an occasional hockey game at the invitation of Domi, the quantity and quality of the entertainment did not rise to an inappropriate level. Moreover, given the level of entertaining engaged in by her immediate supervisor, Andrew, Viinamae's acceptance of entertainment is more understandable.

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<sup>12</sup> Viinamae 10/23/2003 at 214-215; Viinamae 10/16/2003 at 180-181.

<sup>13</sup> Viinamae 10/16/2003 at 180-181.

<sup>14</sup> Domi 01/23/2003 at 201.

#### 4. Viinamae was an ineffective communicator

10. Senior managers at the City must have communication skills commensurate with the positions they hold. They must be able to assign tasks clearly, to request assistance in a focussed fashion and to ensure that other employees know who is being asked to do what.

11. Viinamae had an extremely difficult job during a period of ferocious activity. She was fairly described as a war-time general: get the job done and let others worry about the details and paperwork during peacetime. However, her communication style did not facilitate the exchange of information. In particular, Viinamae:

- a. copied email messages indiscriminately to many people in different departments, deflecting responsibility, obfuscating responsibility, and encouraging passivity in recipients. The most significant example of this problem was Viinamae's email announcing the signing of the 5 year lease schedules. The email referred ambiguously to the 5 year lease term "as requested by Finance" without stating who gave her the instruction;<sup>15</sup>
- b. failed to articulate clearly who was responsible for actions that had been taken or were to be taken;<sup>16</sup>
- c. treated Finance as a monolithic entity and did not distinguish between the appropriate roles and responsibilities of groups as diverse as Treasury and Accounting Services. As Viinamae said in her own words "I did not divide the questions between the various divisions of Finance because I

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<sup>15</sup> Viinamae 10/20/2003 at 97, 98; Viinamae 10/21/2003 at 22; Viinamae Affidavit, para.62, 10/15/2003 at 31; Viinamae 10/28/2003 at 127; Viinamae 10/16/2003 at 30-33, 116-119; COT015587, 63:8:60a; Viinamae 10/22/2003 at 37-40.

<sup>16</sup> COT015649, 52:1:9; COT013065, 63:3:1a; COT013087, 63:3:1a.

did not have the requisite knowledge about the department to do this". This position is totally unacceptable for a senior manager;<sup>17</sup> and

- d. failed to work collaboratively or as a team with other I&T directors and with other senior employees in the City, which led directly to the extension of the lease terms from 3 to 5 years and to the acquisition of the Oracle ELA.<sup>18</sup>

12. Viinamae spent 11 days in the witness box. During this time, various counsel had to interject to focus Viinamae on the question at hand.<sup>19</sup> The Commissioner was forced to intervene on numerous occasions to clarify and accelerate her testimony.<sup>20</sup> Viinamae's answers were unclear, lengthy, and loaded with jargon. Upon reflection, her jargon-loaded answers were frequently irrelevant and/or meaningless.

13. Her manner of giving evidence was consistent with and confirmed that she had poor communications skills and had difficulty making herself understood.

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<sup>17</sup> Viinamae Affidavit, paras. 65, 70, 10/15/2003 at 32, 34; COT005230, 63:13:14.

<sup>18</sup> Viinamae 10/27/2003 at 101-104, 109.

<sup>19</sup> See, e.g., Viinamae 10/22/2003 at 25; Viinamae 10/17/2003 at 82-83.

<sup>20</sup> See, e.g., Viinamae 10/21/2003 at 40, 139.

## 5. Viinamae failed to assume responsibility for the computer leasing procurement exercise

14. Viinamae failed to provide leadership to the computer leasing initiative.

15. Viinamae envisioned a leasing program of almost unlimited proportions.<sup>21</sup> She and Andrew desired a virtually exclusive vendor of record for a three-year engagement during which I&T could place an unlimited amount of equipment on lease at as yet undetermined rates. Viinamae articulated a vision of an expansive vendor of record relationship in which there would be no pre-defined limit on the amount of equipment to be leased, no pre-specified lease term, and no competitive process in which to obtain future lease rates. The only real limitation in I&T's vision was the imposition of a three year limit to this otherwise unrestricted relationship with MFP.

16. This vision was fatally flawed, violated City policies, and failed entirely to ensure that the City leased its equipment at competitive rates. Moreover, Viinamae's vision was inconsistent with the report to, and was not authorized by, Council. Council's approval of the lease program with MFP was based on the parameters of the P&F Report. The approved lease program therefore limited the amount of equipment on lease to \$43 million, for a three year lease term, at the lease rates quoted by MFP. She should have been aware of this.

17. She testified that she was indifferent as to whether or not the City leased its computers or purchased them.<sup>22</sup> If Viinamae was indifferent as between leasing and other forms of acquisition she erred by remaining indifferent as to whether or not:

- a. I&T provided meaningful information to Finance or Council;<sup>23</sup>
- b. I&T acted within the authority granted by Council; and

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<sup>21</sup> Viinamae 10/28/2003 at 100.

<sup>22</sup> Viinamae 10/20/2003 at 118-119.

<sup>23</sup> Viinamae 10/22/2003 at 12; Viinamae 10/21/2003 at 118; Viinamae 10/22/2003 at 221.



c. the City's best interests were protected throughout the process.

18. She further erred by failing to review fundamental source documents to inform her decision making and analysis.<sup>24</sup> She should be criticized for relying entirely on Power and because she:

- a. failed to review the RFQ either before or after release;
- b. failed to review MFP's response to the RFQ; and
- c. failed to review the report to P&F and to Council regarding computer leasing.

**a) *The RFQ***

19. For reasons stated in Chapter 6, the RFQ failed to contribute materially to the City's improvident transactions with MFP. The City does not intend to repeat its view of the evidence from that chapter. However the City relies on that Chapter in support of its submission that Viinamae failed to discharge her responsibilities while Power prepared the RFQ. Specifically, Viinamae should be criticized because she:

- a. failed to review the drafts of the RFQ that were sent to her specifically for her review;<sup>25</sup>
- b. decided not to review the RFQ but failed to advise the others involved that they should not be looking to her for input and failed to instruct someone to respond in her place;<sup>26</sup>
- c. assumed that the responses to the RFQ would be evaluated solely on the criterion of price, without considering the appropriateness of price as the

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<sup>24</sup> Viinamae 10/22/2003 at 180-182.

<sup>25</sup> COT015560, 63:11:16.

sole criterion or even confirming whether or not that approach was sound;<sup>27</sup>

- d. failed to discuss I&T's vision of the computer leasing program with Treasury so that it could be evaluated;<sup>28</sup>
- e. during Andrew's absence at the end of May, failed to review a May 26, 1999 draft of the RFQ, even though she repeatedly characterized herself as "second in command".<sup>29</sup>

### ***b) The P&F Report***

20. The City does not intend to repeat its view of the evidence related to the preparation of the P&F Report, which is found in Chapter 7. The City relies on that Chapter to support its submission that, with respect to the P&F Report, Viinamae failed in four ways. She:

- a. failed to assume proper responsibility for the P&F Report even though others were expressly relying on her;<sup>30</sup>
- b. failed to review the underlying bid documents before reviewing the P&F Report;<sup>31</sup>
- c. failed to ensure that I&T's objectives regarding the procurement exercise were communicated clearly in the P&F Report;<sup>32</sup> and

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<sup>26</sup> Viinamae 10/22/2003 at 86-87.

<sup>27</sup> Viinamae 10/28/2003 at 82.

<sup>28</sup> Viinamae 10/27/2003 at 89.

<sup>29</sup> COT005219, 63:7:33a; COT015660, 63:11:16; COT019736, 63:7:32; Viinamae 10/20/2003 at 169-173, 176-178; Viinamae 10/22/2003 at 86-87; Viinamae 10/16/2003 at 15; Viinamae10/27/2003 at 35.

<sup>30</sup> Viinamae 10/20/2003 at 219.

<sup>31</sup> Viinamae 10/16/2003 at 21-22.

<sup>32</sup> Viinamae 10/28/2003 at 101-105, 111-112.

- d. encouraged individuals to rely on her review of the P&F Report by occasionally adding her opinion to the discussion.<sup>33</sup>

## **6. Viinamae failed to assume responsibility for the subsequent computer leasing program**

21. Viinamae clearly oversaw the ongoing computer leasing program. The program faced many challenges and its work was complicated because Viinamae failed to provide appropriate leadership. Ms. Viinamae can be criticized for having:

- a. failed to take any meaningful steps to educate herself about the substantive elements of computer leasing, other than attending one leasing vendor presentation;<sup>34</sup>
- b. failed to ensure that the staff she hired to work in the CMO either had previous experience in computer leasing and other relevant substantive areas, obtained the training necessary for them to complete their tasks, or had ongoing oversight and support;<sup>35</sup> and
- c. continued to rely on Power as a leasing expert where through adequate supervision she would have learned of his limitations.

22. One of the major functions that Viinamae oversaw was the completion of the sale leaseback transaction and the reconciliation of data with MFP. Viinamae can be faulted for having failed to instruct Bulko to track serial numbers and locations for all hardware

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<sup>33</sup> COT031948, 63:7:40; COT014316, 63:8:2; COT014211, 63:8:24a ; COT015442, 63:8:18; COT012257, 63:8:15a; COT031462, 63:8:17; Viinamae 10/16/2003 at 29-32, 47-48, 65; Viinamae 10/21/2003 at 18, 31-33, 36-37; Viinamae 10/28/2003 at 128; Viinamae Affidavit, para.45, 10/15/2003 at 23; Viinamae 10/22/2003 at 150-151.

<sup>34</sup> Viinamae 10/22/2003 at 76-78; Viinamae 10/28/2003 at 32-33.

<sup>35</sup> Viinamae 10/22/2003 at 117-122; Marks Affidavit, paras. 4-5, 08/13/2003 at 212; Viinamae 10/16/2003 at 85-86.

that the City purchased and deployed in 1999.<sup>36</sup> It was not until August 12, 1999, after Viinamae met with Wilkinson and Domi, that she instructed Marks to track serial numbers. At this meeting, MFP advised her they required serial numbers in order to properly track equipment.<sup>37</sup>

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<sup>36</sup> Viinamae 10/28/2003 at 48-50, 52-53, 61, 70.

<sup>37</sup> Viinamae 10/21/2003 at 48-49.

## 7. Five year lease terms: Viinamae failed to exercise due diligence

23. Viinamae signed the Equipment Schedule 838-1, which placed over \$20,000,000 of equipment on 5 year leases. Viinamae's decision to sign this contract was in error. The facts leading to the switch from 3 to 5 year lease terms are set out in Chapter 10. The City will not repeat its view of that evidence here, but relies on Chapter 10 to submit that Viinamae should be criticized because she:

- a. failed to raise I&T's opposition to 5 year lease terms with Liczyk before signing the 5 year Equipment Schedule;<sup>38</sup>
- b. failed to confirm with Liczyk, Andrew, or Legal Services that the Council authority, bid documents, and contract documents supported extending the lease term on the majority of the hardware assets to 5 years and instead relied on the opinion of Power;<sup>39</sup>
- c. failed to personally review the Council authority bid documents and contract documents before signing the Equipment Schedules to satisfy herself that they authorized putting the majority of the equipment on lease;<sup>40</sup>
- d. failed to confirm with Legal Services that she was authorized to sign the Equipment Schedule;<sup>41</sup>
- e. failed to appreciate that the Equipment Schedule was nothing more or less than a contract worth more than \$20,000,000, and failed to ensure that

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<sup>38</sup> Viinamae Affidavit, paras.60-62, 10/15/2003 at 30-31; Viinamae 10/21/2003 at 65-68.

<sup>39</sup> Viinamae Affidavit, para. 58; 10/15/2003 at 29; Viinamae 10/16/2003 at 175-176; Viinamae 10/29/2003 at 20-21, 31-32; Viinamae 10/21/2003 at 85-87.

<sup>40</sup> Viinamae 10/29/2003 at 22-23, 53-55.

<sup>41</sup> Viinamae 10/29/2003 at 19, 46.

anyone including Legal Services, Faskens, or even Power, reviewed it before she signed it;<sup>42</sup>

- f. relied, at best, on two brief oral conversations with Andrew and Liczyk as authority to place \$20,000,000 of equipment on 5 year leases and failed to ask for and receive written confirmation that Finance indeed wanted to extend the lease terms in this fashion;<sup>43</sup>
- g. failed to ensure that the lease rate factors and/or monthly rent had been analyzed by anyone in Finance, compared to any other contract documents, or reviewed in any way before she signed the Equipment Schedule;<sup>44</sup> and
- h. for the reasons set out above, failed to ensure that the City had analyzed the financial implications of the particular 5 year lease terms contained in the Equipment Schedule.

24. Viinamae failed to ensure that MFP's lease rate factors were analyzed before she signed subsequent Equipment Schedules.<sup>45</sup> She testified that Power told her that the lease rate factors that were applicable for the next quarter were based on industry standards such as bond rates, and that they were consistent with MFP's response to the RFQ.<sup>46</sup> She relied on Power's explanation and did not confirm his explanation with anyone else at the City. Viinamae assumed that the prospective leasing providers had provided lease rates factors for varying lease terms.<sup>47</sup>

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<sup>42</sup> Viinamae 10/30/2003 at 34-35.

<sup>43</sup> Viinamae 10/16/2003 at 164-165, 175-176; Viinamae 10/29/2003 at 8-9, 14, 28; Viinamae 10/28/2003 at 199; Viinamae Affidavit, para. 59, 10/15/2003 at 29-30.

<sup>44</sup> Viinamae 10/29/2003 at 79, 86, 89; Viinamae 10/21/2003 at 115-117; Viinamae 10/17/2003 at 14, 20-22, 35-36; Wilkinson Affidavit, para.86, 09/16/2003 at 76-77; Viinamae Affidavit, para. 75, 10/15/2003 at 36; Colley 09/03/2003 at 72; Power 03/24/2003 at 57.

<sup>45</sup> Wilkinson Affidavit, para.86, 09/16/2003 at 76-77; Wolfrim 09/28/2004 at 83-84.

<sup>46</sup> Viinamae Affidavit, para. 75, 10/15/2003 at 36; 10/21/2003 at 90-91.

<sup>47</sup> Viinamae 10/17/2003 at 14.

25. Viinamae presumed that Finance was reviewing the lease rate factors for reasonableness.<sup>48</sup> Power advised her that all the documentation was forwarded to Finance.<sup>49</sup> Initially, Viinamae assumed that the lease rate factors sheets were sent to Brittain. She did not confirm that Brittain was analyzing the lease rate factors.

Q: You didn't call him, you didn't e-mail him, you didn't have a face to face with him, there was no contact between you and Mr. Brittain or anyone else in Finance with respect to these lease rate factors that you were signing without analysis?

A: We had discussions with Finance, with regards to establishing the leasing program and the fact that the documents would first come to myself and then go to Finance, but, not specifically breaking out any one (1) document.

Q: But, would you not, when you recognized that there was a financial impact of these documents, would you not call Mr. Brittain, why would you not call Mr. Brittain, and say, look I have this lease rate factor, let's talk, let's meet?

A: Again, my understanding is that these documents were going to Mr. Brittain and that he was aware that these documents were being, were part of the response from MFP.<sup>50</sup>

26. After January 2000, Viinamae presumed that Colley was reviewing the lease rate factors. Although she referred to Colley as the "Finance lead" in email communications, she never expressly mentioned that he was responsible for reviewing the lease rate factors in any communication passing between them.<sup>51</sup> Colley testified that no one ever asked him to review lease rate factors.<sup>52</sup> Had she done so, Colley likely would have told her that there was no way he could perform that role.

27. Viinamae could not point to a single piece of evidence demonstrating that she either directed or confirmed with anyone in Finance that they were responsible for

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<sup>48</sup> Viinamae 10/17/2003 at 20-21.

<sup>49</sup> Viinamae 10/21/2003 at 115.

<sup>50</sup> Viinamae 10/21/2003 at 116-117.

<sup>51</sup> Viinamae 10/17/2003 at 22.

<sup>52</sup> Colley 09/03/2003 at 72.

reviewing lease rate factors. Finally, Viinamae testified that Power would “absolutely” have known that Finance was charged with reviewing the lease rate factors.<sup>53</sup>

28. Viinamae’s failure to ensure that somebody analyzed the lease rate factors before signing the contracts was a serious error. It left the City vulnerable to MFP’s practices and allowed MFP to dictate its own terms.

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<sup>53</sup> Viinamae 10/17/2003 at 35.



## 8. Oracle: A deliberate campaign of obfuscation

29. The City submits that it is fair to criticize Ms. Viinamae for certain aspects of the Oracle transaction. In giving evidence, Viinamae refused to accept responsibility for the problems with the Oracle deal.

30. The details of the Oracle transaction can be found in Chapter 13. The City will not repeat its view of that evidence here, but relies on Chapter 13 to submit that Viinamae should be criticized because she:

- a. never prepared or provided the Year 2000 Steering Committee with any written documents that analyzed the need for the Oracle ELA, supported its acquisition, or even concerned the acquisition of the Oracle ELA;<sup>54</sup>
- b. did not ensure that the City compiled an inventory of existing licences that would be affected, and instead relied solely on the vendor's representations;<sup>55</sup>
- c. failed to consult adequately with other I&T directors regarding the acquisition of the Oracle ELA;<sup>56</sup>
- d. never made a detailed presentation to the Year 2000 Committee regarding the Oracle transaction and specifically, and despite her evidence to the contrary which should be soundly rejected:
  1. did not obtain any approval in principle for the acquisition of the Oracle licences from the Year 2000 Committee at its October 7, 1999 meeting;<sup>57</sup>

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<sup>54</sup> Viinamae 10/22/2003 at 49-50.

<sup>55</sup> Viinamae 10/17/2003 at 48-49, 93; Viinamae 10/20/2003 at 48-49.

<sup>56</sup> Viinamae 10/29/2003 at 158, 162-163; Wong Affidavit, paras. 28-29, 07/31/2003 at 185-186; Franey Affidavit, paras. 16,17,21, 08/07/2003 at 62-63.

2. did not make a formal or detailed presentation to the Year 2000 Committee at its December 9, 1999 meeting regarding the Oracle proposal.<sup>58</sup>
- e. mischaracterized the acquisition of the Oracle ELA as a Year 2000 related expense when it was not fairly characterized as a Year 2000 acquisition;<sup>59</sup>
- f. misled Garrett by mischaracterizing the substance of the transaction on the Year 2000 delegated approval form;<sup>60</sup>
- g. inappropriately placed the Oracle software and, most mistakenly, the maintenance contracts on lease with MFP, and placed the entire value of the Oracle ELA on lease on day 1;<sup>61</sup> and
- h. failed to ensure that the fact of the Oracle acquisition and its implications were adequately communicated to City staff.<sup>62</sup>

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<sup>57</sup> Viinamae 10/17/2003 at 89-90.

<sup>58</sup> Liczyk 11/06/2003 at 168-169; Andrew 10/14/2003 at 62; O'Brien 09/08/2003 at 146-147; COT039679, 35:1:68.

<sup>59</sup> Power 04/25/2003 at 74; Liczyk 11/06/2003 at 158; Wong Affidavit, paras. 37-39, 07/31/2003 at 190; COT030456 at COT030456, 3:1:6.

<sup>60</sup> Viinamae 10/29/2003 at 170-173; COT016151, 63:12:29.

<sup>61</sup> Viinamae Affidavit, para. 113, 10/15/2003 at 51-52; Andrew 10/14/2003 at 41; Wilkinson Affidavit, para. 90, 09/16/2003 at 78; Wilkinson 09/16/2003 at 258-260; Andrew 10/14/2003 at 41; Currie 09/02/2003 at 62-63.

<sup>62</sup> Viinamae 10/20/2003 at 82-83; Viinamae 10/17/2003 at 200-205; COT016241, 54:2:40.

## 9. Lyons and Viinamae

31. The City anticipates that there may be evidence in TECI that may be relevant to this issue. The City will address several TCLI specific issues under this heading, but may make additional submissions following TECI.

### *a) Background to their relationship*

32. Viinamae perceived lobbyist-organized events and meetings as an opportunity for personal and professional networking. She testified that, apart from such external events, there was a dearth of other opportunities for City staff to meet politicians and Councillors.<sup>63</sup> Viinamae admitted that she had several meetings with Lyons in his capacity as a lobbyist for information technology suppliers.<sup>64</sup> After amalgamation, she estimated that she met with Lyons approximately three times per year.<sup>65</sup> She admitted that she met with Lyons more than she had met with any other lobbyist, and that she was more familiar with him than with any other lobbyist. She attended a few events with him or organized by him.<sup>66</sup>

### *b) Viinamae's desire to be the Executive Director, I&T*

33. Viinamae made no secret of the fact that she wanted to become Executive Director, I&T after Andrew's contract expired.<sup>67</sup> She believed that Andrew absolutely supported her candidacy.<sup>68</sup> Andrew agreed that he believed that Viinamae was the "ideal candidate" to replace him.<sup>69</sup>

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<sup>63</sup> Viinamae 10/15/2003 at 137.

<sup>64</sup> Viinamae Affidavit, para. 145, 10/15/2003 at 64.

<sup>65</sup> Viinamae 10/15/2003 at 124.

<sup>66</sup> Viinamae 10/22/2003 at 94-95.

<sup>67</sup> Viinamae 10/15/2003 at 111, 116.

<sup>68</sup> Viinamae 10/15/2003 at 111.

<sup>69</sup> Andrew 09/24/2003 at 205.

34. Viinamae also believed that she had the support of City staff, vendors, and lobbyists.<sup>70</sup> She derived this understanding partly from Lyons, who advised her that she had the support of lobbyists.<sup>71</sup> Lyons had also voiced his personal support for Viinamae as the candidate for this position.<sup>72</sup> However, Viinamae maintained that Lyons did not tell her what or how his support translated into helping her obtain the position.<sup>73</sup>

***i) Viinamae's inappropriate reaction to Ridge's appointment as the acting Executive Director***

35. Anderton announced the appointment of Ridge as the Acting Executive Director, I&T on a day when Council was in session. Anderton testified that Viinamae approached her during the Council meeting and asked to speak with her.<sup>74</sup> As soon as Anderton was able to leave the meeting, she went with Viinamae to the Council lounge. Viinamae was visibly angry and unhappy with the decision.<sup>75</sup>

Q: Did you think there -- did you think there was anything inappropriate about those discussions that Ms. Viinamae had with you?

A: It was very unusual.

Q: Unusual in what way?

A: It's not common for an employee who is a candidate in a competition to express such -- such anger to a senior employee.<sup>76</sup>

36. Anderton also spoke to Allan Slobodsky ("Slobodsky") and Councillor Berardinetti about Ridge's appointment. She testified that Slobodsky asked her why she appointed Ridge instead of Viinamae, and was very accepting of her response.<sup>77</sup> Councillor Berardinetti asked her only about Ridge's lack of technology background.<sup>78</sup> Anderton

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<sup>70</sup> Viinamae 10/15/2003 at 116.

<sup>71</sup> Viinamae 10/15/2003 at 120-121.

<sup>72</sup> Viinamae Affidavit, para. 148, 10/15/2003 at 64-65.

<sup>73</sup> Viinamae 10/16/2003 at 126-127.

<sup>74</sup> Anderton 11/25/2003 at 51.

<sup>75</sup> Anderton 11/25/2003 at 51.

<sup>76</sup> Anderton 11/25/2003 at 52.

<sup>77</sup> Anderton 11/25/2003 at 52-53.

<sup>78</sup> Anderton 11/25/2003 at 54.

did not consider these inquiries unusual, although she did find them out of the ordinary.<sup>79</sup>

***ii) Viinamae's interactions with Lyons around her application***

37. Lyons believed that Viinamae was the “nuts and bolts” of I&T. He agreed that he encouraged the City to appoint Viinamae to Andrew’s former position.<sup>80</sup>

[I] just heard about it and I heard that they weren't appointing her, and I thought what -- that just didn't make any sense, and I felt that I knew enough of the companies in that area that I should speak to somebody, because you'd want some continuity going on, and she was very good, and I was sorry that Jim left, but he had his reasons.<sup>81</sup>

38. Lyons recalled speaking with someone in the Mayor’s office, perhaps Slobodsky or Rod Phillips. He also called Councillors Miller and Berardinetti, with the intention of persuading them to challenge Anderton’s decision.<sup>82</sup>

39. Lyons agreed that he might have spoken with Anderton after the decision to appoint Ridge had been made.<sup>83</sup> When confronted with evidence that Anderton would say that he did speak to her, Lyons agreed that he must have called her.<sup>84</sup> Lyons confirmed that any calls he might have made to individuals at the City were on his own initiative.<sup>85</sup> Lyons said that Viinamae never asked him to help her obtain the Acting Executive Director position.<sup>86</sup> He agreed that Viinamae probably did not know that he made these calls.<sup>87</sup> Lyons did not know whether he made the calls before or after

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<sup>79</sup> Anderton 11/25/2003 at 52-54.

<sup>80</sup> Lyons 05/08/2003 at 173.

<sup>81</sup> Lyons 05/13/2003 at 65.

<sup>82</sup> Lyons 05/13/2003 at 86-87.

<sup>83</sup> Lyons 05/08/2003 at 174-175.

<sup>84</sup> Lyons 05/08/2003 at 175.

<sup>85</sup> Lyons 05/13/2003 at 65.

<sup>86</sup> Lyons 05/13/2003 at 65.

<sup>87</sup> Lyons 05/13/2003 at 65-66.

Anderton made her decision, although his evidence suggests that he made the calls after the fact.

***iii) Viinamae testified that she never asked for Lyons' help***

40. Viinamae maintained that she never asked Lyons for any help during the application process.<sup>88</sup> Viinamae swore that she did not ask Lyons to make any calls or inquiries on her behalf. Nevertheless, she admitted that Lyons was a good person to have on your side.

41. Viinamae acknowledged that it was helpful to have lobbyist support during an application for a City staff position.<sup>89</sup> Further, she was aware that Lyons supported her application.<sup>90</sup> She swore that she was not aware that Lyons made telephone calls to inquire into why she was not awarded the position of Acting Executive Director, I&T.<sup>91</sup> Viinamae further testified that, if she been aware that Lyons was intending to make a phone call, she would have asked that he refrain from doing so, as Anderton was not fond of lobbyists.<sup>92</sup>

42. After he left the City, Andrew became aware that Lyons was lobbying on behalf of Viinamae's candidacy.<sup>93</sup> Andrew testified that he did not think that Lyons was an asset with respect to obtaining the position. He advised Viinamae that it was a mistake to consult him.<sup>94</sup> Andrew understood that Viinamae wanted Lyons to help her overrule Anderton's decision to refuse applications from individuals in acting positions. He speculated that Viinamae wanted Lyons to speak to some of the Councillors.<sup>95</sup>

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<sup>88</sup> Viinamae 10/16/2003 at 130.

<sup>89</sup> Viinamae 10/15/2003 at 122.

<sup>90</sup> Viinamae 10/15/2003 at 126.

<sup>91</sup> Viinamae Affidavit, para. 147, 10/15/2003 at 64.

<sup>92</sup> Viinamae 10/15/2003 at 131.

<sup>93</sup> Andrew 09/24/2003 at 206.

<sup>94</sup> Andrew 09/24/2003 at 206.

<sup>95</sup> Andrew 09/24/2003 at 207.

43. Andrew recalled meeting Viinamae one evening.<sup>96</sup> During their meeting, he mentioned that he had heard that Lyons was lobbying on her behalf. However, the majority of the meeting focused on the fact that Viinamae had not been awarded the Acting Executive Director position. Viinamae did not recall this meeting.<sup>97</sup>

44. The City submits that it was wrong for Viinamae to accept the support of a lobbyist with respect to an internal City position. Andrew agreed that it was inappropriate for Lyons to assist Viinamae.<sup>98</sup> The evidence suggests that Lyons took the initiative to advocate on Viinamae's behalf. Nonetheless, Viinamae knew that he supported her application and she also knew his tactics. As an acting senior Director for the City, Viinamae should have advised Lyons that it was inappropriate for him to lobby the City on her behalf.

***c) Other interactions with Lyons***

45. Viinamae also had a brief interaction with Lyons around the photocopier leasing issue. After she left the floor of the Council meeting, Lyons approached her and asked her to explain "what was that all about?". Viinamae explained to Lyons that Councillor Balkissoon had a lot of questions about the leasing program. She did not know why Lyons wanted such information except that she "figured he wanted his finger on the pulse of [what] seemed to be a hot issue in Council."<sup>99</sup>

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<sup>96</sup> Andrew 10/04/2003 at 6-7.

<sup>97</sup> Viinamae 10/22/2003 at 97.

<sup>98</sup> Andrew 09/24/2003 at 208.

<sup>99</sup> Viinamae 10/29/2003 at 135.