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## 1. Overview

1. Liczyk failed as the keeper of the City's financial due diligence because:
  - a. she placed too much trust in MFP after placing herself in a conflict of interest with MFP;
  - b. her judgment was therefore sufficiently impaired in her dealings with MFP that she failed to exercise any due diligence when directing the change in lease term from 3 to 5 years, and executing the July 2000 rewrites;
  - c. she failed to recognize the significance and complexity of the computer leasing program, and thereby failed to adequately address the issues it raised; and
  - d. she failed to disclose to Council, or to any senior City official, that Council authority had been exceeded when she discovered that significantly more than \$43 million had been placed on lease with MFP.

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

### ***a) Accountability as CFO and Treasurer and Acting Commissioner of Corporate Services for I&T technical issues, including Y2K***

2. As Chief Financial Officer and Treasurer of the City from January 1, 1998 to June 4, 2001, Liczyk was the City's most senior financial official. As a statutory officer under the *Municipal Act*, Liczyk reported directly to Council; operationally, she reported to Garrett, the CAO.<sup>1</sup> Garrett viewed Liczyk, as CFO and Treasurer, to be the City's keeper of financial due diligence.<sup>2</sup>

3. As CFO and Treasurer, Liczyk was responsible for "leading the formulation of strategic corporate financial policy and plans to the Chief Administrative Officer and Council while ensuring that proper controls [were] in place to protect assets and optimize funds". She:

[P]rovid[ed] overall direction for accounting and financial reporting, payroll, pension & employee benefits management, purchasing and materials management, revenue management including tax, water and parking tag revenue, investment & debt management, insurance and risk management, budget preparation and analysis, development related financial services, and policy & research functions through seven divisions.<sup>3</sup>

4. In July 1999, Glover became the Acting Commissioner of Corporate Services, save and except for the service delivery components of I&T, which fell to Liczyk. Liczyk thus took direct responsibility for Y2K preparations<sup>4</sup> and became a member of the Y2K Steering Committee.<sup>5</sup> Therefore, during this

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<sup>1</sup> Liczyk Affidavit, para. 12, 11/03/2003 at 9.

<sup>2</sup> Garrett 12/05/2002 at 180.

<sup>3</sup> COT067880, 63:9:74a.

<sup>4</sup> Garrett 12/05/2002 at 50.

<sup>5</sup> Garrett 12/09/2002 at 44.

period Andrew reported to Liczyk in her capacity as Acting Commissioner of Corporate Services for these issues.

5. At the City of North York, the Information Technology Division reported to Liczyk. Liczyk believed that as a result she had acquired knowledge of information technology sufficient for a CFO and Treasurer.<sup>6</sup> Liczyk's exposure to I&T while at North York led to her expressing interest in I&T issues at the City of Toronto. Garrett understood her to be knowledgeable in I&T issues, and was therefore comfortable with Liczyk taking on the role of Acting Commissioner in 1999.<sup>7</sup>

6. Garrett viewed Y2K as one of Liczyk's top priorities in 1999.<sup>8</sup>

***b) Qualities reasonably expected of a senior executive at the City of Toronto***

7. The City's reasonable expectations of its senior management have been addressed at length elsewhere and they are only summarized here.<sup>9</sup> The City reasonably expected Liczyk to:

- a. have a keen sense of public service reflecting ultimate responsibility to the taxpayers and citizens of Toronto;
- b. exercise good judgment;
- c. demonstrate leadership by example; and

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<sup>6</sup> Liczyk Affidavit, para. 8, 11/03/1999 at 7-8.

- d. establish clear lines of accountability, including the provision of advice, guidance, and supervision to her employees.

8. As will be demonstrated below, Liczyk failed to meet these expectations on the computer leasing file.

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<sup>7</sup> Garrett 12/05/2002 at 49.

<sup>8</sup> Garrett 12/09/2002 at 19.

<sup>9</sup> See Chapter 21.

### 3. Conflict of interest

#### *a) Policies and expectations governing Liczyk's conduct*

9. Like Andrew and other senior City staff, Liczyk was expected to recognize and avoid conflict of interest situations.<sup>10</sup> For most of her tenure at the City, Liczyk's conduct was governed by the North York code of ethics policy and the terms of her employment agreement.<sup>11</sup>

10. As of August 2000, the amalgamated City issued a conflict of interest policy which replaced any existing codes, and which governed Liczyk's conduct from that time on. Both policies required that Liczyk be vigilant to ensure that nothing she did influenced her decision making or exercise of due diligence in protecting the City's interests. In particular, both policies spelled out that City employees should not accept gifts or favours which might influence the discharge of their duties.<sup>12</sup>

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

The responsibility rests with the Employee to recognize and to avoid circumstances that may give rise to (or give the appearance of giving rise to) conflict of interest situations. He/She acknowledges that conflict of interest or the perception of one does not necessarily involve monetary gain, but may arise in a variety of ways.<sup>13</sup>

12. The City relied on the good judgment of its senior executives to know how to conduct themselves with City suppliers. The good judgment of senior

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<sup>10</sup> COT032638 at COT032642, 63:5:18.

<sup>11</sup> COT014620, 63:12:3a; COT032638, 63:5:18.

<sup>12</sup> COT014620 at COT014620, 63:12:3a; COT040386 at COT040389, 3:2:33.

<sup>13</sup> COT032638 at COT032642, 63:5:18.

executives was necessary to ensure that the City conducted, and was seen to have conducted, a fair tendering process for the provision of goods and services to the City.

***b) Liczyk developed an inappropriate relationship with Domi***

***i) Frequent entertainment and favours***

13. Beginning in the spring of 1999, Liczyk and Domi developed an inappropriate relationship.<sup>14</sup> There was no evidence that their relationship was sexual. However, there was an abundance of evidence that Liczyk failed to maintain the professional boundaries expected from the keeper of the City's financial due diligence.

14. Liczyk attended numerous charity dinners, hockey games, and private dinners as Domi's guest.<sup>15</sup> She permitted Domi to arrange a haircut for her with his best friend, Gian Frank.<sup>16</sup> She flew to Ottawa for a playoff hockey game on a private jet arranged for by Domi.<sup>17</sup> She invited him to her home for her 40<sup>th</sup> birthday party.<sup>18</sup> Liczyk's sister also regularly attended hockey games as Domi's guest.<sup>19</sup>

15. Some of these events occurred prior to approval by Council of the P&F Report, when MFP was a potential bidder on the leasing RFQ. These events included: the Tie Domi Charity Dinner (March 15, 1999);<sup>20</sup> two or three hockey games (after March 15 and prior to June 11, 1999);<sup>21</sup> the haircut (May 6, 1999);<sup>22</sup>

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<sup>14</sup> See Chapter 5 for more details.

<sup>15</sup> Liczyk 11/05/2003 at 8, 20, 58-59.

<sup>16</sup> Liczyk Affidavit, para 121, 11/03/2003 at 51-52.

<sup>17</sup> COT042276, 63:20:9; COT004278, 63:20:9a.

<sup>18</sup> Domi 01/27/2003 at 40.

<sup>19</sup> Domi 01/23/2003 at 165-166.

<sup>20</sup> Domi 01/23/2003 at 147-149.

<sup>21</sup> Domi 01/29/2003 at 142.

<sup>22</sup> COT013249, 63:7:26.

and dinners. Garrett's evidence was clear that accepting frequent entertainment with a potential supplier in the months leading up to a public tender was inappropriate.<sup>23</sup>

16. The Commissioner should find that Liczyk exercised poor judgment, violated the City's conflict of interest policy, as well as her employment agreement, and failed to meet the City's reasonable expectations in participating in these events when she knew that I&T intended to issue a tender document for leasing computer equipment in the spring of 1999.

17. Liczyk continued to accept Domi's hospitality after MFP had won the deal. Even she conceded that their relationship became friendlier over time.<sup>24</sup> Liczyk failed to recognize that the period of active procurement did not really end when Council approved MFP's bid in July 1999, but rather continued through 2000. During this time, MFP continued to "enhance" its deal with the City. MFP:

- a. negotiated an MLA that resiled from many of the terms MFP had promised to the City in its response to the RFQ;
- b. extended the terms of the leases from 3 to 5 years without having those terms tendered;
- c. substituted revised lease rate factors for those promised to the City in MFP's response to the RFQ;
- d. placed the Oracle ELA on lease without a tender and on terms that were beneficial to MFP and detrimental to the City; and

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<sup>23</sup> Garrett 12/05/2002 at 132.



- e. entirely rewrote the leases to MFP's sole advantage (the July 2000 rewrites).

18. During this entire period it was incumbent on City staff in contact with MFP to retain a scrupulous arm's length relationship in order to protect the City's interests. Liczyk completely failed to maintain this distance. For example, Liczyk flew to Ottawa in a private jet with Domi in April 2000, two months before the July 2000 rewrites resulted in a substantial commission for Domi.<sup>25</sup> Her July 15, 2000, birthday party occurred within weeks of the lease rewrites.<sup>26</sup>

***ii) Phone calls***

19. Cellular telephone records indicate that Liczyk spoke with Domi on the phone on numerous occasions, and once for over an hour, at her home, well after midnight. Of the 216 phone calls placed by Domi to Liczyk between March 8, 1999 and October 4, 2002, 62 of these calls were to Liczyk's home.<sup>27</sup> Liczyk and Domi conceded that they rarely talked about the City's computer leases.<sup>28</sup> This means there was no appropriate reason for the City's CFO and Treasurer to be in such frequent contact with a salesperson for a vendor to the City. These calls are clear evidence of an inappropriate relationship in which professional boundaries were crossed.

20. Throughout this Inquiry Liczyk refused to accept that the extent and nature of her interaction with Domi was inappropriate, that it violated the City's conflict of interest policies, or that it could have affected her business judgment in any

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<sup>24</sup> Liczyk 11/05/2003 at 19.

<sup>25</sup> COT042276, 63:20:9.

<sup>26</sup> Domi 01/27/2003 at 40; Liczyk 11/06/2003 at 69.

<sup>27</sup> COT084378, 98:2:12; Domi 02/11/2003 at 143, 158-159.

<sup>28</sup> Liczyk 11/18/2003 at 105; Domi 02/11/2003 at 148-149, 158.

way.<sup>29</sup> She would not acknowledge that the relationship had crossed the line from business to personal.<sup>30</sup>

***c) Liczyk publicly endorsed the corporate predator MFP***

21. In May 2000, Liczyk agreed to Domi's request that she provide a testimonial to MFP for its 2000 Annual Report.<sup>31</sup> This involved an elaborate photo shoot, and the publication in MFP's glossy annual report of a full page photograph of Liczyk, Andrew and Viinamae, together with written testimonials from each of these senior City officials. This Annual Report was published on the internet.<sup>32</sup> In it, Liczyk enthusiastically endorsed MFP:

They were financially competitive and a good team for the City . . . MFP expanded things for our staff and exposed them to new ideas. Rob Wilkinson [MFP], for example, took a great deal of time and made the effort to explain new models, and he listened to our concerns. The entire team made sure they were implementing what we were saying.<sup>33</sup>

22. Andrew described a process in place at the City whereby approval should have been sought from the Communications Division of the Corporate Services Department by himself, Liczyk, and Viinamae before they agreed to publication of the Annual Report containing their photos and testimonials. None of Liczyk, Andrew, or Viinamae followed this process by notifying the Communications Division when MFP approached them to appear in its annual report.<sup>34</sup>

23. Andrew testified that he discussed the appropriateness of their involvement with Liczyk when he became concerned about the elaborate photo shoot. He testified that Liczyk told him that she felt he should go ahead and

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<sup>29</sup> Liczyk Affidavit, para. 296, 11/03/2003 at 109; Liczyk 11/06/2003 at 148.

<sup>30</sup> Liczyk 11/06/2003 at 53, 144.

<sup>31</sup> COT067874, 63:9:65a.

<sup>32</sup> Andrew Affidavit, para. 200, 09/24/2003 at 87.

<sup>33</sup> COT029127 at COT029167, 63:1:7.

participate, that she was familiar with testimonials from her time at North York, and that she felt it was a reasonable thing to do.<sup>35</sup> Liczyk did not recall this conversation with Andrew, but testified that she felt that giving a testimonial was an accepted thing to do at the City.<sup>36</sup>

24. Liczyk never checked with Garrett or the Communications Division to see if there were any guidelines governing supplier testimonials.<sup>37</sup>

25. In hindsight, Andrew regretted his willingness to publicly endorse MFP in its annual report.<sup>38</sup> In contrast, Liczyk relied on the fact that no one told her not to participate to justify her involvement in giving the testimonial.<sup>39</sup> She did not acknowledge her lack of judgment in going ahead without checking with anyone, or appear to regret that she had done so. Rather, she attempted to excuse her behaviour because it was not “uncommon [in] the business community”, and because she understood that other public sector clients would also be involved.<sup>40</sup>

26. Liczyk was not prepared to acknowledge that she had overstated anything in her testimonial.<sup>41</sup> She indicated that her reference to the “great deal of time and effort” Wilkinson spent explaining new models was to the interactive five year lease model presented by MFP at the September 21, 1999 meeting. In actual fact, as detailed in Chapter 10, Liczyk testified that she was only present for 15 minutes at the start of that meeting.<sup>42</sup> Brittain, who remained for the entire hour long meeting, concluded that MFP’s model was “without merit” and “made no sense.” His view was completely at odds with Liczyk’s enthusiastic

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<sup>34</sup> Andrew 09/25/2003 at 159; Viinamae 10/15/2003 at 253.

<sup>35</sup> Andrew 09/25/2003 at 147.

<sup>36</sup> Liczyk Affidavit, para. 278, 11/03/2003 at 104.

<sup>37</sup> Liczyk 11/06/2003 at 43-44.

<sup>38</sup> Andrew 09/25/2003 at 156-157.

<sup>39</sup> Liczyk 11/06/2003 at 50-51, 53.

<sup>40</sup> Liczyk 11/06/2003 at 47.

<sup>41</sup> Liczyk Affidavit, para. 280, 11/03/2003 at 104.

<sup>42</sup> Liczyk 11/17/2003 at 185.

endorsement.<sup>43</sup> His view was correct. Her view was coloured by her misplaced trust in MFP.

27. Throughout her evidence, Liczyk avoided any acknowledgment that providing the testimonial was inappropriate, even in hindsight.<sup>44</sup> Indeed, she would do it again, but for what she had learned during the course of the Inquiry about how MFP took advantage of the City through the lease rewrites.<sup>45</sup>

***d) Liczyk's inability to recognize the pitfalls of such a close relationship caused her to let down her guard in her dealings with MFP***

***i) Change in lease term from 3 to 5 years***

28. Liczyk failed to exercise due diligence when she authorized the change in lease term with MFP from 3 to 5 years.<sup>46</sup> She approved this change without:

- a. having any idea how much equipment was being put on a 5 year lease term;
- b. directing that any financial analysis be performed to justify such a decision;
- c. seeking input from her Treasury staff;
- d. advising her Treasury staff that she had made this change; and

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<sup>43</sup> Brittain 07/09/2003 at 233-234.

<sup>44</sup> Liczyk 11/06/2003 at 49-53.

<sup>45</sup> Liczyk 11/06/2003 at 63-64.

<sup>46</sup> See Chapters 8 and 10.

- e. recognizing the need to re-tender to obtain bids on 5 year lease rates, or if she did recognize such a need, ignoring the tender requirements.

29. The Commissioner should find that Liczyk made these errors because she put too much trust in MFP. This trust resulted from her failure to avoid placing herself in a conflict of interest situation through her inappropriate relationship with Domi.

***ii) July 2000 rewrites***

30. Liczyk failed to exercise the required diligence when she signed the re-written lease schedules in July 2000.<sup>47</sup> Again, the Commissioner should find that her lack of diligence resulted from her misplaced trust in MFP.

31. Liczyk showed a serious lapse in judgment in signing the rewrites. Liczyk should be criticized because:

- a. she blindly trusted Domi when he said that he was bringing the documents to her from the CMO, and that they had already been reviewed by the CMO;<sup>48</sup>
- b. she blindly accepted Domi's explanation that the documents were merely "administrative reorganizations", without knowing what that phrase meant or what the consequences of signing the documents might be;

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<sup>47</sup> See Chapter 15.

<sup>48</sup> Liczyk Affidavit, para. 211, 11/03/2003 at 82-83.

- c. she made no inquiries of her staff or the CMO before she signed the documents while Domi waited in her office;
- d. she signed the documents on the spot even though there was nothing to suggest that anyone at the City had already reviewed and approved them;<sup>49</sup> and
- e. she gave no thought to the fact that Domi was a City supplier, and might therefore put MFP's interests before the City's.<sup>50</sup>

32. In short, she signed the rewritten leases because her friend Domi asked her to do so.

33. Liczyk had a blind spot when it came to her trusted friend Domi. Just as in September 1999 when Liczyk let MFP obtain a new deal with the City by extending the lease terms from 3 to 5 years without challenge, Liczyk was not on her guard when Domi presented her with a box of documents to sign in July 2000. Domi took advantage of Liczyk's trust, walked away with signed contracts that cost the City a minimum of \$2.5 million, and pocketed \$420,000 in commission.<sup>51</sup> Liczyk was duped by Domi.

***e) Liczyk refused to admit her conflict of interest***

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<sup>49</sup> Liczyk 11/17/2003 at 122, 146-147; Scarcello Affidavit, para. 11, 09/01/2004 at 74-75.

<sup>50</sup> Liczyk 11/06/2003 at 77-78.

<sup>51</sup> Flanagan 02/18/2003 at 125; COT080176 at COT080195, 61:1:Report.

34. Liczyk never acknowledged that she had placed herself in a conflict of interest situation in any way.<sup>52</sup> Nor could she admit that her ability to guard the public interest might have been impaired by her relationship with Domi.<sup>53</sup>

35. Liczyk claimed that she applied a subjective “three part test” when considering whether to accept a supplier’s invitation to a social event:

- a. first, whether the City was in an active procurement period;
- b. second, whether attending the event would create a sense of obligation; and
- c. third, whether or not attending the event would impair her decision making.<sup>54</sup>

36. Liczyk claimed never to have been in doubt about the propriety of any decision to socialize with City suppliers she made after applying her subjective test. Liczyk never sought the advice of her colleagues regarding her conduct. In fact, she never asked herself what her staff, or other members of senior management, or members of Council, might think of her conduct. Nor did she turn her mind to what the ordinary reasonable taxpayer might think.<sup>55</sup>

37. This three part test was an after the fact artifice. Liczyk was obliged to comply with the terms of her employment agreement and the conflict of interest policies that applied to her. She did not. Moreover, given the evidence that has already been heard in TECI, it is impossible to believe that Liczyk ever applied

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<sup>52</sup> Liczyk 11/18/2003 at 50.

<sup>53</sup> Liczyk 11/18/2003 at 59.

<sup>54</sup> Liczyk 11/18/2003 at 50-51.

any such standard to her conduct. The Commissioner should reject Liczyk's evidence as a self-serving attempt to justify her conduct.

38. Liczyk should have been a leader by setting standards for others to follow. She did not provide such leadership. Despite this, and fortunately for the City, Liczyk's staff who testified at the Inquiry all seemed to understand their obligation to avoid conflict of interest situations far better than did Liczyk. For example, not one of her Finance staff was ever entertained by MFP.<sup>56</sup>

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<sup>55</sup> Liczyk 11/18/2003 at 51-52.

<sup>56</sup> Rabadi Affidavit, para. 11, 06/24/2003 at 125; Pagano 02/25/2003 at 175; Altman 07/07/2003 at 106-107; Beattie Affidavit, para. 40, 03/31/2003 at 69; Colley 09/03/2003 at 57-58.



#### **4. Liczyk failed to recognize the complexities of introducing a large scale leasing program to the City**

##### ***a) Liczyk's failure to appreciate that the computer leasing program was complex***

39. Introducing and implementing a large scale computer leasing program at the City in 1999 was a complex undertaking. It had to be done quickly, to meet the deadlines imposed by the Y2K issue. It was being done on such a large scale for the first time at the City. It followed quickly on the heels of amalgamation, and City staff were still dealing with the merger of staff, systems, and policies. It presented a significant challenge.

40. As the City's senior financial officer, Liczyk should have been alert to the need for careful consideration of the implications of the introduction of this program at the City. She was not; rather she admitted that she did not apply her usual rigour and attention to detail to this program.<sup>57</sup> To Liczyk, it was a straightforward one-time transaction of \$43 million.<sup>58</sup> It was not a high priority or high risk. It did not require a lot of "day to day coaching or structuring on how this . . . particular assignment would actually be carried out".<sup>59</sup>

41. Liczyk's approach to the computer leasing transaction was overly simplistic. She thought it was much like a car lease.<sup>60</sup> She failed to appreciate the complexities involved, both in general and as they related to her Department. If she had been more engaged in thinking through the implications of the program, and been more diligent about identifying and addressing the issues involved, it would have been apparent to her that the program required the ongoing involvement and oversight of someone with financial expertise.

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<sup>57</sup> Liczyk 11/03/2003 at 185-186.

<sup>58</sup> Liczyk 11/03/2003 at 178.

<sup>59</sup> Liczyk 11/03/2003 at 177-178.

<sup>60</sup> Liczyk 11/03/2003 at 289-290.

42. Liczyk herself recognized in hindsight that someone should have exhibited leadership, and clearly assigned roles and responsibilities.<sup>61</sup> She tried to blame her staff for their lack of leadership on these issues. This was merely an attempt to deflect criticism from herself. In reality, it was up to Liczyk to take the Finance lead, to communicate directly with Andrew (both as the head of Finance and as Andrew's Acting Commissioner), and to clearly set out her expectations to her staff.

43. Instead, Liczyk's close relationship with Domi and her consequent continued involvement in the computer leasing program gave the appearance that she herself was the Finance lead. This impression was reinforced by that fact that Liczyk:

- a. held the only position in Finance that cut across PMMD, Treasury, Accounting Services and Budget Services;
- b. wore a second hat as the Commissioner responsible for I&T; and
- c. failed to appoint one of her staff as the lead, or to adequately and clearly delegate roles and responsibilities.

***b) Liczyk's failure to communicate***

44. Liczyk was the senior City staff person involved with the computer leasing initiative. Moreover, for most of 1999, she had a dual role as CFO and Treasurer with acting responsibility for I&T. She was the only person with the authority to ensure that Finance and I&T understood what each department intended to

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<sup>61</sup> Liczyk 11/18/2003 at 43; Liczyk 11/12/2003 at 39.

accomplish and that each had evaluated the other's plans. She failed entirely. Liczyk:

- a. never engaged in any meaningful discussion with Andrew or Viinamae about their vision for the computer leasing program; and
- b. never communicated with I&T to ensure there was a clear understanding between Finance and I&T with respect to their respective roles and accountabilities.

45. In addition, she failed to communicate well with Brittain and the other staff in her own Department. Liczyk never:

- a. assigned overall responsibility for Finance's involvement in the leasing program to anyone; and
- b. articulated her expectations of her staff to them.

46. Liczyk attempted to downplay her ongoing role and involvement in the computer leasing program. At this Inquiry she claimed to have delegated a lead finance role to Brittain, and to have been involved very little herself.<sup>62</sup> Yet, the evidence from MFP witnesses told a different story:

- a. Liczyk was MFP's only contact within Finance;

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<sup>62</sup> Liczyk 11/03/2003 at 180-181; see Chapter 8 for more details.

- b. MFP saw Liczyk as a “key decision maker”,<sup>63</sup>
- c. it was she that Domi entertained and called regularly;
- d. it was she that Wilkinson contacted in September 1999 to discuss the Jakobek Amendment;<sup>64</sup>
- e. it was she who appreciated that I&T had exceeded Council authority by placing significantly more than \$43 million of hardware and software on lease, and she assumed responsibility for addressing it; and
- f. it was she who called the January 17, 2001 meeting with I&T and MFP.

47. In both appearance and reality, Liczyk was more involved with MFP and the computer leasing program than she cared to admit.

48. Liczyk’s evidence that she delegated clearly to Brittain and others and had no meaningful involvement herself should be rejected. It is contradicted by the clear evidence of her ongoing intermittent involvement in computer leasing, evidenced most visibly by her direction to move to a 5 year lease term. Her evidence was designed to:

- a. deflect attention and criticism from herself;

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<sup>63</sup> Ashbourne 12/17/2002 at 134; Wolfram 12/18/2002 at 150; COT023260, 63:3:6a.

<sup>64</sup> Wilkinson, paras. 69-70, 09/16/2003 at 67.

- b. provide an explanation for her continued, albeit intermittent, meddling in the computer leasing file; and
- c. explain why she continued to be MFP's only point of contact in Finance.

49. Liczyk should be criticized for her failure to take the necessary leadership in communicating both with I&T and within her department. Liczyk's self-serving evidence - which attempted to blame her staff for her own failures - should be rejected.

***c) Liczyk's failure to adequately review the P&F Report***

50. In keeping with her general lack of attention to and oversight of the leasing program, Liczyk testified that she did not pay much attention to the various drafts of the P&F Report, including the final version which she authorized. Such an approach was contrary to her usual hands-on style of drafting, as described by Rabadi and Brittain.<sup>65</sup>

51. In any event, if the P&F Report is to be criticized by the Commissioner, the responsibility for its contents as it relates to the involvement of Finance must rest with Liczyk:

- a. she was provided with a number of drafts of the P&F Report for her review throughout its development;

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<sup>65</sup> Liczyk 11/03/2003 at 185-186; Brittain 07/31/2003 at 127-128; Rabadi 07/02/2003 at 15.

- b. she should have been alert to the issue of shifting version control, as she received various drafts from both Rabadi and Andrew;
- c. she made at least one set of detailed changes, and took no steps to follow up on those changes to ensure they had been adequately addressed in the final P&F Report; and
- d. she met with Rabadi and Andrew by telephone to review the final draft before authorizing Andrew to sign it on her behalf.

***d) Liczyk never envisaged an ongoing oversight role for Finance after July 27, 1999***

52. If she had really thought through the complexities of the computer leasing program, Liczyk, together with Andrew, should have realized that Viinamae and her team would require significant and ongoing oversight by Finance after Council approval. Instead, both I&T and Finance accepted that Finance would play only a support role when specifically called upon for assistance by I&T. Finance was not involved in the MLA negotiations with MFP, in assessing quarterly lease rate factors, or in addressing Finance-related contract administration issues. Liczyk should have recognized the need for such involvement at the time. Instead, she could only admit in her testimony that it would have been a good idea in hindsight.<sup>66</sup>

53. I&T must bear primary responsibility for the failures of the computer leasing program. Nonetheless, Liczyk's failure to recognize and respond to the significant challenges faced by the City as it introduced a new large scale leasing program was a failure of the due diligence required of her office. Her inattention

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<sup>66</sup> Liczyk 11/12/2003 at 36-39.

and inaction resulted in the leasing program carrying on without any effective checks and balances in place.

## 5. Liczyk's failure to disclose

### ***a) Liczyk failed to disclose the excess amounts on lease with MFP to Council***

54. In November or December 2000, Liczyk became aware that I&T had placed considerably more than \$43 million of computer hardware and software on lease with MFP.<sup>67</sup> She was also aware that Council had approved only \$43 million with MFP, and that I&T had not returned to Council after July 27, 1999 for approval of additional leases with MFP.<sup>68</sup>

55. Despite this knowledge, Liczyk took no steps to clearly advise Council of these facts. The only information she gave to Council was a Budget Advisory Committee Report which merely indicated the need for an increase in 2001 budgeted leasing costs for software licences “[i]n order to support the expanded infrastructure”.<sup>69</sup> Garrett testified that this report conveyed only that, at some time in 2001, I&T planned an additional expenditure on software products. It neither explicitly nor implicitly identified that these additional costs related to unauthorized leases with MFP.<sup>70</sup>

56. Liczyk testified that she felt she had been as forthcoming as was necessary with Council:

Q: Ms. Liczyk, you are someone who is tough and direct and in your affidavit you have been in respect to talking about Council and some members, very blunt. But here, where the staff has exceeded Council's authority, and continues after this to exceed that authority in the millions and millions of dollars, you are not so blunt, and in fact, you reported through a budget vehicle, that doesn't simply and bluntly state staff exceeded your authority Council, by millions and millions of dollars and I

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<sup>67</sup> Liczyk 11/13/2003 at 102.

<sup>68</sup> Liczyk Affidavit, paras. 156, 252, 11/03/2003 at 62-63, 96-97.

<sup>69</sup> COT031894 at COT031896, 28:1:10.

<sup>70</sup> Garrett 12/06/2002 at 77-78.



have investigated it, and I have concluded that the following people are responsible. You didn't do that?

A: No, I did not, but I would say that at this point in time it was in my mind, water under the bridge, the spend had been made, the contracts had been signed, and this was a vehicle that we used to report out on over expenditures, or whether it be operating or capital and so this was my decision on how to report this out.

Q: Water under the bridge, or dirt under the rug?

A: I think I've described this as something that was the former.<sup>71</sup>

57. Liczyk did not disclose her concerns about the fact that I&T had exceeded Council authority by placing excess assets on lease with MFP with either Garrett, the CAO, or Anderton, the Commissioner responsible for I&T.<sup>72</sup>

58. There is no justification for Liczyk's failure to fully and explicitly report to Council that I&T had put significantly more on lease than the \$43 million approved by Council in July 1999.

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<sup>71</sup> Liczyk 11/04/2003 at 144-145.

<sup>72</sup> Liczyk 11/18/2003 at 145; Garrett 12/09/2002 at 74; Garrett 12/10/2002 at 175.