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1. Overview

1. Finance became involved in the computer leasing transaction at the invitation of I&T. All of the Finance witnesses understood that I&T was the program sponsor and as such was primarily responsible for the initiation, implementation, and administration of the program. The Commissioner should find that Finance was required to play a support role, and assumed primary responsibility only in the financial analysis of the competing bids and in the preparation of that portion of the P&F report.

2. Thus, Finance was not primarily responsible for any defects in the RFQ and the failure to consider whether an RFP would be better suited to protect the City's interests. Treasury staff were entitled to rely on the purported experience and expertise of Power to ensure that the terms of the RFQ were appropriate.

3. However, staff in PMMD could have done more to ensure that the project sponsor, I&T, had thoroughly assessed the various procurement options including the use of an RFP instead of an RFQ.

4. Treasury was not responsible for the ambiguities in the report to P&F, although Liczyk as CFO and Treasurer and Brittain as Director of Treasury could have done more to ensure that responsibility for drafting the report and incorporating changes was clearly demarcated between I&T and Finance.

5. Treasury's financial analysis of the bid responses was sufficient. In particular, Treasury staff correctly concluded that MFP's bid was a good deal for the City.

6. After Council awarded the leasing tender to MFP, I&T failed to clearly delineate Finance's ongoing role. Andrew, and later Viinamae, failed to foresee the need for ongoing support from various groups in Finance after the RFQ was awarded and thus failed to request that Liczyk assign a finance lead or team. Andrew and Viinamae are primarily responsible for this oversight.

7. However, Liczyk also failed to recognize that the computer leasing transaction was of sufficient significance and complexity that it required ongoing oversight and support from Finance after the RFQ award. She should have, but failed to, delegate the responsibility to one of her Directors. Even more problematically, she continued to behave as if she was the Finance lead on the file on a number of occasions.

8. Accordingly, Finance was not responsible for and had no role in:

- a. contract negotiations with MFP;
- b. reviewing the lease rate factors on a quarterly basis;
- c. supervising the leasing expenditures undertaken by I&T to ensure that they did not exceed the \$43 million cap.

9. That said, Brittain, Pagano, and Shultz were senior managers and should have done more to insist on the clear definition of roles, both between Finance and I&T, and within Finance itself. They were content with a largely hands-off approach, only becoming involved where specifically called upon to do so and then only to the extent necessary. In particular:

- a. Brittain did not clarify the meaning of the Jakobek Amendment with Liczyk;
- b. Brittain did not take steps to ascertain who, why, or how “Finance” had authorized Viinamae to commit the City to five year leases as explained in Viinamae’s October 1, 1999 email;
- c. Colley, Shultz, and Brittain could have done more to ensure there was a coordinated response from Finance to assist I&T and the CMO with ongoing leasing issues after I&T requested assistance.

2. Not all of the Finance witnesses were implicated in all aspects of the MFP computer leases

10. The Finance witnesses were not responsible for and had no role in:
 - a. the lease rewrites;
 - b. the Oracle transaction;
 - c. contract negotiations with MFP;
 - d. supervising leasing expenditures to ensure that they did not exceed \$43 million dollar cap; and
 - e. reviewing the lease rate factors.

3. The Finance Divisions reasonably relied on Power's purported expertise throughout the process of drafting the RFQ, evaluating the responses, and drafting the P&F Report

11. Andrew delegated responsibility for drafting the leasing tender documents to Power. Power had primary responsibility for drafting the RFQ. He was not hired by either PMMD or Treasury. He did not report to anyone in PMMD or Treasury, nor did PMMD or Treasury have responsibility for supervising his work.

12. Neither Treasury nor PMMD had the authority to challenge departments on their expertise, or to question whether an expert retained by a department, such as Power, had sufficient expertise to adequately identify and define departmental needs, or to communicate the intentions and pitfalls of leasing.¹

13. Both PMMD and Treasury were told by I&T that Power was a consultant who had considerable experience with computer leasing.² PMMD and Treasury therefore reasonably relied on Power and I&T generally to have sufficient leasing expertise.³

14. Accounting Services and Budget Services were not involved in any part of the tender and award process, and did not become involved with the leasing program until after the fall of 1999.

15. Any failure that is attributable to Power is necessarily attributable to the division and the individuals who entrusted him with primary responsibility for the leasing process. Andrew and Viinamae considered Power to possess sufficient leasing experience and expertise and conveyed this to PMMD and Treasury. These Finance Divisions cannot be faulted for relying on the assessment of two senior City executives. The unavoidable conclusion is that responsibility for Power's deficiencies lies with I&T,

¹ Beattie Affidavit, para. 45, 03/31/2003 at 70-71.

² Rabadi 06/24/2003 at 214-215; Rabadi 06/25/2003 at 30-31; Brittain Affidavit, para. 15, 07/09/2003 at 147; Brittain 07/29/2003 at 17, 107-108; Altman 07/09/2003 at 130; Beattie 03/31/2003 at 218; Beattie 04/01/2003 at 18-19.

³ Brittain Affidavit, para. 15, 07/09/2003 at 147; Altman 07/07/2003 at 14-15; Pagano 02/26/2003 at 11-12; Beattie 04/01/2003 at 7; Pagano 03/04/2003 at 219-220.

the sponsor division, who hired and supervised him. In short, no one in Finance can be held responsible for the following:

- a. ensuring that Power had enough training and experience to draft RFQs, to evaluate responses to RFQs, or to evaluate lease rate factors; or
- b. raising concerns with the CFO and Treasurer or anyone else about Power's expertise.

4. The RFQ

a) PMMD did not ensure that I&T adequately assessed procurement options

16. It is the role of PMMD to provide an open, fair, and competitive tender process.⁴ It is also the role of PMMD to provide advice to the project sponsor in relation to the appropriate procurement process. In order to fulfill this role, PMMD must make adequate inquiries to ensure that the project sponsor has selected the correct procurement process. Here, the evidence suggests that PMMD should have asked more questions, particularly after receiving a May 26, 1999 document drafted in the form of an RFQ, but still containing the term `RFP' in some places.

17. It is not the role of PMMD to provide expertise to the initiating department with respect to the goods and services to be acquired.⁵ In this case, it was not the role of PMMD to provide expertise with respect to leasing since it was part of the goods or services being acquired.⁶ PMMD reviewed the specific needs and technical requirements as drafted by I&T, the initiating department, but only to ensure that the tender was not obviously deficient or otherwise in breach of PMMD requirements.⁷

18. PMMD reasonably relied on I&T to communicate the intent and scope of the tender. I&T failed utterly to convey the intention to create an ongoing vendor of record relationship for an unlimited amount of assets. PMMD cannot be faulted for relying on the information provided by I&T, which suggested that the tender related to a one-time leasing transaction for \$43 million dollars worth of assets.

19. I&T, the sponsor department, was primarily responsible for drafting the RFQ. It did not involve PMMD in the process, and certainly did not involve PMMD early enough. As set out in Chapter 6, there is no evidence to show that Power or anyone else from I&T sent a copy of the draft RFQ to PMMD. Spizarsky somehow obtained a late draft of

⁴ Pagano 02/24/2003 at 154.

⁵ Pagano 02/24/2003 at 130-131.

⁶ Beattie Affidavit, paras. 30, 41, 03/31/2003 at 65, 69.

the RFQ, perhaps from Power, and forwarded it to Beattie on May 27, 1999 for his review.⁸ This marked the beginning of PMMD's involvement with drafting the RFQ.⁹ Beattie received the draft RFQ on Thursday, May 27, 1999 with the instructions that the RFQ was to be issued as soon as possible. The RFQ was issued within two business days, on Monday, May 31, 1999. PMMD had very little time to make inquiries and, in any case, it remains unknown what inquiries Spizarsky may have made, as he did not testify before this Commission.

b) Treasury sufficiently reviewed the draft RFQs where they were asked to do so

20. I&T was primarily responsible for drafting a tender document which adequately protected the City's interests. It was up to I&T to determine what, if any, assistance it required from other City departments and divisions. In this case, it wrongly determined that it did not require assistance from Legal Services in reviewing the draft tender, and I&T alone is responsible for that regrettable decision.

21. I&T correctly concluded that it required assistance from Treasury in reviewing the draft RFQ. However, Treasury correctly concluded that its role in reviewing the draft was limited, and that it was not responsible for supervising I&T's drafting efforts or determining whether I&T had the requisite expertise to undertake the process.

22. It was not Treasury's role to be involved in the computer leasing RFQ drafting process. It was not the project sponsor. Treasury only reviewed the draft RFQ because they were asked to do so by I&T.

23. Rabadi and Brittain had some preliminary discussions with I&T in May 1999 about the RFQ. They understood the purpose of these discussions to be their

⁷ Beattie Affidavit, para. 12, 03/31/2003 at 57-58.

⁸ Beattie Affidavit, paras. 42-43, 03/31/2003 at 69-70; COT005800, 24:1:20; COT005801, 24:1:21.

⁹ Beattie 03/31/2003 at 124.

forthcoming role with respect to the lease versus purchase analysis after the closing of the RFQ.¹⁰

24. Neither Brittain nor Altman played any significant role in the drafting of the RFQ. Brittain did not review the RFQ, and was not aware of its contents.¹¹

25. As set out in Chapter 6, Rabadi made some handwritten suggestions on an early draft of the RFQ.¹² These comments were merely suggestions made at Power's direct invitation.¹³ Later in the process, Rabadi made further comments on a draft that Brittain forwarded to him for review.¹⁴ Power invited these comments from Treasury, was entitled to dismiss them, and continued to exercise ultimate control over the content of the RFQ.

26. Treasury's limited involvement in the RFQ drafting process is also evidenced by the exchange of emails between Altman and Rabadi on May 17, 1999.¹⁵ These emails demonstrate that, even two weeks before the RFQ was issued, Treasury did not believe that a final decision to lease had been made.

27. Based on the roles and responsibilities of the Finance witnesses set out above, they cannot be criticized for their distance from the details of the tender. None of the Finance witnesses were responsible for conceptualizing, planning, or structuring the leasing tender, nor were any of them responsible for supervising I&T during the drafting process. Moreover, neither PMMD nor Treasury had any firsthand knowledge of the details of the leasing transaction. Both PMMD and Treasury reasonably relied on I&T to clearly articulate the objectives of the leasing transaction and to supply relevant and accurate operational specifications for the tender. Accordingly, neither Treasury nor PMMD can be faulted for failing to:

¹⁰ Rabadi Affidavit, paras. 17-19, 06/24/2003 at 127; Brittain Affidavit, para. 16, 07/09/2003 at 147.

¹¹ Brittain 07/31/2003 at 64-65; Altman 07/07/2003 at 24-25.

¹² Rabadi Affidavit, para. 21, 06/24/2003 at 127-128.

¹³ Rabadi Affidavit, paras. 21-23, 06/24/2003 at 127-128.

¹⁴ Rabadi Affidavit, para.22, 06/24/2003 at 128.

¹⁵ COT014311, 52:2:7; COT043243, 46:1:92; COT012753, 46:1:20.

- a. ensure that the leasing transaction was accurately described;
- b. specify the intent to do a sale leaseback transaction;
- c. particularize the sale leaseback equipment;
- d. provide the leasing volume estimates, and the value of equipment;
- e. specify the leasing term;
- f. specify the mandatory requirements and providing the terms for disqualifying bids; and
- g. specify the real estimated value of the RFQ.

5. Evaluation of responses to the RFQ

a) Treasury was responsible for performing financial analysis: it properly performed this support role

28. Treasury understood that I&T was leading the process, which began in May 1999 with the RFQ, and culminated in the contracts with MFP.¹⁶ A program department, such as I&T, which was responsible for implementing the program, was in a better position than Finance, which served a corporate services role, to assess which vendors would satisfy that program department's requirements.¹⁷

29. Treasury's role in the RFQ evaluation was limited to conducting the lease versus purchase analysis by comparing the bid pricing to debenturing.¹⁸ Treasury was asked to do a financial evaluation of the proposals.¹⁹ This evaluation involved a financial calculation of the costs to the City of leasing equipment for a three year period, with and without the exercise of a purchase option. Power provided Rabadi with the RFQ responses and any additional operational information he needed to perform this financial analysis.²⁰ In fulfilling these responsibilities, Treasury reasonably relied on operational assumptions provided by I&T.²¹

30. Kerr testified that, ideally, the sponsor department should begin the leasing process by mapping out its intentions with respect to the leasing program.²² This mapping process encompasses decisions about refresh and end of term strategies. In the absence of such a plan, it is very difficult for an organization to perform a complete financial analysis.

31. At the time that Treasury was performing the financial analysis, I&T was anxious to acquire and roll out all of the desktops ahead of the looming Year 2000 deadline. I&T

¹⁶ Brittain 07/29/2003 at 112-113.

¹⁷ Brittain 07/29/2003 at 142-143.

¹⁸ Brittain 07/29/2003 at 110, 113.

¹⁹ Power 03/06/2003 at 99; Power 03/24/2003 at 59.

²⁰ Power 03/27/2003 at 200-202; Rabadi 06/25/2003 at 56.

²¹ Brittain Affidavit, para. 28, 07/09/2003 at 150-151.

²² Kerr 09/15/2003 at 113.

mistakenly believed that leasing was a flexible option that would permit the City to establish a plan for refresh and end of term strategies later, after the desktops were safely on the desks of City staff. Accordingly, I&T (and Finance in its supporting role) were under pressure to award the tender in July 1999, so that the equipment could continue to be acquired and placed on the lease prior to January 1, 2000. This time pressure rendered the possibility of designing a comprehensive technology plan extremely difficult. In the absence of a comprehensive plan, Treasury could only perform a limited financial analysis.

32. In any case, Treasury's financial analysis was properly based on the most conservative financial assumptions. It compared the cost of debenturing against the cost of leasing for three years, and then purchasing the equipment, the most expensive leasing option. Even on this comparison, leasing was a better financial option for the City than debenturing. Treasury's analysis was based on the reasonable assumption that I&T would negotiate a leasing contract consistent with the terms of MFP's response to the RFQ, and its best interests.

33. Rabadi was responsible for conducting the financial analysis of the six RFQ responses under the direction of Altman and Brittain. No one ever questioned Rabadi's analysis or calculations.²³ In fact, Kerr confirmed that Rabadi's numbers were accurate.²⁴

34. Treasury was completely dependent on I&T for the operational assumptions to be used in its financial analysis. As set out in Chapter 7, email exchanges between Rabadi and I&T show that I&T repeatedly provided vague information and ill-informed assurances in response to Rabadi's questions. The leasing expert hired by this Inquiry concluded that Treasury's financial analysis, assessed in light of I&T's deficiencies, was sound. Accordingly, Treasury cannot be held responsible for:

- a. ensuring the responses were thoroughly and accurately assessed;

²³ Rabadi Affidavit, para. 29, 06/24/2003 at 130; Power 03/24/2003 at 73-74.

²⁴ Kerr 09/15/2003 at 206.

- b. ensuring that responses to section 1.1.17 in the RFQ provided a complete mechanism for changes to lease rates;
- c. ensuring that all costs, including end of term costs, were evaluated;
- d. analyzing the cost of software, including an assessment of whether or not software should be leased at all;
- e. ensuring that 90 days was enough time to obtain Council approval and complete the leasing transaction; or
- f. considering the financial impact of not completing the leasing transaction within 90 days.

b) PMMD adequately performed its role after the RFQ was issued

35. PMMD adequately performed its role with respect to the evaluation of responses to the RFQ. PMMD had a very limited role in the evaluation of the responses to the RFQ and the report to the P&F summarizing that evaluation.²⁵ PMMD was not responsible for reviewing the substantive content of the responses to the RFQ.

36. In general, after the closing date specified in a tender, PMMD's role was to summarize the bids received and to forward the results to the initiating department.²⁶ The initiating department would then evaluate the bids and send a letter of recommendation to PMMD. PMMD would review the letter of recommendation for compliance with City policies.²⁷ For purchase transactions exceeding \$2.5 million dollars, PMMD would ensure that the initiating department prepared a report to the Standing Committee for forwarding to City Council.²⁸

²⁵ Beattie 04/01/2003 at 9-10.

²⁶ COT030534, 20:1:32.

²⁷ COT030534, 20:1:32.

²⁸ COT030534, 20:1:32.

37. On June 11, 1999, Beattie assembled the responses to the computer leasing RFQ and sent them to Power on behalf of Spizarsky.²⁹ In addition, on June 11, 1999, Spizarsky sent a memo to Power which enclosed the six responses to the RFQ.³⁰ This memo directed Power to examine the six quotations and to make a recommendation for the successful bidder. PMMD's conduct was entirely in keeping with its limited role.

38. PMMD adequately performed its limited procurement process function. It was not PMMD's responsibility to review the terms of the responses to a tender, apart from ensuring that PMMD requirements were met. Accordingly, PMMD witnesses had no obligation and cannot be faulted for not alerting the sponsor department or anyone else to any adverse details of the bids. Neither Treasury nor PMMD can be held responsible for:

- a. ensuring that each paragraph of the responses to the RFQ met the requirements of section 1.1.17; or
- b. disqualifying MFP's response because it did not contain a complete mechanism for lease rate changes under section 1.1.17.

²⁹ Beattie 03/31/2003 at 140.

³⁰ COT005765, 2:1.1:7.

6. P&F Report

a) Neither Treasury nor PMMD were primarily responsible for the content of the P&F Report

39. PMMD played only a minor role in drafting the P&F Report: to ensure that the actual procurement process undertaken was accurately described.

40. Treasury was responsible for completing the financial analysis for the lease transaction. Its financial analysis met a reasonable standard.

41. As set out in Chapter 7, Rabadi was the most involved of Treasury staff in drafting the P&F Report. Rabadi reasonably relied on the information and direction provided by Power when considering what information was necessary to include in the report. Treasury was not obliged to verify or exercise due diligence over the operational assumptions provided by the program sponsor, I&T. In particular, they were entitled to rely on I&T to provide fair, accurate, and complete information about:

- a. the timing of acquisition of the assets;
- b. the number of assets to be acquired;
- c. the value of assets to be acquired;
- d. the sale leaseback transaction; and
- e. the description of the leasing program.

42. Equally, it was not the obligation of any of the Finance witnesses to raise concerns about changes and deletions made by I&T to the P&F Report with respect to any of these operational issues.

43. Power agreed that Rabadi could not have been expected to advert to the possibility of additional operational issues, such as the cost of upgrades, buyouts and end of term options, and that it was incumbent on Power to assess the relevancy of these factors and to advise Rabadi of such issues.³¹ Power also provided information to Rabadi confirming that \$43 million of equipment would be received within the 90-day guarantee period, thus allaying any concern about the risk of future lease rate changes. Treasury witnesses were therefore not responsible for alerting Liczyk to this issue, or for including it in the P&F Report, because they reasonably relied on I&T's assurance that all of the equipment would be received before the 90 days expired.

44. Rabadi and Power, provided various drafts of the P&F Report, circulated them for review, and incorporated suggestions made by others. Rabadi provided Liczyk, Brittain, and Altman with copies of the drafts of the report as it progressed. Similarly, Power kept Viinamae and Andrew apprised. Rabadi reviewed the final version with Liczyk in detail by telephone, and with Andrew in person, before either signed it.³² It was up to Liczyk to raise any concerns she might have had about revisions or deletions to the report; it was similarly up to Andrew to ensure I&T's concerns were adequately addressed. As co-signatories, Andrew and Liczyk bore ultimate responsibility for the final content of the P&F Report.

45. For these reasons, neither Treasury nor PMMD can be criticized for any deficiencies in the P&F Report.

b) Neither Treasury nor PMMD were responsible for the failure of the P&F Report to spell out I&T's ill-conceived vision

46. PMMD and Treasury were entitled to rely on I&T to ensure that the P&F Report accurately represented its conception of the leasing program. No one in PMMD or Treasury should be criticized because the report that went to Council did not reflect I&T's ill-conceived vision of the leasing program as an open-ended vendor of record for

³¹ Power 03/27/2003 at 201-202.

³² Rabadi 06/26/2003 at 7-8.

an unlimited amount of equipment. Indeed, had I&T ever clearly communicated its vision to anyone in Finance, it would have been incumbent on Finance to recommend against such an open-ended program.

47. To the extent that I&T witnesses suggested that the only problem with the RFQ and the P&F Report was ambiguous drafting, and that Finance was equally responsible for this ambiguity, these witnesses missed the point. I&T's vision was ill-conceived and not in the City's interest, full stop. The claim of I&T's witnesses that the P&F Report's ambiguities allowed them to proceed with their vendor of record vision is evidence of their casual, ill-informed approach to Council approval.

48. In contrast, the Finance witnesses fairly understood that they were describing a transaction limited to the acquisition of an estimated \$43 million of computer hardware and software within the 90 day guarantee period, with a 10% cushion, for a lease term of three years, and with a requirement for a report back to Council for any additional acquisitions. As described in Chapter 7, when read in full, the P&F Report contained each of these elements, and this is what Council approved.

49. There is no doubt that this Inquiry has identified a number of ambiguities in the P&F Report. However, these ambiguities would not have been of any consequence had I&T complied with the authority granted by the P&F Report. I&T staff had an obligation to be diligent about the nature and scope of Council's ultimate approval as set out in the P&F Report.

50. As a result, the Treasury and PMMD witnesses cannot be criticized because the P&F Report did not:

- a. indicate that the total amount of the leasing transaction would exceed \$43 million dollars. Alternatively, if the total amount of the leasing transaction was limited to \$43 million dollars, neither Treasury nor PMMD had the primary obligation to ensure that this limit appeared in the recommendations section;

- b. clearly highlight the 90 day limit to the quoted lease rate factors;
- c. describe all aspects of the transaction, including end of term and refresh options; or
- d. describe MFP as the vendor of record.

c) Treasury and I&T failed to clearly demarcate responsibility for drafting the report

51. The P&F Report was a joint report of I&T and Finance. Therefore, both I&T and Finance were obliged to ensure that departmental and individual responsibility for drafting the report was clearly defined and demarcated. Although I&T as program sponsor is primarily responsible for the lack of clearly defined accountabilities, Finance could have done more to ensure that departmental and individual responsibility for the drafting the report was clearly spelled out. Because the division of responsibility was not clearly defined, version control shifted back and forth, and information included in the report by Treasury was later removed by I&T without adequate communication between I&T and Treasury.

52. Moreover, after the fact, the failure to clearly define accountability for the report at the outset made it possible for some of those involved to deny any responsibility. Andrew, although he was a signatory, admitted that he played only a minor role in the drafting of the P&F Report.³³ Viinamae, to whom Power reported, denied that she had any responsibility.³⁴ This would not have been possible if clear accountability had been addressed between I&T and Finance from the beginning, and if roles and responsibilities had been clearly defined and assigned.

53. The P&F Report was, as acknowledged by the witnesses, a joint report. In retrospect, the P&F Report ought not to have been a joint report. Since the events that

³³ Andrew 09/25/2003 at 34-35.

³⁴ Viinamae 10/28/2003 at 103-105.

are the subject of this Inquiry, the City has adopted a different approach to report writing which clearly divides responsibility between sponsor departments and Finance. Today, sponsor departments are obliged to take responsibility for reports. The CFO and Treasurer and Finance are responsible for the financial implications portion only.

7. Jakobek Amendment

a) Treasury did not do enough to clarify the meaning of the Jakobek Amendment

54. Brittain did not do enough to clarify the meaning of the Jakobek Amendment with the CFO and Treasurer after the July 20, 1999 meeting and before the P&F Report went forward to Council on July 27, 1999. Brittain admitted that he found the Jakobek Amendment vague, and that he did not understand it.³⁵

55. Brittain knew that Treasury had completed a financial analysis for a three year leasing program. He also knew that Treasury had not received any information from I&T or any bidder about five year lease rate factors or refresh options. As discussed in Chapter 8, Liczyk, as the CFO and Treasurer who discussed the amendment with Jakobek, was primarily responsible for the lack of clarity surrounding it. However, Brittain failed to take any steps to clarify the meaning of the Jakobek Amendment during an important period, one in which the amendment could have been fixed before sending it onto the Council floor. Brittain may be criticized for his inaction.

56. At the same time, it was reasonable for Brittain to believe that before I&T made any materially significant operational decision which changed the assumptions that formed the basis for Council approval, they would consult Treasury. Indeed, since I&T did not have a forward-looking plan, and had not established a refresh strategy or chosen an end of term option, it was reasonable for Brittain to believe that I&T would consult Treasury with respect to the financial implications of the options under consideration.

³⁵ Brittain 07/31/2003 at 90; Brittain Affidavit, para. 41, 07/09/2003 at 155.

8. Sale leaseback transaction

a) Treasury was jointly responsible for failing to obtain explicit Council approval for the sale leaseback transaction

57. An early draft of the P&F report prepared by Rabadi specifically referred to the vendors of equipment received by the City “re-invoicing” that equipment to the lessor.³⁶

Considering the urgency of the Y2K project, equipment worth \$__ has already been received by the City. If the recommendation in this report is adopted, the said equipment will be re-invoiced by the vendors to the lessor and then leased to the City.³⁷

58. Rabadi’s re-invoicing plan depicts an unusual scenario dependent on the co-operation of City vendors. It required a vendor to agree to unwind an entire transaction, and refund all of the money paid by the City, including taxes, only to rebook the transaction with MFP.³⁸

59. Power’s later draft of the P&F Report removed Rabadi’s reference to the vendor re-invoicing.³⁹

60. The final version of the P&F Report contained no reference to a sale leaseback or vendor re-invoicing, and provided no notice to Council of the intended transaction. Since neither the recommendations of the Report to Council, nor the body of the Report, made any reference to the sale leaseback transaction Council did not approve the sale of assets owned by the City to MFP. In the absence of Council approval, City staff had no authority to enter into the sale leaseback transaction.

61. Brittain was ultimately accountable for this error as a Director.

³⁶ Rabadi Affidavit, para. 40, 06/24/2003 at 133-134; COT012716, 49:2:11.

³⁷ COT012716 at COT012717, 49:2:11.

³⁸ Rabadi 07/03/2003 at 84-85.

³⁹ COT013811, 46:2:23; Rabadi 07/02/2003 at 83- 84.

b) Treasury failed to flag the negative tax impact of the transaction

62. As discussed above, the failure to refer to the sale leaseback transaction in the P&F Report meant there was no Council approval for the transaction and, by extension, no Council knowledge or approval of the negative tax consequences. Rabadi's paragraph about re-invoicing did not specifically reference the tax issue. Even if this paragraph evidenced Rabadi's recognition of the negative tax implications of the sale leaseback, it inadequately signaled to a reader that there was a potential tax issue if vendors failed to co-operate.

c) Accounting Services reasonably pursued the GST/PST refund claim

63. On January 17, 2000, Viinamae sent an email to several individuals in Finance.⁴⁰ This email precipitated the involvement of Accounting Services with the tax liability issue. Colley assigned Alex So, who was in an indirect reporting relationship with him, the task of figuring out the tax issues.⁴¹ During the same time frame that Colley assigned the tax issue to So, he asked Ernst & Young, the City's external auditors, to examine the entire leasing program, including the tax issues.⁴²

64. Colley properly supervised So and the other City staff involved to ensure that the City's response to the Minister of Finance was thorough, complete, and submitted in a timely manner. Colley may not have ensured up front that the City could claim the return of PST and GST, but as soon as he was aware of the issue, he assigned the task to someone and obtained external advice. Colley's actions were entirely reasonable.

65. After the auditors concluded that the City needed to show an intent to lease prior to the July 1999 Council Report in order to obtain a PST rebate, Accounting Services began to search for a report that predated the July 1999 Council Report. So started to make inquiries of the CMO.⁴³ He continued to exchange emails with individuals in the

⁴⁰ COT013801, 63:13:15a.

⁴¹ Colley 09/04/2003 at 11-14.

⁴² Colley 09/04/2003 at 15.

⁴³ Colley 09/04/2003 at 45-46.

CMO, updating them on the status of the City's tax rebate claims.⁴⁴ By August 24, 2000, So had received the Ministry of Finance's denial of the City's PST rebate claim.⁴⁵ As set out in Chapter 11, he engaged in a lengthy exchange of letters, ruling requests, and formal applications, the final appeal of which is still pending.⁴⁶

66. On May 17, 2000, So sent a letter to CCRA with respect to the GST refund issue.⁴⁷ By August 24, 2000, the City had successfully obtained a GST refund.⁴⁸

d) Disposition of assets

67. Although PMMD failed to spot the disposition of assets issue entwined with the sale leaseback transaction, this failure is insignificant, and immaterial to the issues before the Commission.

68. The City's Purchasing Bylaw contained a section on the sale or disposal of surplus materials or equipment.⁴⁹ However, this section did not exist in the interim Bylaw which governed the time period pertaining to the sale leaseback transaction.⁵⁰

69. In any case, it is far from clear that the Purchasing Bylaw that was stated to apply to the sale leaseback transaction in fact applied to it at all. Arguably, the Purchasing Bylaw invoked during Pagano's testimony did not even address the disposition of assets issue contained in the sale leaseback transaction. After all, the sale leaseback transaction was considerably different from a situation in which the assets physically left City property and the City lost all use of the assets.⁵¹ Moreover, the bylaw referred to "obsolete or surplus assets", and the sale leaseback equipment was neither obsolete nor surplus.

⁴⁴ COT015584, 62:4:33; COT063979, 55:2:42.

⁴⁵ COT072239, 55:2:43.

⁴⁶ COT072239, 55:2:43; COT062098, 55:2:44; COT062099, 58:2:4; Colley 09/04/2003 at 82-83.

⁴⁷ COT076640, 58:2.

⁴⁸ COT072239, 55:2:43.

⁴⁹ COT036845 at COT036853-36854, 54:2:44.

⁵⁰ COT031536, 3:2:48; COT038188, 3:2:50.

⁵¹ Pagano 03/04/2003 at 175.

9. Five year lease terms

a) Treasury failed to take any steps to investigate the reference to five year lease terms in Viinamae's October 1, 1999 email

70. Brittain had previous knowledge that MFP had proposed five year lease terms to the City and that longer lease terms did not provide any benefit to the City. He attended a meeting with Liczyk and MFP on September 21, 1999.⁵² At this meeting, there were discussions about whether it made financial sense to extend the term of the leases beyond three years.⁵³ A couple of days after this meeting, Brittain performed some rudimentary analysis of five year lease terms, and quickly realized that MFP's proposal to extend the lease terms to five years made no sense for the City.⁵⁴

71. Brittain agreed that Viinamae's email announcement of October 1, 1999 was the first he learned of the decision to place the majority of hardware and software on five year leases with MFP.⁵⁵ Brittain candidly and fairly admitted that the email did not raise any red flags and that he did not follow up on this email, and that he probably should have done so.⁵⁶ Although Brittain was accustomed to receiving emails from Viinamae copied to numerous individuals with respect to each and every aspect of the Y2K program, he was still obliged to scan the email.⁵⁷ Even a quick read should have sounded alarm bells.

72. As discussed in Chapter 10, Liczyk never delegated any responsibility to Brittain or anyone else in Treasury for analyzing or supervising the change to five year lease terms. Accordingly, Treasury cannot be held responsible for the following deficiencies:

- a. supervising, reviewing, or approving changes to the lease terms, including conducting financial analysis and reporting;

⁵² COT013063, 33:2:88; COT064004, 63:8:54; COT013253, 63:8:55; COT013190, 63:3:3a; COT013665, 63:4:1a; Liczyk Affidavit, para.181, 11/03/2003 at 71-72.

⁵³ Brittain 07/31/2003 at 96.

⁵⁴ COT074916, 49:2:11; Brittain 07/09/2003 at 234-235.

⁵⁵ Brittain 07/29/2003 at 6-7; Brittain Affidavit, para. 40, 07/09/2003 at 154-155.

⁵⁶ Brittain 07/28/2003 at 172-173.

⁵⁷ Brittain 07/28/2003 at 173.

- b. directing or agreeing to the change to five years without considering Council authority;
- c. providing financial analysis for five year lease terms;
- d. observing that the lease term exceeded the three years approved by Council; or
- e. directing a new RFQ.

73. Furthermore, PMMD cannot be held responsible for failing to notice that the lease schedules were for five year lease terms or for failing to direct a new RFQ. PMMD did not receive the lease schedules on an ongoing basis and was not responsible for their contents. The CMO was in charge of the lease schedules.

10. The leasing program and the absence of a Finance lead

a) Senior managers from Treasury Services, Accounting Services, and Budget Services failed to ensure that there was a coordinated response from Finance to assist I&T and the CMO with ongoing leasing issues

74. Both Liczyk and Andrew underestimated the need for ongoing Finance support for the ongoing leasing program. They ignored the fact that it was the first significant leasing transaction for the City and underestimated its complexity.

75. After Council awarded the leasing tender to MFP, I&T failed to clearly delineate Finance's ongoing role. Andrew, and later Viinamae, failed to foresee the need for ongoing support from various groups in Finance after the RFQ was awarded and thus failed to request that Liczyk assign a finance lead or team. Andrew and Viinamae are primarily responsible for this oversight.

76. However, Liczyk also failed to recognize that the computer leasing transaction was of sufficient significance and complexity that it required ongoing oversight and support from Finance after the RFQ award. She should have, but failed to, delegate the responsibility to one of her Directors. Even more problematic, on a number of occasions Liczyk continued to behave as if she was the Finance lead on the file.

77. That said, once Viinamae directly requested help with the ongoing leasing program and made known that assistance was required, Finance staff were required to respond, and to respond diligently and effectively.

78. On January 7, 2000, Viinamae sent an email to Brittain, Shultz and Colley, copied to Liczyk. She asked for the identity of the Finance lead that she should be working with:

To date I have met with representatives from all areas of Finance, but I am unsure of who the "point" person is.⁵⁸

79. Brittain responded that same day, to Viinamae only, indicating that: “As far as the point person for Finance, I will defer to [Shultz] since the issues now are generally Accounting in nature”.⁵⁹ Colley was not copied on Brittain’s response, and was not aware of this response.⁶⁰ He did understand his role, however, to be dealing only with accounting issues relating to the leasing program, and he discussed this specific role with Shultz.⁶¹

80. On at least two occasions between January 2000 and May 2000, Viinamae sent memoranda and emails to individuals in all of the Finance divisions.⁶² The Finance witnesses sometimes responded in writing, and often did not copy anyone else on their response.⁶³ None of the Finance witnesses advised Viinamae directly that her questions involved different people with different responsibilities within Finance, and none of them followed up with her.⁶⁴

81. Over the period between January 2000 and January 2001, none of the Finance witnesses from whom Viinamae had sought advice and assistance - Brittain, Shultz, and Colley - communicated with each other to ensure a coordinated response from Finance. No doubt overloaded by the demands of their own specific mandates, they operated as if Finance had separate silos of expertise that could not be integrated.

82. It was not until December 2000 that Liczyk specifically assigned Colley to become more involved in assisting the CMO with the accounting related financial aspects of leasing process.⁶⁵

⁵⁸ COT013082, 55:2:29.

⁵⁹ COT015690, 58:1:82.

⁶⁰ Colley 09/03/2003 at 93.

⁶¹ Colley 09/03/2003 at 94.

⁶² COT013801, 55:1:15; COT013802, 55:1:15; COT031414, 55:1:28; COT031415, 55:1:29.

⁶³ Colley 09/03/2003 at 99-100.

⁶⁴ Colley 09/03/2003 at 100-101.

⁶⁵ COT030579, 58:1:83; COT030583, 29:4:27.

b) None of the Finance Divisions were responsible for reviewing the lease rate factors

83. There is no document or communication from anyone in I&T to suggest that Finance ever had responsibility for reviewing lease rate factors.⁶⁶ No one in I&T ever communicated this expectation to anyone in Finance. The evidence of I&T witnesses, specifically Viinamae and Power, that they expected or believed that Finance would and should perform this role is wishful thinking at best and blame-shifting at worst.

84. Any review would have to occur without the benefit of competitive lease rate information from a re-tender. It is difficult to imagine how Finance was supposed to conduct any kind of meaningful analysis of the competitiveness of MFP's future lease rates in such circumstances.

⁶⁶ Power 03/25/2003 at 164; Colley Affidavit, para. 9, 09/02/2003 at 236-237.

11. PMMD ongoing interactions with CMO

a) PMMD did not provide sufficient guidance to the CMO about ongoing leasing processes, forms, and procurement requirements when requested

85. While PMMD did not ordinarily have an ongoing support role after a tender was awarded, in this case the CMO expressly asked for help in establishing the leasing processes, forms, and procurement requirements. PMMD failed to provide sufficient guidance.

86. During November and December 1999, Power and Leggieri were developing forms and an approval process for the future acquisition of computer hardware and software. They requested PMMD's assistance.⁶⁷ In early December 1999, Leggieri sent multiple drafts of the CMO Business Rules document and the CMO Leasing Program document to individuals in PMMD.⁶⁸

87. The CMO then invited Spizarsky and Pagano to a meeting scheduled for December 9, 1999.⁶⁹ Pagano did not attend this meeting.⁷⁰ Hewitt, Beattie, and Spizarsky attended. However, Beattie and Hewitt attended the meeting on behalf of the Client Services Division with respect to the SAP system.⁷¹ Spizarsky and Pagano discussed the meeting and drafted a memo to Viinamae, dated December 13, 1999.⁷²

88. In the memo, Pagano stressed the importance of proper purchasing procedures.⁷³ He attached a summary of purchasing requirements.⁷⁴ Pagano did not receive any further feedback from Viinamae or the CMO.⁷⁵ Pagano did not follow up on this memo to ensure that his suggestions were implemented. Pagano assumed from

⁶⁷ COT013069, 52:2:24.

⁶⁸ COT013069, 52:2:24; COT031625, 29:1:11; COT031620, 56:1:40; COT029387, 63:20:11.

⁶⁹ TEC019497, 20:1:44.

⁷⁰ Pagano 02/25/2003 at 127; Pagano 02/26/2003 at 114.

⁷¹ Beattie 03/31/2003 at 240-241.

⁷² Pagano 02/26/2003 at 116-117; COT016093, 63:13:10a.

⁷³ COT016093, 63:13:10a.

⁷⁴ COT016093 at COT016096, 63:13:10a.

⁷⁵ Pagano 02/25/2003 at 149.

the lack of response that his comments were taken into consideration.⁷⁶ He agreed that “perhaps” his staff should have followed up.⁷⁷

89. PMMD continued to attend occasional meetings with the CMO.⁷⁸ Both the Business Rules document and the ITLA form were developed by the CMO in consultation with PMMD.⁷⁹ Both of these documents clearly made reference to the Council approval obtained in July 1999 for the P&F Report, as authorization for these future purchases.⁸⁰ Neither Spizarsky nor Pagano appear to have questioned how approval for the lease of \$43 million of equipment, the vast majority of which was to have been received by September 1999, could have authorized future lease acquisitions. PMMD may be criticized for failing to spot this discrepancy and failing to provide proper guidance based on that discovery.

90. On July 12, 2000, Leggieri requested Pagano’s confirmation that PMMD did not want to play an approval role with respect to each ITLA form.⁸¹ Pagano confirmed the PMMD’s non-involvement with respect to equipment previously authorized to form part of the MFP lease and for which pricing had already been acquired through a competitive process.⁸² Neither he nor his PMMD staff considered the quantum of assets already placed on the MFP lease.⁸³

91. Pagano described PMMD’s process, circa March 2000, for placing computer hardware and software on the MFP lease. The starting point for PMMD was to ensure that the type of equipment in the departmental request could be included under the lease. This involved reviewing the terms of the leasing RFQ and the Council approval.⁸⁴ Pagano was unsure whether or not someone from PMMD actually performed these steps. Even a brief perusal of these documents should have raised red flags for PMMD

⁷⁶ Pagano 02/26/2003 at 118.

⁷⁷ Pagano 03/04/2003 at 66-67.

⁷⁸ Pagano 03/04/2003 at 71-72; COT065114 at COT065115, 55:2:28.

⁷⁹ Pagano 03/04/2003 at 97-98.

⁸⁰ COT029387 at COT029395, 63:20:11; COT029387 at COT029389, 63:20:11.

⁸¹ COT072360, 55:2:33.

⁸² COT072360, 55:2:33; Pagano 03/04/2003 at 104-105.

⁸³ Pagano 03/04/2003 at 106-107.

⁸⁴ Pagano 03/04/2003 at 88.

with respect to the acquisition of computer equipment into the future and the sheer amount of computer equipment being placed on lease.

b) The September 2000 purchase requisition

92. PMMD's only further involvement, apart from contributing to the CMO's forms and processes, as detailed in Chapter 12, concerned the blanket contract and purchase requisition process.

93. Once Council approved a transaction with a particular vendor, the department wishing to acquire the goods and services from the approved vendor ("user department") was required to send PMMD a purchase requisition. The purchase requisition, together with the relevant Council authority, authorized PMMD to issue either a purchase order, for a single one-off purchase, or a blanket contract (also referred to as an open order contract) for a series of purchases over time.⁸⁵

94. Once issued, a blanket contract authorized a series of transactions over time with one vendor, without requiring the user department to obtain specific authority each time. A blanket contract would therefore specify an "upset limit", or maximum amount, as authorized by Council. Each time the user department made a purchase under a blanket contract, it would issue a contract release order against the blanket order for the amount of that purchase.⁸⁶ When contract release orders had been issued up to the amount of the upset limit, no further purchases could be made against that blanket order.

95. PMMD relied on the user department to provide all of the necessary information required to issue the purchase order or blanket contract. In the case of a blanket contract this included the amount of the upset limit, the start and end dates, various internal cost centre and accounting entry codes, and the source of the Council authority for the transaction or series of transactions with the particular vendor.

96. PMMD did not receive a purchase requisition from I&T for the MFP leasing transaction until September 18, 2000 (“MFP Purchase Requisition”), almost one year after the City entered into the first Equipment Schedule.⁸⁷ The MFP Purchase Requisition described an open order contract with MFP for a five year term, from January 1, 2000 to December 31, 2005, for “the cost of leasing hardware, software, scanners, printers”, at a price of \$40 million.⁸⁸ The MFP Purchase Requisition contained a notation referencing the July 1999 Council Report as the authority for the transaction.⁸⁹ Andrew signed the MFP Purchase Requisition, thereby providing the necessary departmental approval.

97. The MFP Purchase Requisition issued by I&T and authorized by Andrew was deficient in a number of respects:

- a. it was not issued until almost one year after Viinamae signed the first Equipment Schedule placing \$23 million on lease;
- b. the commencement date of January 1, 2000 and end date of December 31, 2005 bore no resemblance to the leasing deal approved by Council;
- c. the cost of leasing the computer hardware and software was not \$40 million; rather, this amount appears to be close to the underlying value of the \$43 million of assets to be leased; and
- d. at the time it was issued, over \$60 million dollars worth of computer equipment was already on lease with MFP, such that the \$40 million reference was inaccurate.⁹⁰

⁸⁵ Pagano 02/24/2003 at 213; Pagano 02/25/2003 at 44.

⁸⁶ Pagano 02/24/2003 at 212.

⁸⁷ COT004161, 62:2:467; Pagano 03/04/2003 at 117-118.

⁸⁸ COT004161, 62:2:467.

⁸⁹ Pagano 02/25/2003 at 98-99.

⁹⁰ Beattie 03/31/2003 at 185.

98. It was not the practice of PMMD to follow up with a user department to request a purchase requisition once Council had approved a transaction.⁹¹ Pagano indicated that PMMD normally received a purchase requisition from a department shortly after Council approval.⁹² It was up to the user department to initiate the proper process leading to the issuance of a purchase order or blanket contract to a vendor. It was therefore I&T's responsibility to provide the necessary information, in a timely way, to permit PMMD to issue a blanket contract containing complete and accurate information. To the extent that the MFP Purchase Requisition was not timely, and did not accurately reflect the terms of the transaction approved by Council, I&T must bear primary responsibility.

99. Nevertheless, PMMD staff were expected to check to ensure that proper Council authority had been obtained for the transaction upon receipt of a purchase requisition from a User Department. The PMMD staff who performed the check would ordinarily initial or mark the purchase requisition in some way to indicate that such a check had been done and that PMMD approval was given. A blanket contract would then be prepared by PMMD based on the approved information.

100. The evidence suggests that Corbett, an Acting Manager in PMMD, approved the MFP Purchase Requisition on behalf of PMMD. Pagano testified that he believed Corbett placed the letters "OK" at the bottom of the MFP Purchase Requisition.⁹³

101. Corbett's signature also appeared on a blanket contract to MFP dated September 26, 2000 ("MFP Blanket Contract") which was issued by PMMD.⁹⁴ It was valid from September 26, 2000 to December 31, 2005, and stated that the "Total Amount Of This Contract Order Not To Exceed \$40,000,000.00 Including All Taxes And Charges Without Further Authorization". It further referenced "RFP No. 3406-99-01735", and "Council Report No. 4, Clause 11, of July 27, 1999".

⁹¹ Beattie Affidavit, para. 75, 03/31/2003 at 82-83.

⁹² Pagano 03/04/2003 at 119.

⁹³ Pagano 02/25/2003 at 97; Pagano 03/04/2003 at 113.

⁹⁴ COT029452, 45:1:45.

102. Corbett was not called as a witness. There is therefore no direct evidence as to what, if any, steps she might have taken to compare the MFP Purchase Requisition to the Council Report, or whether she took any other steps to identify or explain the discrepancies listed above. Pagano recounted a conversation he had with Corbett before he testified, in which she indicated she had no recollection of what she did or what she reviewed, but that her procedure at the time was to ask the buyer to provide the relevant backup documentation, including Council approval, before she gave her authorization.⁹⁵ It is not possible for this Inquiry to determine what steps PMMD actually took, or did not take, in approving the MFP Purchase Requisition, and issuing the MFP Blanket Contract.

103. Pagano acknowledged that the approval of the MFP Purchase Requisition, leading to the issuance of the MFP Blanket Contract that contained terms inconsistent with the Council Report, appeared to represent a failure of the purchasing program.⁹⁶ In the absence of any explanation from Corbett, the staff member most directly involved, Pagano candidly and fairly accepted responsibility for any oversight that might have occurred within his division.

104. Although PMMD staff were privy to communications indicating that acquisition activity had been ongoing since the fall of 1999, PMMD staff were unconcerned that a purchase requisition for the MFP transaction was not issued until September 18, 2000 for a number of reasons:

- a. there was an existing leasing contract already in place with MFP, so PMMD assumed that acquisitions were initiated against that contract rather than against a blanket order.⁹⁷

⁹⁵ Pagano 02/25/2003 at 102.

⁹⁶ Pagano 03/04/2003 at 196-201.

⁹⁷ Pagano 03/04/2003 at 118.

- b. in the pre-SAP system context, some of the former municipalities did not use blanket contracts or purchase orders; therefore Pagano did not consider it unusual to have ongoing acquisitions without a blanket order.⁹⁸
- c. Pagano testified that, upon receipt of communications indicating that acquisitions were underway, he relied on the user department to ensure a purchase requisition was in place, and therefore would not have asked his staff to confirm the same.⁹⁹

105. PMMD was not involved in the issuance of contract release orders against a blanket order, as this was done directly into the accounting system by the user department. Nor did PMMD have any role in the payment of vendors' invoices. Nonetheless, as they were early City witnesses, Pagano and Beattie were asked a number of questions about the general accounting system which were within the realm of Accounting Services, and not PMMD. Both Beattie and Pagano attempted to answer these questions based on their general knowledge of SAP. Beattie testified that a blanket contract did not create a commitment in the SAP system until the requisitioning department released the contract against a particular account number and general ledger number.¹⁰⁰ In the case of a blanket contract, departmental funds were not committed until the contract was released. Accordingly, payment could not be made to a vendor until a contract release order was issued against a blanket order.¹⁰¹

106. Once Council had authorized a purchase transaction, and PMMD had issued a blanket contract, PMMD played no further role in monitoring transactions or spending.¹⁰²

⁹⁸ Pagano 03/04/2003 at 118.

⁹⁹ Pagano 03/04/2003 at 120.

¹⁰⁰ Beattie 03/31/2003 at 187.

¹⁰¹ Pagano 03/04/2003 at 118.

¹⁰² Pagano 02/25/2003 at 15-17.

12. The \$43 million dollar cap

a) Finance witnesses not responsible for monitoring I&T's leasing expenditures

107. The primary responsibility to design, implement and maintain internal financial and other controls at the City rested with the actual business unit, such as the CMO, with assistance from Accounting Services where required. Finance was not responsible for ensuring that such controls were in place.¹⁰³

108. Beattie¹⁰⁴ in PMMD, and Brittain¹⁰⁵, Altman¹⁰⁶ and Rabadi¹⁰⁷ in Treasury, together with Liczyk¹⁰⁸, were all consistently of the view that the P&F Report obtained Council approval for a total asset value of \$43.15 million, with 5-10% overage being acceptable given that the \$43.15 million was a best estimate of the City's needs at the time.¹⁰⁹

109. Neither Treasury, nor PMMD, nor Accounting Services was responsible for monitoring leasing expenditures to a maximum of \$43 million dollars. Accordingly, none of the Finance witnesses were responsible for the following monitoring related issues:

- a. alerting Council when leasing expenditures surpassed \$43 million dollars;
- b. ensuring that the \$43 million dollar maximum was not exceeded; or
- c. ensuring that MFP was not treated as a sole source provider or a vendor of record.

¹⁰³ Liczyk 11/12/2003 at 20-21.

¹⁰⁴ Beattie 04/01/2003 at 165-166.

¹⁰⁵ Brittain Affidavit, para. 27, 07/09/2003 at 150.

¹⁰⁶ Altman 07/09/2003 at 138.

¹⁰⁷ Rabadi 07/03/2003 at 67.

¹⁰⁸ Liczyk 11/04/2003 at 59.

¹⁰⁹ Brittain Affidavit, para. 27, 07/09/2003 at 150.

13. SAP

a) Accounting Services was not responsible for entering the leasing transactions

110. Accounting Services was not responsible for entering the leasing transactions into SAP.

111. Accounting Services was responsible for providing training on SAP to CMO and I&T staff. However, in this case, the failure of SAP to detect the overspending (beyond the \$43 million cap) was not the result of CMO or I&T staffs' lack of familiarization or training with SAP, but rather their fundamental misconception about the parameters of the leasing program and the existence of a cap.

112. Accordingly, Accounting Services and Colley in particular cannot be faulted for the following issues:

- a. considering how leasing should be entered into SAP;
- b. ensuring that the sale leaseback transaction was clearly entered into SAP;
- c. ensuring that the CMO was properly trained in SAP;
- d. ensuring the CMO was properly entering data; or
- e. ensuring all data related to leasing was properly, accurately, and completely reported.

14. Capital versus operating leases

113. Colley made the decision to characterize the MFP leases as operating leases in the City's financial statements. He did so based on the understanding that the leases were for a three year term. He was not aware that the lease terms were actually for five years. Had he known this, he would have re-evaluated his decision.¹¹⁰

114. In any event, the issue of how the leases were reflected on the City's financial statements is irrelevant to the issues before this Commission.¹¹¹ The financial statements summarized the City's financial affairs at a much higher level than would be needed to reveal any issues with the MFP leases. First, the MFP leases were bundled up with numerous other property and other leases held by the City, so that their existence and the way in which they were accounted for was not apparent from the financial statements. Second, even if they had been reflected as capital leases, it is doubtful that any member of Council reading the financial statements would have recognized that this meant that the leases were for five years, rather than the approved three years. Indeed, it is a stretch to suggest that somehow the characterization of the MFP leases as capital leases, on a financial statement for a multi-billion dollar entity such as the City, could have set off any alarm bells about the way in which the leasing program was implemented.

115. Accordingly, neither Treasury nor Accounting Services can be criticized for failing to record the MFP leases as operating leases in the City's financial statements and other financial documents.

¹¹⁰ Colley Affidavit, para. 32-33, 09/02/2003 at 244-245.

¹¹¹ Colley 09/04/2003 at 195.

15. Lease rewrites

a) None of the Finance witnesses were implicated in the lease rewrites

116. None of the Finance witnesses, except for Liczyk, were implicated in the lease rewrites. See Chapter 24 for further details of Liczyk's involvement. In particular, none of the Finance witnesses can be held responsible for the following:

- a. providing financial analysis of the lease rewrites in July 2000;
- b. not opposing the lease rewrites (no one from the City agreed to or was even aware of the lease rewrites, as discussed in Chapter 15);
- c. contacting or following up with I&T to ensure that further analysis was completed; or
- d. protecting the City's financial interests as result of the lease rewrites.

16. Oracle

a) None of the Finance witnesses were implicated in the Oracle transaction

117. None of the Finance witnesses, except for Liczyk, were implicated in the Oracle transaction. See Chapter 24 for further details of Liczyk's involvement. In particular, none of the Finance witnesses can be held responsible for failing to ensure that the Oracle purchase fell under the Y2K purchasing authority prior to the execution of the Y2K Delegated Approval Form.