1. MFP Financial Services Ltd./ CLEARLINK Capital Corporation

1. MFP Financial Services Ltd. ("MFP") was a financial services company engaged primarily in leasing technology equipment and services to large corporations and government entities.[1] MFP was founded in 1984, and became a publicly-traded company in 1993.[2] It had offices in Canada, the United States, and the United Kingdom. MFP had approximately one billion dollars in assets under management.[3]

2. MFP's portfolio was one-third public sector, one-third private sector (United States), and one-third private sector (Canada).[4] Accordingly, public sector business constituted about one-half of MFP's Canadian portfolio.

3. In 2004, MFP changed its name to CLEARLINK Capital Corporation and has the following on its website:

> For over 20 years, CLEARLINK has been assisting organizations with acquisition alternatives and strategies related to technology and capital infrastructure financing. We provide a series of Life Cycle Management products and services designed to reduce Total Cost of Ownership (TCO). Our philosophy towards delivering effective and beneficial solutions to our clients is based on four major principles:
>
>> Provide the best customer service and administrative support that our clients receive from any lessor or supplier.
>>
>> Maintain the highest level of financial business acumen to act as *trusted advisors* to our clients.
>>
>> Maintain the *technical skills* and market knowledge that allow us to be *effective, independent advisors* to our clients.
>>
>> Operate from a position of financial strength in order to give our clients the flexibility to select from a complete range of financing options.

[1] http://www.clearlink.com/
[2] Wolfraim 12/18/2002 at 7.
[3] Wolfraim 12/18/2002 at 8.
[4] Wolfraim 12/18/2002 at 10.

> Through innovation, flexibility and a strong commitment to understanding our clients' constantly evolving needs we are fortunate to be viewed as a mainstay in the industry.
>
> What our clients say about us.
>
> > "This is a relationship, a partnership where CLEARLINK continues to align itself with what we want to achieve."
> >
> > "What gives us the most confidence that everything is being managed properly and that we don't have to worry, is CLEARLINK's people; our CLEARLINK team is phenomenal.
> >
> > "CLEARLINK's price competitiveness is a given; what is important is the speed and transparency at which CLEARLINK helps us adapt to change."
>
> "Excellent customer service regarding any issues that may arise."[5]

4. For the reasons that follow, the City of Toronto disagrees with virtually every assertion on CLEARLINK's website.

[5] http://www.clearlink.com/ (emphasis added).

2. MFP's people

a) Peter Wolfraim

5. Peter Wolfraim ("Wolfraim") was one of four founders of MFP in 1984. He became President and CEO in 1988, and held that position until replaced by Fraser Berrill on September 24, 2003.[6]

6. Wolfraim described himself as hands-on with respect to daily financial transactions. During examination-in-chief, he agreed that he would participate in strategy and pricing decisions with a material financial impact.[7] He further agreed that the rewriting or extension of major leases, such as the City of Toronto lease, would have a material financial impact.

7. In the MFP Annual Report for fiscal year 2000, Wolfraim wrote:

> MFP will make a difference by creating and supplying the right skills, solutions and services to our customers. As important as the technology is, our ability to get projects planned, financed and implemented *from a position of partnership with our customers will be the key to success* …
>
> At the core of each project will be a strong relationship based on insight, understanding and trust. *It may sound like corporate motherhood. Yet it is absolute fact at MFP: people-based partnerships and relationships will make the biggest difference* of all as the old economy becomes new.[8]

b) Irene Payne

8. Irene Payne ("Payne") joined MFP in 1989, after working at the Digital Equipment Company.[9] She had experience in sales and marketing with respect to computer hardware and software. She started working in the computer industry in 1977, with Hamilton Computers. Eventually, Hamilton Computers was bought by GE Capital, and

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6 Wolfraim 12/18/2002 at 7.
7 Wolfraim 12/18/2002 at 17.
8 COT028069 at COT028079, 6:2:173.
9 Payne 01/09/2003 at 31.

Payne continued to work with GE Capital for approximately two more years.[10] In 1982, Payne started her own company called Transition Group.[11]

9. After approximately one year, Payne joined the Digital Equipment Company's government sales team,[12] where she focused on government clients, particularly the Ontario provincial government.[13] Payne agreed that she was familiar with government procurement practices and understood the entire process surrounding RFPs.[14]

10. Payne met Andrew in 1989 during his tenure as a Senior Manager at the Ministry of Natural Resources, and maintained a professional relationship thereafter, speaking with him a couple of times a year.[15]

11. In 1994, Payne was promoted to MFP Senior Vice President.[16] She earned between $1 million in 1995 to $1.8 million in 1997, based on a commission structure.[17] In 1997, Payne was promoted to Senior Vice President of Sales and Marketing, where she worked with the management team to establish and deliver a business plan.[18] Essentially, this involved reviewing sales accounts and strategies and putting together an annual budget. With the exception of Dave Robson, all of MFP's thirty sales representatives reported to her.

12. On December 15, 1999, Payne left MFP.[19] The parting was not amicable, and Payne commenced a lawsuit against MFP. The lawsuit ultimately settled.[20] Payne did consulting work with a U.S. company called Red Hat Inc. for approximately eight months.[21] Payne then started her own company called Bucknall Inc.[22] At the time of her

[10] Payne 01/13/2003 at 95-96.
[11] Payne 01/13/2003 at 97.
[12] Payne 01/13/2003 at 99.
[13] Payne 01/09/2003 at 31.
[14] Payne 01/13/2003 at 103.
[15] Payne 01/09/2003 at 118.
[16] Payne 01/09/2003 at 31.
[17] Payne 01/13/2003 at 144.
[18] Wolfraim 12/18/2002 at 19.
[19] Payne 01/09/2003 at 33.
[20] Payne 01/09/2003 at 33-34.
[21] Payne 01/09/2003 at 35.

testimony at the Inquiry, Bucknall Inc. had placed technology leases worth between $10 - $15 million.[23]

13. Payne testified that MFP can be distinguished from its competitors by its ability to offer services to its clients that are tailored to their needs, commonly referred to as "value-added" services.[24]

c) Michael Flanagan

14. Michael Flanagan ("Flanagan") originally worked for MFP between 1990 and 1996 as the Director of Asset Management and Trading.[25] He had 15 or more years of experience in the leasing business.[26] Flanagan left in 1996 to pursue opportunities with GE Capital, but rejoined MFP in 1998 as Senior Vice President of Sales and Trading.[27] In this capacity, Flanagan was responsible for approving the pricing of a transaction, including the residual values.[28] He returned to MFP approximately one and a half years before Payne departed.[29]

15. In February 2000, Payne was replaced by Flanagan.[30] After Payne left MFP, Flanagan reorganized MFP's sales department, hiring, *inter alia,* two sales managers that had no specific account responsibility – one for the US and one for Canada.[31] He felt that the sales management function was not being performed adequately, and thus introduced dedicated sales managers. One of Flanagan's roles was to set the residual values in response to an RFQ, although he testified that the residuals are usually

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[22] Payne 01/09/2003 at 34.
[23] Payne 01/09/2003 at 34.
[24] Payne 01/09/2003 at 41.
[25] Flanagan 02/18/2003 at 15.
[26] Flanagan 02/19/2003 at 80.
[27] Flanagan 02/18/2003 at 8, 16.
[28] Wolfraim 12/18/2002 at 20. Residual values will be explained further in paragraph 32, below.
[29] Flanagan 02/18/2003 at 17.
[30] Wolfraim 12/18/2002 at 18-19.
[31] Flanagan 02/18/2003 at 19-20.

derived from a constant grid of residual values.[32] Between October 2000 and February 2002, Robin Wilkinson reported to Flanagan.

d) Robin Wilkinson

16. Robin Wilkinson ("Wilkinson") joined MFP in 1986.[33] In 1995, Wilkinson was promoted to the position of Vice President for Sales Support and Special Projects, a position he still holds today. In his affidavit, Wilkinson outlined three relevant areas of responsibility:

> Occasionally, I assist sales representatives in attending promotional meetings to describe and explain MFP's leasing business and services, in both the private and public sector.
>
> I generally review public and private sector RFPs and RFQs and assist in responding to such calls. This occurs through collaborative discussions regarding the appropriate response strategy and through participating in the drafting of MFP's response to such tenders.
>
> In those cases where MFP is awarded a contract, I provide technical/analytical assistance to sales representatives by being available, when needed, to answer client's questions and to respond to requests for financial models for clients' review and consideration.[34]

17. Payne testified that Wilkinson had technical finance skills that were generally superior to the MFP sales representatives.[35]

e) John Rollock

18. John Rollock ("Rollock") was MFP's Sales Manager for Government.[36] Both Payne and Rollock testified that Rollock joined MFP on the same day as Domi -

32 Flanagan 02/18/2003 at 9-10.
33 Wilkinson Affidavit, para. 2, 09/16/2003 at 32.
34 Wilkinson Affidavit, para 6, 09/16/2003 at 33.
35 Payne 01/13/2003 at 116.
36 Payne 01/09/2003 at 171; Rollock Affidavit, para. 8, 06/09/2003 at 204.

November 2, 1998.[37] Rollock was responsible for managing the Provincial Government accounts and the Provincial Government sales team, although some ministries were allocated to other sales representatives. Rollock left MFP in 2000 to start his own Information Technology management consulting business, which he still operates.[38]

f) Robert Ashbourne

19. Robert Ashbourne ("Ashbourne") was the Regional Director of Sales for MFP. He joined MFP in 1992, when MFP acquired his previous employer.[39] Prior to joining MFP, Ashbourne had some limited involvement with the City of Toronto.[40] His former firm had handled an assignment of a lease for the City of Toronto.[41] Ashbourne handled the City of Toronto account from 1992, when he joined MFP, to early 1999.[42]

20. Ashbourne was responsible for managing a number of specific sales accounts, including the City of Toronto.[43] He was involved in the early stages of the tendering process for the City's May 1999 RFQ.

g) David Robson

21. David Robson ("Robson") joined MFP in December 1998 as a member of the sales staff. Robson worked with Ashbourne on the early days of the City of Toronto file and earned a commission on the Councillors' lease deal, which was signed in December 1997.

22. Robson subsequently met Tie Domi at a golf tournament. Tie Domi persuaded David Robson to consider Tie Domi's brother, Dash Domi, for a sales position. Robson and Dash Domi became good friends.

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[37] Payne 01/13/2003 at 164; Rollock 06/10/2003 at 86.
[38] Rollock Affidavit, para. 4, 06/09/2003 at 204.
[39] Ashbourne 12/16/2002 at 9-10.
[40] Ashbourne 12/16/2002 at 10.
[41] Ashbourne 12/16/2002 at 10-11.
[42] Ashbourne 12/16/2002 at 9.
[43] Ashbourne 12/16/2002 at 9.

23. Robson was a central figure in the City of Waterloo’s RIM Park Project. The Project ultimately resulted in an Inquiry. Commissioner Sills found that Robson deliberately misled members of the staff at the City of Waterloo as to the ability of MFP to deliver low interest rates on financing the RIM Park Project.[44]

h) Dashnor Domi

24. MFP hired Dashnor Domi (“Domi”) as a sales representative in November 1998. At the time he was hired, he had no experience or background in computer leasing. He replaced Ashbourne as the salesperson on the City of Toronto account shortly before the City released its computer leasing RFQ. On the spectrum of technical finance skills, Ashbourne was closest to Wilkinson, Domi was at the other end, and Payne was somewhere in between, albeit closer to Domi.[45]

25. Domi was the successful salesperson on the computer leasing RFQ and earned over $1.2 million in commissions on the City of Toronto contracts. More will be said about Domi below.

i) Sandy Pessione

26. Sandy Pessione (“Pessione”) worked for MFP from July 1996 to August 2002, when he was laid off.[46] He was the Business Development Manager. In this role, he spent 60 per cent of his time in sales support and 40 per cent of his time managing and responding to the RFQ process.[47] However, he testified that the financial aspects (pricing, lease rate factors, residuals) of an RFQ response were the responsibility of Wilkinson and other individuals in senior management. Pessione reported to Payne and later to Flanagan.

[44] Report of the Waterloo Inquiry at 270.
[45] Payne 01/13/2003 at 117.
[46] Pessione 02/13/2003 at 6.
[47] Pessione 02/13/2003 at 11-12.

3. MFP's structure and committees

27. In fiscal year 2000, MFP had a nine member board of directors and nine officers. MFP had a number of internal administrative committees including an investment committee and a credit committee.

a) Investment Committee

28. The MFP Investment Committee oversaw the company's investments in technology. Wolfraim described the function of the Investment Committee as follows:

> …The investment committee is – is –
> - oversees the company's investments in technology and the –
> so that includes both how we're going to price transactions,
> what – how much equity we're going to invest in technology
> and what future values we're going to book or keep in the
> books and records as residuals.[48]

29. The purpose of the Investment Committee was to discuss and make informed business judgments with respect to sizeable business transactions.[49]

30. In 1999, Flanagan had primary responsibility for MFP's Investment Committee. The individuals on the Investment Committee at the time were Flanagan, Wright, and Payne. After the members of the Investment Committee approved a deal, Wolfraim would also sign off if required to do so by the Investment Committee.[50] He did not sign off on every yellow sheet.[51] If the amount of the investment exceeded a certain amount, two non-management members of the Board of Directors had to sign off. For certain extremely large transactions, the entire Board had to sign off.[52]

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[48] Wolfraim 12/18/2002 at 23.
[49] Ashbourne 12/16/2002 at 48-49.
[50] Wolfraim 12/18/2002 at 24.
[51] Wolfraim 12/18/2002 at 103.
[52] Wolfraim 12/18/2002 at 24.

31. MFP made a profit in one or more of three ways: first, at the end of the lease, by selling the equipment; second, during the lease, by refinancing or releasing the equipment to the client; and/or third during the lease, if the equipment was returned.[53]

32. Ashbourne explained that there were two components to a lease structure that are relevant to how the transaction is priced: the residual and the interest rate.[54] The first, the residual or equity position, means the risk position that MFP was willing to take in the asset.[55] This was effectively MFP's cash in that asset. The term "residual" did not refer to the residual value of the equipment, but rather to the residue of the deal that would not have to be financed by the finance company. The extent to which MFP contributed its own funds to the deal depended on, *inter alia,* the type and quality of client, the long-term interest in pursuing the client, historical trends, and MFP's overall portfolio. The second critical aspect that affected the pricing or lease rate was the interest rate implicit in the lease rate.[56]

33. For some deals, MFP sold/assigned portions of the deal to other insurance companies – notably, Clarica and Canada Life.[57] The lender assumed the debt portion of the deal and then MFP assigned the rental stream to the lender to pay off the debt portion. The assignment of MFP's interest in the rental stream discharged MFP's obligation to that lender with respect to the original loan.[58] This was called "non-recourse financing". By using non-recourse financing, MFP insulated itself from any direct liability with respect to the loan.

b) Credit Committee

34. MFP's Credit Committee was an internal committee, which did not involve Board members, except for Wolfraim. Similar to the Investment Committee, after the amount of

[53] Ashbourne 12/17/2002 at 104-105.
[54] Ashbourne 12/16/2003 at 62.
[55] Ashbourne 12/17/2003 at 84.
[56] Ashbourne 12/17/2002 at 180.
[57] Ashbourne 12/17/2002 at 99.
[58] Ashbourne 12/17/2002 at 100.

an investment surpassed a certain threshold, higher levels of authority were required for sign off. The Credit Committee dealt primarily with the non-recourse aspects of MFP's business. Accordingly, the Credit Committee became involved when MFP sold the rental stream of income from a leasing transaction to a third party at a discount rate.[59] As discussed above, "non-recourse" meant that if the lessee went bankrupt, the financier of the transaction would not have recourse back to MFP.[60]

[59] Wolfraim 12/18/2002 at 24-25.
[60] Wolfraim 12/18/2002 at 26.

4. MFP policies and responsibilities

35. Wolfraim testified that MFP developed corporate policies in the early to mid-1990s.[61] The relevant policies pertain to conflict of interest, code of conduct, donations and sponsorship, and expense reports. He testified that the Director of Human Resources, Chris Long ("Long"), would discuss these policies with new employees. Wolfraim agreed that these policies were materially the same as they were in 1999, and had not changed considerably in the last 5-6 years.[62]

a) MFP Code of Conduct

36. The MFP Code of Conduct defined unacceptable behaviour to include, non-exhaustively, the following conduct:

a. engaging in dishonesty, fraud, theft or misuse of authority;

b. unauthorized possession of or use of company property;

c. falsifying records;

d. misuse of company-provided technology;

e. violating criminal laws while at MFP, or on the property of any organization with which MFP has a business relationship;

f. acts of discrimination and/or harassment;

g. behaving or participating in activities, whether legal or not, outside the company that are detrimental to the image of the Company;

[61] Wolfraim 12/18/2002 at 27; COT043625, 18:3:20; COT043626, 6:2:191; COT043628, 6:2:192; COT043629, 6:2:193; COT043630, 18:3:29.
[62] Wolfraim 12/18/2002 at 28-29.

h. continued unnecessary rudeness to others and or disrespect for others; and

i. insubordination.

37. Employees who violated the MFP Code of Conduct faced discipline up to and including termination of employment:

> Any staff member who participates in any of the above activities or behaviours or any similar activity that discredits the company or could damage MFP's reputation or relationship with any organization, will be subject to discipline, up to and including termination of employment.[63]

38. As will be discussed in subsequent Chapters, many of Domi's extravagant entertainment expenses violated the MFP Code of Conduct. Domi's method of filling out expense reports, if his testimony is believed, also violated the MFP Code of Conduct.

b) Expense reports and expense reimbursement

39. MFP also had a policy on expense reports, which provided that:

> All expenses must be presented in a timely manner. In general, expenses must be claimed for approval at the end of the month in which the expenses were incurred. It is understood that some expenses, such as business telephone calls, may not be billed until the month following the month the expense was incurred, and such expenses may be submitted in the month received.
>
> <u>Expense Claim Form</u>
>
> Staff claiming expenses must use the standard expense claim form or a spreadsheet format of the standard form. The date, reason for, and amount of all expenses claimed must appear on this form.
>
> All expense claims must be approved by the Senior Vice President or most senior manager of the unit, or the Vice President, if delegated by the Senior Vice-President. Both the individual claiming the expense and the approving manager must sign the expense claim form with a complete signature. Initials are not acceptable.

[63] Wolfraim 12/18/2002 at 32-33; COT043625, 18:3:20.

> All approved expense claims are subject to audit at any time.[64]

40. Wolfraim explained that MFP revised its expenses policy when it was discovered that many expenses were being reimbursed that did not list the specific people in attendance at the event. An investigation showed that one-third of the expenses that came through failed to list individuals, listing instead only the customer. Therefore, as of August 1998, MFP revised its policy to read:[65]

> General Principles
>
> Only legitimate business expenses will be approved on expense claims.
>
> Transportation Expenses
>
> All travel expenses will be approved at the economy rate for the flight, unless the flight is in excess of three hours duration, in which case business class travel will be approved. Where a trip is comprised of more than one flight from origination to destination, and there is a change of aircraft en route, only those flights of more than three hours duration will be approved at the business rate. Staff may upgrade to business class at their own expense for any flight.
>
> Meals and Entertainment
>
> All meal and entertainment expenses must be supported with a receipt. Expense receipts for entertainment/meals for guests must indicate the individuals, customer, etc. entertained and the business purpose of the expense.[66]

41. As will be demonstrated below, Domi did not follow the MFP expense report policy. In addition, Payne failed to correct Domi's approach to his expense account. Domi's expense accounts were so clearly offside the policy that Payne must have explicitly or tacitly approved of Domi's expense account practices.

c) Conflict of interest policy

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[64] COT043629, 6:2:193.
[65] Wolfraim 12/19/2002 at 134.
[66] COT043630, 18:3:29.

42. MFP had an internal conflict of interest policy. It provided that:

> MFP staff must not accept gifts from suppliers or anyone seeking to do business with MFP if the acceptance of the gift could be construed as an influence on MFP's decision to either hire or continue dealing with the organization. This is not intended to prohibit staff from accepting promotional items or participating in goodwill activities. *However, staff faced with the opportunity to accept gifts are expected to apply a test of reasonableness to the situation, and to consult with senior management if there is any doubt. For example, a promotional T-shirt can likely be accepted without concern, but a weeklong all-expenses paid trip should not be accepted.*
>
> MFP distributes gifts for promotional and marketing purposes, and invites suppliers and customers to participate in specific goodwill activities. *Direct financial inducements and highly expensive favours designed to inappropriately influence individuals are not permitted.*
>
> The above examples are not exhaustive. Conflicts of interest may develop in other situations, and all staff are expected to be alert to the possibility of perceived conflict and reveal all such situations to the senior manager of their unit.[67]

43. MFP breached its own conflict of interest policy in its dealings with the City of Toronto. As will be discussed below:

a. Domi chartered a private jet to fly Jakobek to a playoff hockey game in Philadelphia less than one month before the RFQ was issued;

b. Domi offered Andrew a $700 pen, which Andrew returned; and

c. Domi made an improper financial payment to Jakobek of approximately $25,000.

44. Domi clearly violated the MFP conflict of interest policy by providing Jakobek with "direct financial inducements and highly expensive favours designed to inappropriately influence" Jakobek.

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[67] COT043626, 6:2:191 (emphasis added).

45. In addition, Domi engaged in a pattern of entertaining other City officials that violated the MFP policy.

d) CFLA Code of Ethics

46. The Canadian Finance and Leasing Association ("CFLA") was an organization of members engaged primarily in asset-based financing and equipment and vehicle leasing in Canada. At the relevant time, MFP was a member of the CFLA, and Wolfraim was once on its Board of Directors.[68] The CFLA created a Code of Ethics, which was designed to maintain integrity, professionalism, and trustworthiness within the leasing industry.[69] As part of its corporate policy, MFP followed the CFLA Code of Ethics.[70] The Code of Ethics provided that:

> There are fundamental standards of practice, which should serve as guiding principles for all engaged in the business of leasing and asset-based financing.
>
> At all times conduct our activities with integrity, dignity and professionalism and encourage such conduct by others in the leasing industry.
>
> Maintain respect for keen competition and seek no unfair advantage by dishonest or unethical means.
>
> At all times adhere to the specific terms of funding commitments, commission agreements and purchase orders.
>
> Not knowingly make false or misleading statements or withhold information vital to an intelligent business decision concerning any aspect of a leasing transaction.
>
> Disclose all relevant information as to the terms and conditions of the lease, which may effect [sic] the lessee's decision.
>
> Treat in a fiduciary capacity all funds received from the lessee, which may be returned to the lessee.
>
> Hold in strict confidence all financial information supplied by the lessee on a confidential basis.

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[68] Payne 01/09/2003 at 42.
[69] Report of the Waterloo Inquiry at 230.
[70] Payne 01/09/2003 at 43.

Not make payments directly to an employee of a vendor or business source without that company's knowledge.[71]

47. MFP violated its obligations under the CFLA Code of Ethics in many ways:

a. MFP did not conduct its activities with integrity and professionalism when it lavishly entertained City Councillors, Andrew, and Liczyk;

b. MFP contracted out of the promises made in its response to the computer leasing RFQ and thus did not adhere to the specific terms of its commitments;

c. by extending the term of the lease from 3 to 5 years without ever providing the City with a written proposal or any information that would allow the City to analyze its options, MFP both obtained an unfair advantage through unethical means and withheld vital information for an intelligent business decision;

d. by rewriting the leases in July 2000 without informing the City of the cost of the rewrites, MFP sought an unfair advantage through unethical means and withheld vital information for an intelligent business decision; and

e. by putting the Oracle ELA on lease, MFP knew that the City was prepaying five years worth of maintenance and support fees, but said nothing.

e) Special considerations for leasing with government

48. Ashbourne accepted that there were four categories of special considerations that MFP would have to keep in mind when bidding for work with municipal governments, including the City of Toronto:

[71] COT043600 at COT043604, 6:2:188.

a. council approvals of spending;

b. purchasing bylaws and the need to tender;

c. conflict of interest guidelines; and

d. protection of confidential bid information.[72]

49. Ashbourne agreed that there was a general requirement that City of Toronto purchases must be properly approved by City Council. He also agreed that anyone at MFP doing business with the municipal government of Toronto would have been aware of that requirement.[73] Ashbourne was also aware that the City of Toronto had purchasing bylaws which governed the circumstances in which the City must tender bids through RFPs and RFQs. Ashbourne agreed that anyone at MFP doing business with the City of Toronto would have known this.[74]

50. Ashbourne knew that municipalities generally have conflict of interest guidelines which govern the manner in which their officers and employees interact with vendors.[75] Although Ashbourne was not specifically aware that the submission of bids and related information must be treated confidentially by the City, he agreed that such confidentiality was a general expectation with any of MFP's clients and that he would have expected that protection with respect to MFP's response to the City's RFQ.[76]

51. Ashbourne agreed that it was incumbent on all persons wishing to do business with the City of Toronto to know and understand these bylaws and policies, including

[72] Ashbourne 12/17/2002 at 47.
[73] Ashbourne 12/17/2002 at 44.
[74] Ashbourne 12/17/2002 at 45.
[75] Ashbourne 12/17/2002 at 45.
[76] Ashbourne 12/17/2002 at 45-46.

MFP employees.[77] Ashbourne's evidence was that these bylaws and policies *were* generally understood by MFP employees at all relevant times.[78]

52. Ashbourne testified that he had not taken any steps to learn the conflict of interest guidelines in place in the former municipalities, nor did MFP conduct a training session or offer any information to him about the existing conflict of interest guidelines in the former municipalities.[79] Ashbourne agreed that he viewed the policing of conflict of interest guidelines to be the responsibility of City employees, not of himself or MFP.[80]

53. Payne agreed that she was aware that City Council had to approve purchases, that purchasing bylaws governed the process by which the City of Toronto tendered work, and that the City of Toronto and its predecessor municipalities would have had conflict of interest guidelines in place.[81] She also acknowledged that, during the RFP period, i.e. from the time the bid was issued, until the time that it was awarded, all bids were confidential.[82]

54. Payne admitted that she had no idea what the City's post amalgamation conflict of interest guidelines were and that no training about them had been provided to anyone at MFP.

> Q: And can I ask you directly, Ms. Payne, as a Senior Vice President of Marketing and Sales at MFP, at the relevant time, what steps if any, you had taken to learn and understand the conflict of interest guidelines that were in place at any of the former municipalities that formed upon amalgamation this new City of Toronto?
>
> A: I'm not sure.
>
> Q: Is it fair to say, you didn't take any steps to inform yourself about what those conflict of interest guidelines were?

[77] Ashbourne 12/17/2002 at 47.
[78] Ashbourne 12/17/2002 at 47.
[79] Ashbourne 12/17/2002 at 48-49.
[80] Ashbourne 12/17/2002 at 50.
[81] Payne 01/13/2003 at 149-150.
[82] Payne 01/13/2003 at 151-152.

A: I think it's safe to say that I would expect the people who were assigned to that account to understand that.

Q: That would include Mr. Ashbourne and Mr. Domi?

A: That's right.

Q: Did you tell either of Mr. Ashbourne or Mr. Domi that they should go and inform themselves about the City's conflict of interest guidelines?

A: Not that I remember.

Q: And I take it that you certainly didn't conduct any training on the City's conflict of interest guidelines for any of your sales staff that might have been involved --

A: No.

Q: -- with the City bid? That's correct?

A: That's right.

Q: And to your knowledge, you're not aware of any such training taking place formally or informally at MFP?

A: There was very little training.

Q: So the answer is, you're not aware of any specifically directed --

A: I'm not aware of –

Q: -- at the City of Toronto conflict of interest guidelines?

A: I'm not aware of any.[83]

…

Q: The truth is, Ms. Payne, you didn't know what guidelines were in place at the City, either before or after amalgamation, isn't that true?

A: Yes.

Q: And to the best of your knowledge, that was also true of other members of your staff that were involved in the City of Toronto, including Mr. Ashbourne and Mr. Domi?

A: I'm not sure.

Q: You have no direct knowledge of any efforts they undertook to inform themselves of the state of the City's conflict of interest guidelines?

[83] Payne 01/14/2003 at 84-85.

A: No idea.[84]

55. MFP took no meaningful steps to make itself or its staff aware of the relevant City policies.

[84] Payne 01/14/2003 at 91-92.

f) MFP's duty to educate novice leasing clients

56. The senior executives of MFP, including Wolfraim and Payne, agreed that MFP had an obligation to educate its clients about the advantages and disadvantages of leasing in general and about the particular proposals tabled by MFP.

57. Wolfraim agreed that, in certain circumstances, MFP was obligated to educate its customers. He accepted that these circumstances included a situation where a lessee was a relative novice in the leasing business.[85] In such a situation, MFP would assume the obligatory role of providing that education.

58. Domi agreed that he was not competent to provide any education to the City.[86] He further agreed that he did not understand any of the details of the financial and technological aspects of the leasing business, including the alleged tax benefits of leasing, the pressures on the City's operating budget, the budget approval process, or the City's procurement process.[87]

59. Not only did MFP provide no meaningful education to the City of Toronto on its proposals, it never even committed its proposals to writing. MFP went directly from "conceptual" and "interactive" proposals to dense contractual language. Far from educating the City about its proposals, MFP hoped that its novice client would simply sign on the dotted line.

60. MFP spent considerably more time, energy, and money wining and dining City executives than it ever did educating the City about leasing in general and MFP's proposals in particular. Unfortunately, and as a direct result of this strategy, senior City staff did as MFP hoped and signed on the dotted line without the benefit of any written proposals.

[85] Wolfraim 01/07/2003 at 77-78.
[86] Domi 02/10/2003 at 20-21.
[87] Domi 02/10/2003 at 35-36, 43-44, 46, 48-49.

g) MFP was obliged to act in the best interests of its clients

61. Payne agreed that there was an obligation on MFP to act in the best interests of its clients, and that the City of Toronto had a reasonable expectation that MFP would ensure that the City’s best interests were taken into account in MFP’s recommendations to the City.

> Q: You'd want your customers to think that they can trust MFP to provide appropriate advice to them about meeting their leasing needs?
>
> A: Yes.
>
> Q: And you'd like your customer to think that they can look to MFP to ensure that its best interests are taken into account in any leasing strategy that MFP recommends?
>
> A: It's up to MFP to present what their leasing strategy is, and for customer to make sure that that fits within the requirements of the -- or of -- of their environment.
>
> Q: But taking a step back from that, I mean I take it in part, one (1) of the things that you can do for your customers is provide them with advice on what the best leasing strategy is?
>
> A: We can educate them on what we can offer.
>
> Q: But you can also, based on your experience and your expertise in the -- in the industry, you can help them by advising them on what is an appropriate strategy for them, knowing what you do about their business needs; isn't that so?
>
> A: Potentially.
>
> Q: And I take it that you'll agree with me that it's a reasonable expectation for customers like the City of Toronto, that MFP would know its business?
>
> A: Yes.
>
> Q: And it's a reasonable expectation for the City of Toronto that they can trust MFP in their dealings to provide appropriate advice to them about meeting the City's leasing needs? …
>
> THE WITNESS: Yes.
>
> Q: And lastly, it's a reasonable expectation for the City to look to MFP to ensure that the City's best interests are taken into account in any of the leasing strategies that MFP recommended to the City?

> A: Yes.
>
> Q: And you agree with me that those elements that I've just described to you, exist generally in the relationship between MFP and its partner customers?
>
> A: Yes.
>
> Q: And in particular, exists in the relationship between MFP and the City?
>
> A: I would assume so.[88]

62. Wilkinson conceded that the City of Toronto could reasonably expect MFP to have a general understanding of its needs, and could trust MFP to provide options accordingly.[89]

> Q. The proposition that I put to Ms. Payne was that it was a reasonable expectation for the City of Toronto that they could trust MFP in their dealings to provide appropriate [advice] to them about meeting the City's leasing needs.
>
> A. Okay. And I do agree with that, but, at the same time also, believe that the City also has to make sure that they understand equally what it is you know, we're putting to them.[90]

63. Wilkinson further agreed with Ashbourne that because he was a leasing expert, MFP's customers could look to him for advice on leasing, for the best way to structure a leasing transaction, and for help avoiding potential pitfalls in leasing transactions.[91]

64. Ashbourne testified that MFP offered the advantage of a variety of services, including asset management.[92] Ashbourne agreed that MFP was an independent expert in leasing.[93] As such, MFP's customers could look to it for advice on leasing and for the best way to structure a particular leasing transaction.[94] This independence and expertise meant that MFP was able, and indeed required, to provide objective advice to

[88] Payne 01/14/2003 at 114-116.
[89] Wilkinson 09/18/2003 at 174-175.
[90] Wilkinson 09/18/2003 at 176.
[91] Wilkinson 09/18/2003 at 181-182.
[92] Ashbourne 12/16/2002 at 26.
[93] Ashbourne 12/17/2002 at 24.

clients as to the advantages and disadvantages of the structure of a particular lease transaction. Ashbourne agreed that one of his responsibilities to a customer was to provide the best advice on the most advantageous way to structure a lease transaction.[95] Ashbourne agreed that MFP customers could rely on MFP's expertise and experience to help avoid potential pitfalls in leasing transactions.[96]

65. As will be demonstrated throughout the submissions, MFP failed to provide such advice to the City. Having won the RFQ, MFP ceased acting in the best interests of the City. MFP executed a bait and switch and extended the leases on terms that provided a significant benefit to MFP to the direct detriment of the City. MFP cynically churned the City's account to MFP's sole benefit.

[94] Ashbourne 12/17/2002 at 24.
[95] Ashbourne 12/17/2002 at 26.
[96] Ashbourne 12/17/2002 at 24-25.

5. MFP and the City of Toronto 1997 to January 1, 1999

66. The City of Toronto did not engage in any significant computer leasing activity until 1997.[97] In the fall of 1997, MFP and the City of Toronto engaged in a transaction for the Councillors' computer equipment ("1997 Councillors' Leases").[98] At that time, Ashbourne was MFP's Regional Marketing Manager, Salesman.[99] Ashbourne's approach to selling MFP to the City focussed on Andrew and front-line staff at the City.

a) Fall 1997 – MFP approached Andrew

67. By the fall of 1997, Ashbourne had seventeen years experience in the business of leasing technology.[100] He understood the mechanics of leasing and could provide meaningful advice and assistance to his clients. He agreed that he would call himself an expert in leasing.[101]

68. In the fall of 1997, the predecessor municipalities of the City of Toronto were preparing to formally amalgamate in January 1998. Amalgamation would shake up existing vendor relationships in the old municipalities. This change alone presented a large opportunity for MFP, since it provided a significant consolidation of purchasing.[102] In addition, the City was belatedly addressing its Y2K issues, which represented another opportunity for a significant investment in computer technology.[103]

69. Ashbourne viewed MFP as superior to other major leasing companies.[104] He believed that MFP offered a wider range of services than conventional lessors, including asset management, procurement management, and disposition of assets.[105]

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97 Ashbourne 12/16/2002 at 9-11.
98 Ashbourne 12/16/2002 at 6-7.
99 Ashbourne 12/16/2002 at 9.
100 Ashbourne 12/16/2002 at 10.
101 Ashbourne 12/17/2002 at 19.
102 Ashbourne 12/17/2002 at 28.
103 Ashbourne 12/17/2002 at 27.
104 Ashbourne 12/17/2002 at 20-21.
105 Ashbourne 12/17/2002 at 21.

Accordingly, Ashbourne wanted customers of MFP to view MFP as their "outsourcing **partner** to manage their IT assets from procurement through to disposition".[106]

70. In the fall of 1997, Ashbourne contacted Andrew to set up an appointment to discuss leasing opportunities with him.[107] That introductory meeting occurred on November 12, 1997.[108]

71. According to Ashbourne, the City did not have much experience with lease financing.[109] The conventional means of financing at the City of Toronto was through municipal debentures. He testified that he needed to educate the City.[110] Ashbourne's approach to the City account focused on making presentations that detailed MFP's position on the advantages of leasing. He made presentations to the City with a view to educating the City on the benefits of leasing, particularly leasing with MFP.[111]

72. On December 1, 1997, Ashbourne and Bill Smedhurst, Vice President of Operations for MFP ("Smedhurst") sent a letter to Andrew that reflected the City's lack of experience with leasing.

> At the conclusion of our meeting you indicated that a summary memorandum on the benefits of leasing would be helpful as a source for internal use. You anticipated the need for internal communication and/or presentations on the leasing option. Accordingly, we have included these summary points in the body of this letter, enclosing a general page describing the benefits of leasing, and two (2) pages describing the benefits of selecting an independent lessor.[112]

73. One of the pages attached to this letter spoke to "flexibility and commitment", and made the unqualified promise that MFP would design the lease structure to the City's maximum advantage:

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[106] Ashbourne 12/17/2002 at 21 (emphasis added).
[107] Ashbourne 12/16/2002 at 11.
[108] Ashbourne 12/16/2002 at 19; COT025124, 63:5:7.
[109] Ashbourne 12/16/2002 at 12.
[110] Ashbourne 12/16/2002 at 12.
[111] Ashbourne 12/17/2002 at 55.
[112] Wolfraim 01/07/2003 at 64-65; COT025441, 63:5:11.

> The lease structure will be designed to your maximum advantage with specific flexibility around the independent selection of vendors, products and services, roll out period, enterprise or departmental solutions, upgrade and purchase options, and financing for hardware and soft costs.[113]

74. MFP representatives subsequently attempted to distance themselves from this promise. Wilkinson dismissed MFP's promise as a mere bit of fluff.

> No, I mean – no, I think you have to, I don't know, if you pick up a brochure, it's not that there are things in it that are not true, but there's always a little bit of fluff associated with it.[114]

75. Unfortunately, this appeared to have been MFP's standard practice:

a. promise the novice leasing client that MFP will act in the client's best interest and as the client's partner;

b. hope that the client will rely on these promises, give MFP the work, and lower their defences; and

c. resile from the promise as soon as the client reminds MFP of the promise and scold the client for being so naïve as to have believed MFP when it made the promise.

76. It was impossible to reconcile Wilkinson's testimony with the statement Wolfraim signed as part of the Fiscal 2000 Annual Report:

> At the core of each project will be a strong relationship based on insight, understanding and trust. *It may sound like corporate motherhood. Yet it is absolute fact at MFP: people-based partnerships and relationships will make the biggest difference* of all as the old economy becomes new.[115]

[113] COT025443 at COTO25444, 63:3:12.
[114] Wilkinson 09/18/2003 at 194-195.
[115] COT028069 at COT028079, 6:2:173.

77. Andrew requested information to help him understand the practice of leasing. On several occasions, Ashbourne provided analysis of the benefits and costs of purchasing versus leasing equipment.[116] He also gave Andrew a number of documents to help him understand the process and benefits of leasing.[117] Ashbourne testified that Andrew saw numerous benefits to leasing including:

a. relieving pressure on the capital budget;

b. permitting the refresh of technology on an orderly basis;

c. eliminating the need to bring the issue before Council every 3-5 years to replace the equipment; and

d. eliminating the need to dispose of the assets.[118]

78. On December 9, 1997, Ashbourne and Smedhurst met with Andrew.[119] During this meeting, Andrew asked specific questions about different kinds of lease transactions.[120] In his testimony, Ashbourne agreed that 36 months was an appropriate term for computer equipment leases.[121] For the leases for the Councillors' computer equipment, a 36-month term made particular sense because that was also the term of the Council.[122] Ashbourne's notes showed that Andrew required the transaction to be completed by the first Council meeting on January 6, 1998.[123]

79. MFP purported to differentiate itself from other leasing providers in two ways. First, it was not a captive supplier, which means that it was not a subsidiary leasing arm

[116] Ashbourne 12/16/2002 at 12.
[117] Ashbourne 12/16/2002 at 12; COT025442, 5:1:54; COTO25443, 5:1:55.
[118] Ashbourne 12/16/2002 at 12-13, 23.
[119] Ashbourne 12/16/2002 at 31.
[120] Ashbourne 12/16/2002 at 33, 37-38.
[121] Ashbourne 12/16/2002 at 38.
[122] Ashbourne 12/16/2002 at 39.
[123] Ashbourne 12/16/2002 at 44.

of a computer manufacturer, like IBM. Second, it provided value-added services.[124] Ashbourne emphasized this fact to the City, pointing out that MFP was not involved in the process by which the City selected its vendors of record for the supply of hardware (“vendor neutrality”).[125] Andrew had indicated that the hardware would continue to be supplied by Compugen, the current supplier for the City, and SHL, the current supplier for Metro Toronto.[126] Ashbourne agreed that the City was interested in having a competitive tender process.[127] However, because of the nature of this particular transaction, and the speed required to put the computer equipment in place by the first Council Meeting, he did not believe that Andrew intended to put out a formal RFQ.[128]

80. Ashbourne’s notes from December 19, 1997 showed a reminder to himself to put together a proposal with respect to a lease for the Councillors’ computer equipment.[129] Ashbourne viewed the Councillors’ lease as an opportunity to get MFP’s ‘foot in the door’, one that would reap much larger leasing benefits in the future.[130]

b) The 1997 Councillors’ leases 784

81. On December 19, 1997, Ashbourne prepared a memo to present to the MFP Investment Committee.[131] The individuals on the Committee at that point included, *inter alia,* Wolfraim and Payne.[132] In this memo, Ashbourne stated that he specifically targeted Andrew and the City’s “Finance Director”, namely Liczyk.

> Jim Andrew is the current Director of IT for Metro, most likely to take on Megacity Director position. Jim is a strong supporter of leasing and with our effort over the past six weeks he has convinced their Finance Director to support leasing.[133]

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[124] Wolfraim 12/18/2002 at 9.
[125] Ashbourne 12/16/2002 at 36.
[126] Ashbourne 12/16/2002 at 51.
[127] Ashbourne 12/16/2002 at 54-55.
[128] Ashbourne 12/16/2002 at 55.
[129] Ashbourne 12/16/2002 at 46.
[130] Ashbourne 12/16/2002 at 66.
[131] Ashbourne 12/16/2002 at 48; COT025495, 63:5:13.
[132] Ashbourne 12/16/2002 at 48-49.
[133] Ashbourne 12/16/2002 at 51; COT025495 at COT025495, 63:5:13.

82. On December 23, 1997, Ashbourne paid for lunch with Andrew, Payne and Robson.[134] This lunch for four individuals totaled $132.89. That same day, Ashbourne faxed a letter providing rates for the transaction to Beattie in the Purchasing and Materials Management Division.[135] Ashbourne was still under the impression that some form of a tender process would be rolled out by the City.[136]

83. At some point between December 23 and December 30, 1997, Beattie called Ashbourne to tell him that MFP had been awarded the 1997 Councillors' Leases.[137] On December 29, 1997, Ashbourne sent Beattie a letter.[138] That letter confirmed MFP's offer regarding lease financing for the Councillors' lease. Compugen and SHL then sent Ashbourne copies of the purchase orders showing the equipment to be put on lease.[139]

c) Yellow sheet for Councillors' computer lease

84. Another one of MFP's internal procedures was a "yellow sheet".[140] According to Ashbourne, the yellow sheet followed after the Investment Committee decided to go forward with the transaction and a deal had been made with the client.[141] The sales representative would put all of the information for the lease transaction in a yellow sheet. The yellow sheet had to be filled out and signed off by management in order for the sales representative to begin compiling documentation for the client.[142]

85. With respect to the 1997 Councillors' Leases, the first signature on the yellow sheet was dated December 29, 1998, the same day that Ashbourne wrote to Andrew.[143] On the yellow sheet for the Councillors' lease, Beattie was listed as the contact

[134] Ashbourne 12/16/2002 at 69; COT025128, 63:5:7.
[135] Ashbourne 12/16/2002 at 85; COT025486, 63:5:15a.
[136] Ashbourne 12/16/2002 at 86-87.
[137] Ashbourne 12/16/2002 at 87.
[138] COT025475, 5:1:67.
[139] Ashbourne 12/16/2002 at 55.
[140] COT029546, 5:1:81.
[141] Ashbourne 12/16/2002 at 70.
[142] Ashbourne 12/16/2002 at 70.
[143] Ashbourne 12/16/2002 at 71.

person.[144] The yellow sheet established MFP's internal number for the transaction. The Councillors' lease was given the number "784-1". On the yellow sheet, the total value of the hardware and software together was $999,430.00.[145]

86. Under the heading "Transaction Description", the numbers 7.44 annual and 7.22 monthly referred to the interest/debt rate. This rate was fixed by the Manager of Treasury based on the size and term of the deal, the lessee, and prevailing rates of lending institutions at the time.[146] Effectively, what the City (or lessee) was giving up was any residual value (in the normal sense of the word) in the equipment at the end of the 3-year term.[147] MFP owned that residual value because it owned the equipment. This residual was valued on the yellow sheet under the heading "FV of Equipment", which referred to its future value, i.e. what it would be worth at the end of three years.

87. Ashbourne explained the residual calculation as follows: For the Councillors' lease, MFP established a residual of 17 per cent. This residual meant that MFP financed 17 per cent of the total asset value on lease using its own money. The remaining 83 per cent was sourced from external funders. Effectively, after setting the residual, MFP went to the market and borrowed the money to fund the remaining 83 per cent. In order to carry the cost of that borrowing, MFP had to charge a lease rate which incorporated a sufficiently high interest rate to at least break even on its borrowing costs.[148] Ashbourne explicitly stated that MFP tracked its interest rates to the bond market.[149]

88. The sheet also contained present value calculation of that equipment residual. The difference between the present value of the equipment residual (136,347) and the actual cash investment (173,972) showed a net cash margin loss of 37,631.[150] This assisted MFP from a tax perspective because it had ongoing losses that it was able to

[144] Ashbourne 12/16/2002 at 72.
[145] Ashbourne 12/16/2002 at 74.
[146] Ashbourne 12/17/2002 at 107-108.
[147] Ashbourne 12/17/2002 at 114.
[148] Ashbourne 12/16/2002 at 62-63.
[149] Ashbourne 12/16/2002 at 63-64.
[150] Ashbourne 12/17/2002 at 117.

write off against income. Income was ultimately brought into MFP's financial statements on this deal at the end of the 3-year lease. In effect, MFP did not have to recognize any income for this deal for a 3-year period.[151]

89. Under the heading "MFP Residuals/Investment Details", the final line was "Maximum allowable equity (per Grid)". This number was relevant for assessing the salesperson's commission.[152] Usually, the commission was based solely on the residual or equity that MFP had put/invested into the transaction. For the 1997 Councillors' Lease, Ashbourne would not have received a commission because of its negative margin, although Payne retained the discretion to award a commission to recognize the fact that MFP was able to get is foot in the door with the City, which was potentially a major client.[153] Ashbourne received $7811, which he split with Robson.

90. Wolfraim agreed that he signed the yellow sheet for the 1997 Councillors' Lease and that his signature was required because MFP's cash investment was $173,978, which was in excess of the maximum allowable equity on this transaction, $93,940.[154]

i) Councillors' lease signed as of December 30, 1997

91. The Councillors' lease was signed on December 30, 1997. The combined amount of the SHL and Compugen purchase prices yielded a total of $991,430 assets on the lease.[155] The Councillors' lease had terms of 36 months, with a purchase option at the end.[156] The Certificate of Acceptance was signed by Andrew.[157]

92. The Master Lease Agreement 784 was amended by Letter Agreement on January 23, 1998.[158] The purpose of the amendment was to insert a fiscal funding clause, by which the City could terminate the lease if it returned all equipment to

[151] Ashbourne 12/17/2002 at 118.
[152] Ashbourne 12/17/2002 at 118-119.
[153] Ashbourne 12/17/2002 at 122.
[154] Wolfraim 12/18/2002 at 103-104.
[155] Ashbourne 12/16/2002 at 92-93.
[156] Ashbourne 12/16/2002 at 60.
[157] Ashbourne 12/16/2002 at 165.
[158] COT003679, 18:4:3.

MFP.[159] An additional equipment schedule was added to the agreement, numbered 784-2, effective June 1, 1998.[160] This schedule was signed by Bulko.[161]

93. At some point, Ashbourne sent Andrew a document describing Program Agreements.[162] Ashbourne stated that the purpose of a Program Agreement is to provide a streamlined acquisition process.[163]

> Program agreement [sic] is designed to handle multiple acquisitions over a period of time where there are continuous invoices coming through a supplier, on usually a monthly basis.[164]

94. Ashbourne agreed that, in this document, MFP offered to guarantee the interest rate of the lease following the 90-day period during which the bid remained open:

> The interest rate to be used following this initial period, will be 200 base points above the corresponding Canada Bond Yield (equivalent term) two weeks prior to lease commencement.[165]

95. Ashbourne agreed that this was an example of one of the indices that MFP could use to tie its future interest rates.[166] As will be discussed below, MFP did not make any such offer to the City in responding to its RFQ of July 1999.[167]

96. Originally, the Councillors' lease was a "one-off" transaction in the form of an Equipment Schedule (784-1). In 1998, MFP moved into the Program Agreement phase with the City.[168] The Program Agreement (PA1) was dated June 29, 1998.[169] Schedule

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[159] Ashbourne 12/16/2002 at 164.
[160] COT02313, 18:4:8
[161] COT023135 at COT023136, 18:4:8.
[162] COT025310, 5:1:51.
[163] Ashbourne 12/17/2002 at 195.
[164] Ashbourne 12/17/2002 at 195.
[165] COT025310 at COT025314, 5:1:51.
[166] Ashbourne 12/17/2002 at 70.
[167] Ashbourne 12/17/2002 at 71.
[168] Ashbourne 12/16/2002 at 167.
[169] COT023164, 6:1:23.

A to the Program Agreement was replaced by Schedule A-1, dated October 1, 1998.[170] The first Equipment Schedule pursuant to the Program Agreement was number PA1-1, took effect on October 1, 1998, and was signed by Taslim Jiwa.[171] Additional equipment was added throughout 1999, culminating in Equipment Schedule PA1-4.[172]

[170] COT023151, 6:1:15.
[171] COT023140, 6:1:9.
[172] Ashbourne 12/16/2002 at 169; COT023160, 6:1:21.