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## 1. Overview

1. Ashbourne worked diligently to nurture the City of Toronto account for MFP. He had helped them win the Councillors' lease deal and he knew that the City was considering a much larger transaction. Ashbourne met with front line staff in I&T, Treasury and PMMD. He carefully cultivated Andrew and provided him and the front line staff with written material outlining the benefits of leasing IT equipment and with the specific benefits of leasing through MFP. He was an experienced, knowledgeable sales representative who could have assisted the City to understand its needs and answered the City's questions.

2. In the fall of 1998, on the recommendation of Tie Domi, Robson introduced Domi to Payne. Domi was upfront with MFP: he told them he had no formal sales training, no knowledge of the leasing business, no financial background to speak of, no post-secondary education, and no book of business. He was an untested rookie. What he did have was aggressiveness, an entrepreneurial outlook, a famous last name, and personal connections with Paul Godfrey, his son Rob, and Nigro. Payne hired Domi.

3. Payne grew dissatisfied with the progress MFP was making on the City account. She knew a big deal was in the offing and she wanted to win it. She wanted a hunter, not a farmer on the file. Now was not the time for the careful, nurturing work of a farmer like Ashbourne. Payne needed a quick kill; she needed a hunter like Domi. First, she teamed them together on the account. By the end of April 1999, on the eve of the release of the RFQ, Payne put the rookie Domi on the account by himself.

4. Domi testified that the only thing he knew how to do was to work hard.<sup>1</sup> He also repeatedly testified that "my entire effort is my expenses."<sup>2</sup> With this remarkable statement, Domi succinctly summarized not only his approach to his job, but also what MFP expected from him.

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<sup>1</sup> Domi 02/10/2003 at 186-187.

<sup>2</sup> Domi 01/28/2003 at 22; Domi 01/29/2003 at 83, 85, 86; Domi 02/10/2003 at 95, 185.

5. His efforts or his hard work were not reflected in detailed proposals, financial calculations, clients' needs assessments, asset management plans, educational materials, draft contract language, memos to his employer, or emails to his clients. His efforts were reflected solely in a collection of receipts from expensive steakhouses, fine Italian restaurants, caterers in the Air Canada Centre, small neighbourhood bistros, receipts for blue boxes from Birks, and cellular telephone bills.

6. He knew it. MFP knew it. He was not ashamed of it. MFP actively encouraged him to take this approach. Domi testified that he could not remember anyone at MFP ever asking him a question about an expense that he submitted.<sup>3</sup> MFP:

- a. gave Domi a limitless expense account;
- b. approved clearly inappropriate expenses including expensive pens from Birks and flights on private jets;
- c. gave Domi no training on how to use the expense account ethically; and
- d. provided no meaningful oversight of his use of the expense account.

7. In short, like Robson in relation to the City of Waterloo,<sup>4</sup> Domi was encouraged by MFP to develop relationships with customers, such as the City, by taking a very aggressive stance on entertaining. Domi used his expense account to build inappropriate relationships with Jakobek, Andrew, and Liczyk. Less than one month before the City issued its RFQ, Domi flew Jakobek on a private jet to Philadelphia to watch a playoff hockey game. Jakobek paid nothing for the trip. Domi took Andrew to many hockey games, dinners and other events and offered him a \$700 pen as a

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<sup>3</sup> Domi 02/10/2003 at 185. He added that he may have discussed the gold cufflinks he bought for Rob Godfrey with someone at MFP, but that there was no problem getting reimbursed for that expense; Domi 02/10/2003 at 190.

<sup>4</sup> "Mr. Robson was encouraged by MFP to develop relationships with customers, such as the City [of Waterloo], by taking a very aggressive stance in entertaining and otherwise developing a personal relationship with "contact persons", such as [the Waterloo Chief Administrative Officer] and [the Waterloo Chief Financial Officer and Treasurer] Report of the Waterloo Inquiry, page 271, paragraph 6.

Christmas gift. Domi flew Liczyk on a private jet to Ottawa to watch a hockey game, and entertained her at the Air Canada Centre and Harbour Sixty Steakhouse.

8. Domi stayed in extremely close telephone contact with Jakobek, Liczyk and Andrew.

9. During the period March 15, 1999 and October 12, 2000, Domi placed 135 calls to Jakobek and they had at least 76 conversations. During this time he called Jakobek's:

- a. office number 50 times;
- b. cellular telephone number 77 times; and
- c. home 8 times.

10. There is no innocent explanation for this level of contact between a supplier and a City Councillor. In addition, Domi and Jakobek spoke frequently between the date MFP submitted its bid and the date of Councillor Jakobek's motion to amend the report to P&F ("P&F Report") to add the Jakobek Amendment. Domi and Jakobek had:

- a. 11 conversations in May 1999, the month of the trip to Philadelphia and the release of the computer leasing RFQ;
- b. one conversation on May 26, 1999, the same day that Irene Payne sent the letter terminating MFP's relationship with Lyons;
- c. 3 conversations between the date of the release of the RFQ and the date MFP submitted its bid in response to the RFQ; and

- d. 14 conversations in the blackout period between the date MFP submitted its response to the RFQ and the date that Jakobek moved his amendment to the P&F Report recommending that MFP be awarded the contract.

11. Domi also had levels of telephone contact with Andrew and Liczyk that established that the relationship between them had ceased being simply professional. There was no professional reason for Domi to be calling Liczyk at home on a regular basis, much less for 67 minutes at 1:00 in the morning. Domi and Liczyk clearly had some type of personal relationship although there is no evidence that it was ever sexual. Again, like Robson, the MFP salesman on the City of Waterloo account,<sup>5</sup> MFP encouraged Domi to develop a relationship with the City by developing a personal relationship with contact persons such as Andrew, Liczyk and Jakobek.

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<sup>5</sup> “Mr. Robson was encouraged by MFP to develop relationships with customers, such as the City [of Waterloo], by taking a very aggressive stance in entertaining and otherwise developing a personal relationship with “contact persons”, such as [the Waterloo Chief Administrative Officer] and [the Waterloo Chief Financial Officer and Treasurer].” Report of the Waterloo Inquiry, page 271, paragraph 6.

## 2. Ashbourne continued to court the City of Toronto in 1998

12. After the City and MFP signed the Councillors' lease, Ashbourne continued to court the City of Toronto. He focused his efforts on the front-line City employees who would be doing the analysis that would form the recommendations for any subsequent report to Council.<sup>6</sup>

### *a) Meetings and entertainment in 1998*

13. Ashbourne expensed a lunch with Jim Andrew on January 27, 1998 totaling \$54.61.<sup>7</sup> Ashbourne's calendar contained a note beside the appointment that reminded him to "discuss ongoing leasing".<sup>8</sup> The purpose of the meeting was not to discuss the Councillors' lease, but to discuss the future relationship between MFP and the City of Toronto.<sup>9</sup>

14. Ashbourne expensed \$400 worth of hockey tickets for Andrew in February 1998. Ashbourne's calendar contained entries with respect to procuring hockey tickets. On January 28, 1998, his calendar showed a reminder to obtain hockey tickets for Andrew for February 14, 1998.<sup>10</sup> Ashbourne testified that Andrew asked him for these tickets.<sup>11</sup>

Q: All right.

A: I had indicated and I can't remember whether I had done it at that lunch the previous day or even in some of the previous meetings that I had had with him but I might have said it the day before. That I personally had two (2) hockey tickets for Maple Leafs and that if Jim ever would like to attend the game, the tickets were available if he just wanted to give me a shout and ask if they were available.

Q: All right and so he did and you came through with making them available?

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<sup>6</sup> Ashbourne 12/17/2002 at 132, 186.

<sup>7</sup> COT029052, 63:5:9.

<sup>8</sup> Ashbourne 12/16/2002 at 95; COT025131, 5:1:30.

<sup>9</sup> Ashbourne 12/16/2002 at 95.

<sup>10</sup> COT025132, 63:5:7. However, the Nagano Olympics were taking place in Japan, so there was a break in the regular NHL schedule between February 7 and February 25, 1998. Ashbourne could not be sure whether the reference to February 14, 1998 referred to a game on that date, or a reminder to obtain tickets for a game by that date.

<sup>11</sup> Ashbourne 12/16/2002 at 98-99.

A: I believe so, yes.

15. Ashbourne agreed that he claimed the cost of these tickets from MFP, and was “presumably reimbursed”.<sup>12</sup>

16. On January 30, 1998, Ashbourne’s calendar showed another reminder to “get tickets for Jim Andrew” for a March 21, 1998 game between Vancouver and Toronto.<sup>13</sup> Ashbourne could not recall if Andrew had requested the tickets.<sup>14</sup> He was certain that MFP would have paid for such tickets.<sup>15</sup> Andrew swore that he believed that he had received two tickets to a Leafs hockey game on March 21, 1998 from Ashbourne, but was not certain.<sup>16</sup>

17. On March 6, 1998, Ashbourne sent a fax to Andrew which referenced a leasing model.<sup>17</sup> This fax was about a possible future transaction with the City.<sup>18</sup> Ashbourne testified that Andrew seemed to understand his explanations and models,<sup>19</sup> and that nobody at the City expressed concerns to him that they did not understand how leasing acquisitions were made or how the process worked.<sup>20</sup>

Q. I’m just wondering about your understanding of how level the playing field was with Jim Andrew. Did he seem to understand the transaction?

A. Yes.

Q. And to ask appropriate questions about it?

A. Yes.<sup>21</sup>

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<sup>12</sup> Ashbourne 12/16/2002 at 99.

<sup>13</sup> COT025133, 63:5:7.

<sup>14</sup> Ashbourne 12/16/2002 at 99.

<sup>15</sup> Ashbourne 12/16/2002 at 100.

<sup>16</sup> Andrew Affidavit, para. 19, 09/24/2003 at 16.

<sup>17</sup> Ashbourne 12/16/2002 at 100-101; COT025447, 63:5:20a.

<sup>18</sup> Ashbourne 12/16/2002 at 101.

<sup>19</sup> Ashbourne 12/16/2002 at 102.

<sup>20</sup> Ashbourne 12/16/2002 at 120.

<sup>21</sup> Ashbourne 12/16/2002 at 88.

18. On April 1, 1998, MFP hosted an event called “MFP Baseball Stars Night Out” at the Palavrion Movenpick and Skydome.<sup>22</sup> Ashbourne testified that he invited Andrew to attend this event, and that Andrew had confirmed that he would attend. Andrew denied attending this event.<sup>23</sup>

19. On April 7, 1998 Ashbourne met with Beattie.<sup>24</sup> During this meeting, Ashbourne gave a presentation on the benefits of leasing.<sup>25</sup> Ashbourne described the three phases of leasing from MFP: first, quarterly program planning; second, acquisition; and third, equipment acceptance.<sup>26</sup>

20. During his presentation, Ashbourne specifically referenced MFP’s contracts with the Provincial Government (Management Board Secretariat), the Solicitor General, and the Ontario Justice program.<sup>27</sup> He also mentioned the Ministry of Community and Social Services. The City submits Ashbourne named these customers to provide the City with a sense of confidence about selecting MFP for its computer equipment leasing needs.

21. Ashbourne’s April 1998 expense report showed a \$1400 expense for a Raptor’s Foundation Dinner.<sup>28</sup> Ashbourne testified that he only invited Andrew, who attended the dinner with his spouse.<sup>29</sup> Andrew confirmed that he attended this dinner.<sup>30</sup>

22. On June 4, 1998, Ashbourne invited Andrew on a MFP-sponsored ‘Legends of Hollywood Cruise’.<sup>31</sup> Ashbourne testified that Andrew accepted his invitation.<sup>32</sup> In his affidavit, Andrew confirmed that he attended the cruise with his daughter.<sup>33</sup>

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<sup>22</sup> COT029125, 63:14:22; COT029126, 63:14:22.

<sup>23</sup> Andrew Affidavit, para. 20, 09/24/2003 at 16; Andrew 09/25/2003 at 65.

<sup>24</sup> Ashbourne 12/16/2002 at 103; COT025137, 5:1:34.

<sup>25</sup> COT025387, 5:1:52.

<sup>26</sup> COT025387 at COT025395-25401, 5:1:52.

<sup>27</sup> Ashbourne 12/16/2002 at 107-108; COT025387 at COT025390-25391, 5:1:52.

<sup>28</sup> COT029054, 63:5:9. The dinner may have taken place on April 15.

<sup>29</sup> Ashbourne 12/16/2002 at 124.

<sup>30</sup> Andrew Affidavit, para. 20, 09/24/2003 at 16.

<sup>31</sup> COT029115, 63:14:23; Andrew Affidavit, para. 20, 09/24/2003 at 16; Andrew 09/25/2003 at 67.

<sup>32</sup> Ashbourne 12/16/2002 at 127; COT029115, 63:14:23.

<sup>33</sup> Andrew Affidavit, para. 20, 09/24/2003 at 16; Andrew 09/25/2003 at 67.

23. The next month, on July 17, 1998, Ashbourne took Andrew for lunch.<sup>34</sup>

24. Ashbourne testified that he had numerous dealings with Bulko over the Councillors' lease.<sup>35</sup> These interactions involved administrative issues, such as defective computer equipment that had to be returned.<sup>36</sup> On July 27, 1998, Ashbourne had lunch with Bulko.<sup>37</sup> Ashbourne testified to the purpose of this lunch:

And I probably, after numerous discussions, just thought, get together and have lunch and talk about the business in general and obviously about further opportunities and things of this nature.<sup>38</sup>

25. Later that day, Bulko sent Ashbourne an email.<sup>39</sup> The email contained the names and phone numbers of the I&T Directors – the purchasing agents - for the former municipalities.

26. Bulko also wrote "I'm still co-ordinating the acquisitions centrally for the former City of Toronto, so I'll continue to refer my clients to you".<sup>40</sup> The hard copy of the message bore Ashbourne's handwritten note referring to Garrett, the City's CAO.

27. Ashbourne explained that he had asked Bulko for the name of the CAO for the City. Ashbourne did not follow up with Garrett.<sup>41</sup>

28. On July 29, 1998, Ashbourne's expense report showed a modest expense for Jacqueline Gilbert ("Gilbert").<sup>42</sup> On July 30, 1998, Ashbourne's calendar showed a meeting with Gilbert and Franey.<sup>43</sup> He explained the purpose of the meeting as follows:

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<sup>34</sup> COT025138, 63: 5:7; COT029053, 63:5:9.

<sup>35</sup> Ashbourne 12/16/2002 at 128-129.

<sup>36</sup> Ashbourne 12/16/2002 at 128-129.

<sup>37</sup> COT025139, 5:1:36; COT029053, 5:1:78.

<sup>38</sup> Ashbourne 12/16/2002 at 129.

<sup>39</sup> Ashbourne 12/16/2002 at 129-130; COT025304, 55:1:23.

<sup>40</sup> Ashbourne 12/16/2002 at 130; COT025304, 55:1:23.

<sup>41</sup> Ashbourne 12/16/2002 at 130.

<sup>42</sup> COT029053, 63:5:9.

<sup>43</sup> COT025140, 5:1:37.

Again it was to find out more information in regards to their planning. Getting into -- further in the year, closer to Y2K. Mike -- it was really Mike that I wanted to spend the time in understanding what his plans were for the future because he was managing the client server area at that time . . .<sup>44</sup>

29. Ashbourne met with Franey again on September 23, 1998.<sup>45</sup> Ashbourne's expense reports also showed a meeting with Franey sometime in November 1998.<sup>46</sup>

30. On October 23, 1998, Ashbourne met with Andrew.<sup>47</sup> At the time of this meeting, Ashbourne knew that the City had issued an RFQ one month earlier for suppliers of computer hardware and software.<sup>48</sup> He agreed that he probably knew the City had received responses to that RFQ, and that Andrew had indicated to him who had bid.<sup>49</sup> Ashbourne explained that the purpose of the meeting was to get into more detail with respect to the planning process for 1999.<sup>50</sup>

31. Ashbourne's notes showed that Andrew told him that the City needed to replace between 6000 and 8000 of its 13,745 desktops and notebooks to prepare for January 1, 2000.<sup>51</sup> Andrew anticipated that the City would spend \$80 million on computers, software, and networks out of a Y2K budget of \$145 million.<sup>52</sup> Ashbourne testified that, after the October 23, 1998 meeting, he believed there was an opportunity to bid on asset acquisitions worth \$80 million.<sup>53</sup>

32. Ashbourne's expense reports also showed modest expenses for Bulko and Franey in November 1998.<sup>54</sup>

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<sup>44</sup> Ashbourne 12/16/2002 at 131.

<sup>45</sup> COT025141, 63:5:7

<sup>46</sup> COT029055, 5:1:82.

<sup>47</sup> COT025303, 63:2:8.

<sup>48</sup> Ashbourne 12/17/2002 at 72.

<sup>49</sup> Ashbourne 12/17/2002 at 72.

<sup>50</sup> Ashbourne 12/16/2002 at 134.

<sup>51</sup> Ashbourne 12/16/2002 at 135-136.

<sup>52</sup> Ashbourne 12/16/2002 at 135-136.

<sup>53</sup> Ashbourne 12/16/2002 at 176.

<sup>54</sup> COT029053, 63:5:9; COT029055, 5:1:82.

33. Bulko could not recall this meeting, and testified that her entertainment with MFP was limited to approximately three hockey games (all of which were in 2000, after Domi took over the account) and the annual golf tournament. She admitted that she had three lunches with individuals from MFP. She could recall only one of these lunches being with Ashbourne, sometime during the summer of 1998.<sup>55</sup>

***b) Meetings and entertainment in early 1999***

34. On January 22, 1999, Ashbourne sent early registration forms to Viinamae; he could not recall what the event was, but supposed it was sponsored by MFP.<sup>56</sup> There was a fax cover sheet, attaching an early registration form for Viinamae.<sup>57</sup>

35. Andrew believed that he may have accepted an invitation from Ashbourne to attend the Leafs game on February 10, 1999, in the MFP box.<sup>58</sup> Andrew confirmed that he attended one hockey game at the MFP box at the invitation of Ashbourne, and deduced this to be the one.

36. On March 25, 1999, Ashbourne sent an eleven page introductory sales letter to Brittain.<sup>59</sup> The letter was an introduction to technology and asset based financing with MFP. The information in the letter was very similar to the information Ashbourne had previously provided to Andrew and Beattie. Ashbourne identified that MFP had been active at all three levels of government in Canada and with select municipal, state, and federal governments in the United States. Ashbourne agreed that this material was included in order that the City could draw comfort from these existing relationships with governmental authorities.<sup>60</sup>

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<sup>55</sup> Bulko 08/12/2003 at 44-45.

<sup>56</sup> COT029104, 5:1:91; COT029105, 5:1:91; Ashbourne 12/16/2002 at 139.

<sup>57</sup> COT029104, 5:1:91; COT029105, 5:1:91.

<sup>58</sup> Andrew Affidavit, para. 22, 09/24/2003 at 17.

<sup>59</sup> COT025182, 5:1:42.

<sup>60</sup> Ashbourne 12/17/2002 at 43.

37. Ashbourne arranged to meet with Brittain on March 30, 1999, but Brittain did not attend.<sup>61</sup> However, Willschick, Manager of Treasury Services, and possibly Rabadi attended the meeting.<sup>62</sup> Ashbourne agreed that he provided the same information he previously provided to Andrew and Beattie, albeit structured specifically for a finance-oriented audience.<sup>63</sup>

38. During this meeting, Ashbourne contrasted traditional sources of funding (i.e. debentures) with operating leases.<sup>64</sup> He also distinguished between a capital lease, wherein the lessee takes ownership of the asset(s) at some future point, and an operating lease, wherein the lessor continues to hold title to the equipment unless and until the lessee agrees to purchase the asset(s) at the end of the operating lease.<sup>65</sup>

39. At the time of this meeting, Ashbourne anticipated that the City would issue a tender for computer hardware and software in the late spring or summer of 1999.<sup>66</sup>

40. Ashbourne also dealt with Rabadi.<sup>67</sup> On April 13, 1998, Ashbourne faxed Rabadi information from his leasing presentations in anticipation of their upcoming meeting.<sup>68</sup> This information included PowerPoint slides. The next day, Ashbourne faxed Rabadi again.<sup>69</sup> At Rabadi's request, Ashbourne attached information regarding the purchase versus lease analysis.<sup>70</sup> The information provided by Ashbourne was based on standard assumptions:

. . . [B]ased on an asset cost of \$10 million, based on five (5) annual payments, we used an interest rate for the purchase economics of 5 percent and for the lease, we used 6.5 percent. Annual payments in advance and then we assumed a salvage value of 5 percent at the end of five (5) years for the analysis.<sup>71</sup>

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<sup>61</sup> COT025142, 63:5:7; Ashbourne 12/16/2003 at 142.

<sup>62</sup> Ashbourne 12/16/2002 at 143

<sup>63</sup> Ashbourne 12/16/2002 at 144.

<sup>64</sup> COT025103 at COT025202-25203, 5:1:43.

<sup>65</sup> Ashbourne 12/16/2002 at 145-146.

<sup>66</sup> Ashbourne 12/16/2002 at 148.

<sup>67</sup> Ashbourne 12/16/2002 at 15.

<sup>68</sup> COT025254, 5:1:47; Ashbourne 12/16/2002 at 152.

<sup>69</sup> COT025250, 5:1:44.

<sup>70</sup> Ashbourne 12/16/2002 at 153.

<sup>71</sup> Ashbourne 12/16/2002 at 153-154.

41. The analysis concluded that leasing was the most preferable option for the City.<sup>72</sup> After the April 1998 meeting, Ashbourne testified that he had follow-up telephone conversations with Rabadi.<sup>73</sup>

42. On April 27, 1999, Ashbourne had a scheduled appointment with Viinamae.<sup>74</sup> The purpose of the meeting was for Ashbourne to obtain information with respect to Y2K deployment.<sup>75</sup> Ashbourne testified that he spoke with Viinamae about the scope of the Y2K project and that she told him that the City would require approximately 13,000 units.<sup>76</sup> Ashbourne was left with the impression that Viinamae was interested in having all Y2K related equipment rolled out by the end of the year.<sup>77</sup> Viinamae has no recollection of meeting with Ashbourne, nor did she recall any phone conversations with him.<sup>78</sup>

43. Ashbourne's calendar for April 27, 1998 showed a 4:00 p.m. meeting with Rabadi.<sup>79</sup> Ashbourne testified that this meeting occurred. Rabadi attended with two other individuals from Finance: one was Altman and Ashbourne could not recall the identity of the third individual.<sup>80</sup> During this meeting, Ashbourne made a finance-oriented presentation.<sup>81</sup>

44. Ashbourne attempted unsuccessfully on several occasions to meet with Liczyk. He testified that he set up several meetings, but Liczyk cancelled all of them.<sup>82</sup>

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<sup>72</sup> Ashbourne 12/16/2002 at 155.

<sup>73</sup> Ashbourne 12/16/2002 at 156.

<sup>74</sup> COT025143, 63:5:7.

<sup>75</sup> Ashbourne 12/16/2002 at 149.

<sup>76</sup> Ashbourne 12/16/2002 at 150.

<sup>77</sup> Ashbourne 12/16/2002 at 151.

<sup>78</sup> Ashbourne 12/17/2002 at 12-13.

<sup>79</sup> COT025143, 63:5:7.

<sup>80</sup> Ashbourne 12/16/2002 at 155-156.

<sup>81</sup> Ashbourne 12/16/2002 at 156.

<sup>82</sup> Ashbourne 12/16/2002 at 16.

**c) Ashbourne tried to educate City employees who were leasing novices**

45. Ashbourne testified that Andrew was not a leasing expert like he was.<sup>83</sup> He also agreed that, to the best of his knowledge, Franey was not a leasing expert.<sup>84</sup> Ashbourne agreed that he was not aware of any major lease transactions that Rabadi or Beattie had been involved in.<sup>85</sup> Pessione testified that Power was not a leasing expert and that “he’s maybe at my level or maybe slightly higher, in terms of his knowledge of leasing, and being able to evaluate leasing responses.”<sup>86</sup>

46. Ashbourne agreed that he made his presentations to the City to educate the City on the benefits of leasing and on the benefits of leasing through MFP.<sup>87</sup>

47. On examination by David Moore, Ashbourne testified that to his knowledge none of the people he dealt with at the City had any difficulty understanding the concepts that he was explaining, or following the models or examples that he provided to them.<sup>88</sup>

48. Ashbourne’s testimony is perfectly consistent. Ashbourne was a careful and skillful salesperson. He was able to communicate the substance of his sales pitch to his intended customers. If his customers were unable to understand his sales pitch, he would not be doing his job. In fact, it is a fundamental task of a salesperson to identify the sophistication of his or her audience and to tailor her or his presentation accordingly. If salespeople find themselves speaking over the heads of the audience they simplify, or to put it more crudely, “dumb down” their presentation accordingly.

49. The fact that City representatives appeared to understand the sales pitch does not mean that they were leasing experts. Ashbourne acknowledged this reality. Ashbourne agreed that he knew more than, for example, Andrew. In other words, City staff lacked the expertise required to critically evaluate the information provided by

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<sup>83</sup> Ashbourne 12/17/2002 at 52-53.

<sup>84</sup> Ashbourne 12/17/2002 at 53-54.

<sup>85</sup> Ashbourne 12/17/2002 at 54-55.

<sup>86</sup> Pessione 02/13/2003 at 220.

<sup>87</sup> Ashbourne 12/17/2002 at 55-56.

Ashbourne or any other MFP representative. They were unable to identify hidden assumptions, to see potential pitfalls, and to unpack the information MFP provided.

50. This problem was magnified when City staff met with Wilkinson and Domi in meetings that led to the extension of the lease terms from three to five years and the lease rewrites. The complete absence of meaningful written proposals regarding these fundamental decisions left the City with nothing to analyze.

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<sup>88</sup> Ashbourne 12/17/2002 at 151.

### 3. MFP hired Domi, November 1998

51. When MFP hired Dash Domi, he had no experience or background in computer leasing.

#### *a) The MFP job opportunity*

52. Tie Domi, Domi's brother, brought Domi to the attention of Robson, who in turn brought him to the attention of Payne. Domi confirmed this version of events. He testified that Robson met his brother at a golf tournament. Robson had told Tie Domi to have his brother call him if he was interested in working in the leasing business.<sup>89</sup>

53. Payne testified that MFP's business plan included the addition of three more sales representatives to the public sector sales team.<sup>90</sup> Payne later acknowledged that Domi was "really hired to do multiple ministries and government agencies" not only the City of Toronto.<sup>91</sup> Payne remembered the two other sales representatives joining MFP at approximately the same time.<sup>92</sup>

#### *b) Domi's lack of experience and knowledge*

54. In 1984-85, after finishing grade thirteen, Domi attended hairdressing school in Toronto.<sup>93</sup> Domi worked as a hairdresser at a Toronto salon called "Looks" for eleven years.<sup>94</sup> In 1994, Domi left Looks and began working as a sales representative with his friend's printing company, Pristine Printing.<sup>95</sup> After approximately one year, Domi left Pristine Printing and started a fitness club in partnership with Lennox Lewis.<sup>96</sup> This fitness club was called "Life Support". In July 1998, due to professional differences,

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<sup>89</sup> Domi 01/22/2003 at 18.

<sup>90</sup> Payne 01/09/2003 at 77.

<sup>91</sup> Payne 01/13/2003 at 133.

<sup>92</sup> Payne 01/09/2003 at 78.

<sup>93</sup> Domi 01/22/2003 at 24-25.

<sup>94</sup> Domi 01/22/2003 at 26.

<sup>95</sup> Domi 01/22/2003 at 28.

<sup>96</sup> Domi 01/22/2003 at 29 -30.

Domi sold his interest in Life Support.<sup>97</sup> Domi subsequently owned a yogurt shop in the Forest Hill area of Toronto for a short time, while looking for a new opportunity.<sup>98</sup>

55. Domi considered himself “green” when he applied for the job as a sales representative with MFP.<sup>99</sup> He agreed that he had no education or experience in finance, leasing, information technology, or asset management.<sup>100</sup> He admitted that he had never worked in a corporate culture, and had no understanding of business standards or how public companies must conduct themselves.<sup>101</sup>

56. Domi testified that he told Robson that he had no leasing experience and Robson told him that leasing knowledge was not required to be successful in the leasing business.<sup>102</sup> Likewise, during his interview with Payne, Domi also made it clear that he had no technical leasing skills. Domi was confident that despite his lack of technical knowledge about the company and the job, he would succeed as a sales representative with MFP because he knew how to build relationships.<sup>103</sup> He described himself as a driven and “result-oriented” person.<sup>104</sup>

I kind of – sh – she liked to hear that I thought like an entrepreneur, I mean – I mean, I made it very clear that I didn’t have any technical skills or financial background and she – I don’t think she had herself that technical skills or financial background so she could perhaps relate to where I was coming from.<sup>105</sup>

57. Ashbourne also agreed that Domi did not have any experience in leasing and lacked the technical skill possessed by himself or Wilkinson.<sup>106</sup>

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<sup>97</sup> Domi 01/22/2003 at 32-33.

<sup>98</sup> Domi 01/22/2003 at 18.

<sup>99</sup> Domi 01/22/2003 at 88.

<sup>100</sup> Domi 01/22/2003 at 51-52.

<sup>101</sup> Domi 01/22/2003 at 52 - 53.

<sup>102</sup> Domi 01/22/2003 at 20.

<sup>103</sup> Domi 01/22/2003 at 70.

<sup>104</sup> Domi 01/22/2003 at 65.

<sup>105</sup> Domi 01/22/2003 at 67.

<sup>106</sup> Ashbourne 12/17/2002 at 37-38.

**c) MFP hiring and interview process**

58. Wolfraim described the hiring and interview process as being quite informal. Robson met Domi and introduced him to Payne. Payne confirmed that Robson wanted her to meet with Domi. Robson told her:

You really should look at this individual, he's got very good people skills, lots of energy, charismatic, an entrepreneur...<sup>107</sup>

59. Payne agreed that Robson's recommendation influenced both her and Wolfraim.<sup>108</sup> Payne suggested that Wolfraim meet him, which he did. Wolfraim remembered spending a half hour or forty-five minutes with him, discussing some of his background.<sup>109</sup> The next day, Wolfraim clarified:

So in the meeting that I had with -- with Mr. Domi, and I wouldn't call it an interview as much as a conversation. We didn't talk about the City of Toronto. We didn't talk about what relationships he had. It was more a -- to get a sense of -- of him as a person and anyway, enough said.<sup>110</sup>

60. Payne also confirmed that she met with Domi on the same day as Wolfraim, although Wolfraim met him first.<sup>111</sup> Payne did not check any of Domi's references.<sup>112</sup>

**d) Payne: Domi was charismatic, aggressive, and hired**

61. Payne agreed that Domi was an unlikely candidate for the MFP public sector team, which is a fairly sophisticated sector.<sup>113</sup> She further agreed that Domi did not have

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<sup>107</sup> Payne 01/09/2003 at 78.

<sup>108</sup> Payne 01/09/2003 at 82.

<sup>109</sup> Wolfraim 12/18/2002 at 166-167.

<sup>110</sup> Wolfraim 12/19/2002 at 10 - 11.

<sup>111</sup> Payne 01/09/2003 at 81.

<sup>112</sup> Payne 01/14/2003 at 139.

<sup>113</sup> Payne 01/09/2003 at 82.

computer knowledge, leasing knowledge, had never worked in a corporate context such as MFP, and had no sales training or experience.<sup>114</sup>

62. Wilkinson agreed with the other MFP executives: Domi was an unlikely candidate for an MFP sales representative. When asked whether, given a list of facts about the City's needs, its place in the refresh cycle, its cash flow, and its budgetary restraints, Domi would be able to advise the City on the right strategy, Wilkinson agreed that he would be able to advise the City better than Domi.<sup>115</sup> He was responsible for all of the strategizing, financial analysis, and modeling performed by MFP.<sup>116</sup> Domi would not be performing these tasks.

63. Wilkinson testified that, as a general practice, he did not meet directly with MFP clients. Typically, he functioned as a backroom advisor who was consulted by MFP sales representatives.<sup>117</sup> Wilkinson agreed that he played a greater role in the City of Toronto account because of Domi's lack of leasing expertise.<sup>118</sup>

64. During his evidence, Wolfraim acknowledged that the decision to hire Domi as a computer leasing sales representative did not make a lot of sense on the surface.<sup>119</sup>

Well, the skill sets that you use in our business are either financial or technology skills typically, or you -- or you're a seasoned sales rep. So we would hire people -- our -- our ideal sales rep traditionally have been somebody that had -- had had experience -- had -- was an experienced technology sales rep with good success and -- and a group of accounts that he could bring with him. In Dash's case, he had managed a fitness centre and -- and been involved in -- in non-financial and non-technology. I think he also owned a yogurt shop or something. But non-financial, non -- non-sales, non-financial, non-technology background. So that's why it wasn't logical initially.<sup>120</sup>

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<sup>114</sup> Payne 01/09/2003 at 82.

<sup>115</sup> Wilkinson 09/18/2003 at 160.

<sup>116</sup> Wilkinson 09/18/2003 at 160.

<sup>117</sup> Wilkinson 09/18/2003 at 206.

<sup>118</sup> Wilkinson 09/18/2003 at 206-207.

<sup>119</sup> Wolfraim 12/18/2002 at 165-166.

<sup>120</sup> Wolfraim 12/18/2002 at 166.

65. Payne testified that MFP needed fresh ideas and approaches. She was trying to hire entrepreneurial individuals. Payne thought Domi was a natural salesperson and a people person, and MFP's strategy was to surround him with good technical expertise.<sup>121</sup> She considered this to be a good fit with MFP's approach, which was based on establishing long-term relationships with the public sector. Payne explained her hiring choice as follows:

He was recommended to me by Dave Robson. Dave Robson had met him at some event in Toronto. And Dash is one (1) of those hockey players, you know, and -- uhm -- he seemed to [inaudible] Dave said he was just a dynamo you know, he's really good, you -- you got to meet this guy. And I met him, and he was entrepreneurial, and he had his own gym... .

...

Uhm -- you know you -- hear about him being a hair dresser, but he, he's an entrepreneur. And he would make it, you know so, I interviewed him and I liked his personality he's very aggressive, but he had some, a charisma about him that I know customers would like him. So, I hired him, to give him a chance. Because I could surround him with technical people anyway, You don't have to know the business to be a -- [inaudible]-- you just have to know [inaudible] . . . So, that's why I hired him, and he was very personable, got along with everybody, you know, and just got the job done.<sup>122</sup>

66. Ashbourne agreed with Payne's characterization that MFP's hiring strategy seemed to round a corner at the time that Domi was hired.<sup>123</sup> MFP generally, and Payne and Wolfraim in particular, sought out salespeople with the personality to develop relationships – they sought out hunters.

67. Although Payne denied having any knowledge that Domi had connections to individuals at the City at the time he was being interviewed and hired, and specifically to Paul Godfrey, Rob Godfrey, John Danson ("Danson") and Nigro, her evidence on this point is not credible.<sup>124</sup> Payne may not have been introduced to these individuals until three to four months after Domi was hired, but it is not believable that she hired Domi without some indication that he could open doors that had remained closed to

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<sup>121</sup> Payne 01/09/2003 at 83.

<sup>122</sup> COT041622 at COT041781, 5:1:84.

<sup>123</sup> Ashbourne 12/17/2002 at 40-41.

<sup>124</sup> Payne 01/09/2003 at 90.

Ashbourne. Nor is there any reason to believe that Domi would have kept these connections to himself.<sup>125</sup>

68. However, Rollock testified that, although he lacked a detailed recollection of Payne's conversation with him about putting Domi on the City of Toronto account, he believed that "she did mention that Dash seemed to know a number of people in the City".<sup>126</sup>

**e) Domi received no training after he was hired**

**i) MFP policies & public sector-specific issues**

69. Payne testified that beginning in 1998, MFP held orientation sessions for new employees and Human Resources taught them about the MFP policy manual.<sup>127</sup> She indicated that MFP salespeople went through these sessions and were introduced to the policies.<sup>128</sup> However, Pessione and Domi contradicted her statements.

70. Pessione testified that he never received any training with respect to MFP's policies. He never saw, much less reviewed with anybody, a conflict of interest policy, a donation policy, or an expense policy.<sup>129</sup>

71. Domi testified that Human Resources did not provide any training to him on MFP's policies and procedures.<sup>130</sup> He never saw any of the relevant policies – code of conduct, conflict of interest, donations, sponsorships, or expenses – prior to the Inquiry.<sup>131</sup> He did not know if he had ever read a copy of MFP's corporate manual.<sup>132</sup> When asked, Domi openly admitted that he had not complied with specific aspects of the MFP expense policy, including both the timeliness of his reports, and the inclusion

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<sup>125</sup> Payne 01/09/2003 at 90-91.

<sup>126</sup> Rollock 06/09/2003 at 228.

<sup>127</sup> Payne 01/09/2003 at 44.

<sup>128</sup> Payne 01/09/2003 at 44-45.

<sup>129</sup> Pessione 02/13/2003 at 13.

<sup>130</sup> Domi 01/27/2003 at 153.

<sup>131</sup> Domi 01/27/2003 at 154-155.

<sup>132</sup> Domi 01/30/2003 at 153-154.

of a date, a reason, and a name on his receipts. No one at MFP ever said anything to him about his non-compliance.<sup>133</sup>

***ii) Lease financing***

72. Wolfram acknowledged that the MFP sales force received very little substantive training.<sup>134</sup> If an employee specifically asked for technical training, MFP would send the employee on lease or technology training courses. However, employees were not required to attend such courses.<sup>135</sup> When asked about the training Domi received – being inexperienced in both the leasing and the technology aspects of the business - Wolfram replied:

His training would have been just training by walking around, spending time with different people, spending time with different departments, understanding what the work flow is and so forth, pretty -- nothing terribly structured, pretty limited.<sup>136</sup>

73. Domi testified that he did not receive any training with respect to sales.<sup>137</sup> He received no formal training, nor was there any informal training whereby he accompanied an experienced sales representative during the performance of his/her duties. Domi testified that he had received a video, but he never received any formal training about technology or leasing.<sup>138</sup>

Q: You've also told the Commissioner, quite candidly I might add, that when you started in '99, you were completely green?

A: That's correct.

Q: You said that you received no formal training on leasing. Is that right?

A: That's correct.

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<sup>133</sup> Domi 01/27/2003 at 155-160.

<sup>134</sup> Wolfram 01/07/2003 at 126-127.

<sup>135</sup> Wolfram 01/07/2003 at 126.

<sup>136</sup> Wolfram 01/07/2003 at 127.

<sup>137</sup> Domi 01/30/2003 at 36.

<sup>138</sup> Domi 01/30/2003 at 137.

Q: And you didn't even receive any formal training, if I understand you, on MFP's particular approach to leasing. Is that fair sir?

A: No, we don't generally do that at MFP, so.

Q: And they didn't do that for you?

A: No.<sup>139</sup>

74. Domi's lack of knowledge with respect to leasing terminology and procedure was apparent throughout his testimony. When asked to explain his sales pitch, Domi could not get beyond the most general, rudimentary pronouncements. When asked what he could have contributed to nuts and bolts discussions about leasing, Domi agreed that he would have deferred to Wilkinson on every point.<sup>140</sup>

#### ***f) Compensation***

75. A letter of agreement dated October 23, 1998, addressed to Domi, set out his compensation structure. According to the agreement he signed, Domi's compensation included:

- a. commissions, which would be set-off against the draws advanced to him;
- b. draw against commissions at monthly rate of \$8,334;
- c. monthly allowance of \$550 for auto expenses;
- d. monthly reimbursement for out-of-pocket expenses incurred upon completion and approval of an expense account with proper receipts attached;

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<sup>139</sup> Domi 02/10/2003 at 11-12.

<sup>140</sup> Domi 2/10/2003 at 12-28.

- e. reimbursement for costs relating to business use of car or cellular phone;  
and
- f. standard MFP employee benefits package.<sup>141</sup>

76. Domi read his letter of agreement, but testified that he did not understand how his commission was calculated.<sup>142</sup> He testified that he was unfamiliar with terms contained in the agreement like “maximum equity” and “buy/sell margins”. Domi believed that his commission depended on profits, not on the absolute size of the deal.<sup>143</sup> He thought that he “got paid on results”. Domi was also under the impression that he was earning a salary of \$100,000 per year; he did not understand that this amount was actually a draw against commissions.<sup>144</sup>

77. Payne confirmed that there was no fixed income for sales representatives. Sales representatives were only paid by MFP if they landed deals which generated commissions. Then, the salesperson’s monthly draw was offset against the income that they generated from the deals:<sup>145</sup>

Q: And now at MFP, the situation for the sales people is, if I can say so, worse than it was before, in that -- in that they're -- not only do they have to land the business, but they've got to make sure it's good business that the company is going to get paid on profitably; is that right?

A: That's right.

Q: So there's a real incentive for them to land not only business, but good business?

A: Yes.<sup>146</sup>

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<sup>141</sup> 11:2:44.

<sup>142</sup> Domi 01/22/2003 at 93-94.

<sup>143</sup> Domi 01/22/2003 at 75.

<sup>144</sup> Domi 01/22/2003 at 87.

<sup>145</sup> Payne 01/13/2003 at 127.

<sup>146</sup> Payne 01/13/2003 at 127-128.

#### **4. Payne replaced Ashbourne with Domi**

78. In late March 1999, Payne removed Ashbourne from the City of Toronto account and replaced him with Domi. In the run-up to the release of the City's RFQ for computer leasing, Payne decided to replace her experienced, knowledgeable, and successful salesperson with an inexperienced, untested salesperson who did not know the first thing about computer leasing.

79. Payne wanted to win the City account. She wanted a hunter not a farmer to front the bid. She chose charisma over substance, connections over diligence, and an unlimited expense account over experience. Her decision paid off, at the City's expense.

##### ***a) Ashbourne was unable to meet Liczyk and did not meet Jakobek***

80. From November 1998 through the spring of 1999, Ashbourne juggled management responsibilities for the private sector, the Canadian Division of MFP and his many sales accounts. These management responsibilities occupied between 30 and 50 per cent of his time.<sup>147</sup> As set out above, he had many meetings with front-line city staff.

81. However, despite all of Rob Ashbourne's diligent work, he did not get meetings with Liczyk or Jakobek. Ashbourne repeatedly tried to get a dinner meeting with Liczyk. He was entirely unsuccessful. As Liczyk swore in her affidavit, "I did not attend a dinner at La Fenice with any MFP official on either November 18, 25, 1998, December 14, 1998 or February 8, 1999."<sup>148</sup>

##### ***b) Hunters versus Farmers***

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<sup>147</sup> Ashbourne 12/16/2002 at 174.

<sup>148</sup> Liczyk Affidavit, para. 114, 11/03/2003 at 50.

82. In her evidence, Payne described two types of sales representatives: hunters and farmers.

A. One that has been in the industry a long time and feels comfortable going into an account and managing it over a period of time, we call them farmers.

...

A. And for people when you want to get into new markets and expand and really drive the business, you would bring in hunters. And it's -- it's known in the industry as, you know, if you're in the HR department, you're either looking for a hunter or a farmer for a salesperson. We needed both. Most companies need both kinds of skill sets.

Q: Mr. Ashbourne would be a farmer and Mr. Domi would be a hunter?

A: Yes.<sup>149</sup>

83. Wolfram understood this characterization immediately and described the juxtaposition in the most benign terms possible as follows: a hunter is a “real self-starter, has high energy and has the ability to get in front of people and isn’t afraid to pick up the phone and call people and just get in front of them”. A farmer tends to be “a more slower paced, more cautious, deliberate” sales representative.<sup>150</sup>

84. Payne wanted a hunter on the City account, not a farmer. Ashbourne, with his focus on trying to educate the individuals at the City doing the analysis and making the recommendations, was a farmer. In contrast, Domi, with his focus on befriending the key decision makers at the City, was the hunter.

***c) Payne had Ashbourne share the City account with Domi***

85. Ashbourne and Domi shared responsibility for the City account for five to six months, from January to the end of April 1999.<sup>151</sup> During this period, Domi never told Ashbourne what he was doing to advance MFP’s position with the City. Ashbourne

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<sup>149</sup> Payne 01/09/2003 at 93-94.

<sup>150</sup> Wolfram 12/18/2002 at 163.

<sup>151</sup> Ashbourne 12/16/2002 at 174; Ashbourne 12/17/2003 at 34-35.

testified that Domi neither took direction from him, nor was Domi accountable to him during this period of overlap.<sup>152</sup>

86. Domi agreed with Ashbourne's characterization, and noted that Ashbourne did not assist him during this period of overlap, although Ashbourne may have introduced him to Andrew.<sup>153</sup> Domi also testified that he did not work with Ashbourne: he did not attend any meetings with him or visit clients during this period.<sup>154</sup>

***d) April 1999 – Payne replaced the farmer with the hunter***

87. In late March or early April 1999, Payne asked Wilkinson to work with Domi on the City of Toronto account.<sup>155</sup> At this point, Domi assumed sole responsibility for the account.<sup>156</sup> Wilkinson testified that he was not really involved in the City of Toronto account until the RFQ was issued, in late May 1999.<sup>157</sup>

88. Where Ashbourne's focus had been on the individuals at the City doing the analysis and making the recommendations, Domi turned his focus to the key decision makers at the City. Domi identified the key decision makers as: Andrew, Liczyk, and Jakobek.<sup>158</sup>

***e) Why Payne Replaced Ashbourne with Domi***

89. Payne explained that she removed Ashbourne from the account because she considered continuity for the City of Toronto account to be at risk as there was a chance that Ashbourne would not be continuing in his employment with MFP.

The main reason I decided to have Dash Domi on the account totally, or being the key contact, was first of all, it's very confusing for the customer, like who is

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<sup>152</sup> Ashbourne 12/16/2002 at 178.

<sup>153</sup> Domi 01/22/2003 at 96.

<sup>154</sup> Domi 01/30/2003 at 137.

<sup>155</sup> Wilkinson 09/22/2002 at 18.

<sup>156</sup> Domi 01/22/2003 at 97.

<sup>157</sup> Wilkinson 09/22/2002 at 23.

<sup>158</sup> Domi 02/10/2003 at 10.

responsible? Who has ownership? If we don't get the business, who failed? From MFP's perspective, if we don't get the business, who failed? If we got the business, the customer said, who are we dealing with? You don't have two (2) sales execs. You normally would have a senior and a junior sales exec. You don't have two (2) sales execs on the one (1) account.

The other point was that Rob Ashbourne was working on an account called Canada Trust. We lost money on the project for Canada Trust. The next deal he did, we made money. And this is a risk business that MFP is in. And based on that, we had some discussion as to whether he should be paid. And Peter Wolfram felt that he shouldn't have been paid the total amount because the initial deal we lost money on. So, I was to discuss this with Rob. Rob was adamant that he should get paid. Peter was adamant that he shouldn't get paid. I'm in the middle. Peter said, if he doesn't agree with this, fire him.

So, I went out for lunch with Rob, and I said, you know, this is what I've been told. Now, we either come to some discussion -- to some conclusion on this, or you know, I'm concerned for your well being and whether you're going to be with the Company. And I remember the lunch specifically. I went back and I talked to Peter. Peter said, what did you do? And I said, look I want to give him a chance. Give me three months to work with him.

Rob has four (4) children, lots of commitments. I felt it was only just to give him a chance. However, I didn't want it to appear to -- if I did have to let him go, on a strategic account like the City of Toronto that we'd just fired a rep. So, that was my rationale, apart from the fact that he had his work cut out for him any way with all of his other duties and accounts. That was part of my rationale for taking him off the City of Toronto.<sup>159</sup>

90. However, in his affidavit, Wilkinson said that Payne removed Ashbourne because she wanted MFP to make more progress on the City account:

My best recollection is that Ms. Payne was of the view that we were not making enough progress on the City account and that she wanted to focus more closely on that – on it herself.<sup>160</sup>

91. When asked what progress there was to be made on the City of Toronto account, given that no RFQ had been issued, Wilkinson responded that:

[B]ut it might be just in terms of getting to meet, what – who she felt were the right people.<sup>161</sup>

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<sup>159</sup> Payne 1/13/2003 at 136-138.

<sup>160</sup> Wilkinson Affidavit, para. 24, 09/16/2003 at 40.

92. Domi believed that Payne considered the City account to be her own account. He opined that the reason she trusted him with the City account was because she intended to work closely with him.<sup>162</sup>

93. Wilkinson agreed that the purpose of Domi's involvement during the period prior to the issuance of the RFQ was to establish the individual relationships between MFP and the City, so that MFP was in the best possible position when the City issued its RFQ.<sup>163</sup>

94. Wolfraim agreed that Payne made the decision to replace Ashbourne with Domi.<sup>164</sup> In his evidence, Wolfraim confirmed that he understood Ashbourne was leaving the account because "his plate was full" and that the intelligence-gathering process would be conducted by Domi.<sup>165</sup>

95. In his statement to the OPP, Wolfraim noted that although Domi was the sales representative charged with the City account at the time, he was new to the business and thus, more of "an observer".<sup>166</sup> Thus, the ultimate result of Payne's decision was to remove a salesperson knowledgeable and skilled in technology leasing, and replace him with a rookie.

***f) Ashbourne was not pleased about being replaced by Domi***

96. Ashbourne was not pleased about Domi replacing him on the City of Toronto account.<sup>167</sup>

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<sup>161</sup> Wilkinson 9/22/2003 at 18.

<sup>162</sup> Domi 01/22/2003 at 99.

<sup>163</sup> Wilkinson 9/22/2003 at 19.

<sup>164</sup> Wolfraim 12/18/2002 at 160-161.

<sup>165</sup> Wolfraim 12/18/2002 at 161; COT041622 at COT041761, 5:1:84.

<sup>166</sup> Wolfraim 12/18/2002 at 136; COT041622 at COT041760, 5:1:84.

<sup>167</sup> Ashbourne 12/16/2002 at 175; COT041622 at COT041818, 5:1:84.

I obviously spent a fair amount of time on ... what I would consider nurturing and gathering information and it --- in anticipation of that, obviously there was going to be a lot of work if we were successful in winning their transaction.<sup>168</sup>

97. He repeated this dissatisfaction later in his testimony:

No, I was --- and I will be absolutely candid, I was not happy because of the time I had spent on the account.<sup>169</sup>

***g) Payne directly supervised Domi after he replaced Ashbourne***

98. Payne and Rollock each testified that the other supervised Domi as he worked on the City of Toronto file.

***i) Payne testified that Rollock supervised Domi***

99. In both Payne's diary and her Executive Assistant's diary, there were a number of meetings scheduled between Payne and Domi.<sup>170</sup> Payne testified that she met with all members of the sales force frequently, but Domi required additional direction and mentoring on certain issues. Payne claimed that Domi did not work directly with or for her. Payne testified that Domi worked with John Rollock, who was a sales manager.<sup>171</sup>

***ii) Rollock supervised Domi from November 1998 to April or May 1999***

100. John Rollock met Payne initially in the late 1980s, while Rollock was working at the Ministry of Natural Resources, and later re-encountered her at the Ministry of Solicitor General Correctional Services.<sup>172</sup>

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<sup>168</sup> Ashbourne 12/16/2002 at 175-176.

<sup>169</sup> Ashbourne 12/17/2002 at 140.

<sup>170</sup> Payne 01/09/2003 at 97.

<sup>171</sup> Payne 01/09/2003 at 97.

<sup>172</sup> Rollock 06/09/2003 at 221.

101. In his affidavit, Rollock swore that Payne had hired two sales representatives – Dash Domi and Don Ross – to assist him with the provincial government work, prior to Rollock joining MFP.<sup>173</sup> Domi reported directly to Rollock, and Rollock, in turn, reported to Payne.<sup>174</sup>

102. Payne established a commission-sharing structure, whereby any commissions earned by the team, for which Rollock had ultimate responsibility, would be shared between Domi, Ross, and Rollock.<sup>175</sup> During this initial period, Domi worked partly on the City of Toronto account with Ashbourne, and spent the rest of his time working on the Provincial account with Rollock. During this time, Domi reported to Rollock.<sup>176</sup> Sometimes, Domi and Rollock would informally discuss what Domi was doing at the City of Toronto.<sup>177</sup>

103. During this early period, Rollock attended at the City three times. These were the only three times he attended at the City during his 18 months with MFP. At no time was Rollock working personally on any City of Toronto business.<sup>178</sup>

104. However Rollock testified that, in May 1999, this reporting structure changed.

In May 1999, Ms. Payne again approached me and advised me that she wished Mr. Domi to work full-time on the City of Toronto and report directly to her on this account. Ms. Payne requested that I take back the Provincial Government accounts assigned to Mr. Domi. I agreed, and thereafter I had no involvement whatsoever with Mr. Domi's work. The commission sharing scheme also ceased, as Mr. Domi was no longer a part of the Provincial Government team.<sup>179</sup>

105. Rollock vehemently disagreed with Payne's characterization of his relationship with Domi. In his affidavit, he claimed that after Domi began working full-time on the City account, Rollock no longer supervised him in any capacity.

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<sup>173</sup> Rollock Affidavit, para. 8, 06/09/2003 at 204.

<sup>174</sup> Rollock 06/10/2003 at 87.

<sup>175</sup> Rollock Affidavit, para. 9, 06/09/2003 at 204-205.

<sup>176</sup> Rollock 06/09/2003 at 229.

<sup>177</sup> Rollock 06/09/2003 at 229.

I do not know many of the City of Toronto staff to whom reference has been made during the course of this Inquiry. I knew Jim Andrew and, to a lesser extent, Brendan Power from the Province. I met Mr. Nigro through Mr. Domi. I believe that I met Wanda Liczyk once at a Tie Domi dinner and I met Lana Viinamae at a MFP social function. I do not know Tom Jakobek.

I had no other involvement with the City of Toronto account. I did not supervise Mr. Domi on the City of Toronto account; I had no idea with whom he was meeting or entertaining; I did not read the RFQ for leasing in 1999; I did not see, review or in any way participate in drafting MFP's response to the leasing RFQ; and I had no involvement with the leases MFP had with the City. Mr. Domi never asked for my approval on any of the expenditures he undertook.<sup>180</sup>

106. Rollock agreed that large gifts to City staff were inappropriate, and the \$700 Cartier pen to Andrew particularly so.

A: And I said to you -- I said today on the record that I do not support the giving of gifts and a seven hundred dollar (\$700) pen obviously fits the category.

Q: So you have no difficulty agreeing that that's an inappropriate gift to give someone in Mr. Andrew's position?

A: Absolutely.

Q: And I take it the natural extension of that, sir, is had you been made aware of that gift at the time you were Mr. Domi's manager, it [sic] something you would have brought to his attention?

A: Absolutely.

Q: And you would have told him it was not an appropriate thing to do?

A: Absolutely.<sup>181</sup>

107. In a general sense, when asked what Rollock considered to be an appropriate level of contact or communication between a vendor and the "influencers and decision makers", Rollock stated:

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<sup>178</sup> Rollock 06/09/2003 at 236.

<sup>179</sup> Rollock Affidavit, para. 13, 06/09/2003 at 206.

<sup>180</sup> Rollock Affidavit, paras. 16-17, 06/09/2003 at 207-208.

<sup>181</sup> Rollock 06/10/2003 at 113.

As a good dose of common sense, if you use the words, ethical behaviour. There is nothing wrong with the client speaking to the vendor about the needs of the client prior to the issuance of an RFP or an RFQ. If it's done within the context of ethical guidelines, and it does not -- does not obviously cause perception problems. And that will not occur unless, you know, there is an extravagant entertainment or constant and frequent phone calls and daily visits, and that kind of stuff.<sup>182</sup>

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<sup>182</sup> Rollock 06/10/2003 at 118.

## 5. What did Domi do?

108. MFP hired Domi as a sales representative. Throughout his time at MFP, Domi remained generally uninterested in learning the technical skills necessary to become a leasing expert.

Q. Of course, over time you learned more and more, especially from Mr. Wilkinson?

A. I – I – I know my strengths and my weaknesses, and I didn't want to get into reinventing the wheel on being a leasing expert or professional. I just looked to Rob for that direction.<sup>183</sup>

109. Domi estimated that he spent approximately 50 per cent of his time working on the City of Toronto account.<sup>184</sup> His other accounts included the Province of Ontario Ministry of Labour, City of Vaughan, City of Brampton, and City of York.<sup>185</sup>

110. With respect to the City account, he agreed that his job was to build relationships and sell key decision makers on leasing, and leasing through MFP in particular.

Q: Your job was then to establish relationships with the people at C -- with staff at the City of Toronto, including key decision makers, to sell MFP and the concept of leasing?

A: Yes.<sup>186</sup>

111. Domi explained that he followed instructions from more senior MFP employees. Payne and Wilkinson coached him through MFP's leasing business and he essentially followed their lead.<sup>187</sup> Later, Domi added that his strategy for marketing MFP to the City was to establish strong relationships with individuals, particularly decision makers, at

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<sup>183</sup> Domi 01/22/2003 at 109.

<sup>184</sup> Domi 01/22/2003 at 113.

<sup>185</sup> Domi 02/10/2003 at 95-98, 105.

<sup>186</sup> Domi 01/22/2003 at 106.

<sup>187</sup> Domi 01/22/2003 at 74 -75.

the City.<sup>188</sup> He also stated that he worked closely with Wilkinson and he “tried to get [MFP] in front of the right people”.<sup>189</sup>

112. Domi testified that he could not see a role for a lobbyist in MFP because they could not discuss MFP’s business in any significant way.<sup>190</sup> Later, Domi conceded that he was essentially a lobbyist.

Q: Well the only -- my observe -- maybe you can -- you can help me with this. As far as you're concerned, a lobbyist is a person that helps you open doors or gets a sitting with the right person?

A: That's -- that's the extent of their job, I think.

Q: Right. And that's basically what you do?

A: Yes.<sup>191</sup>

***a) Domi never acted as a Regional Sales Manager, he just adopted the title***

113. MFP hired Domi as a sales representative or a sales executive. However, he referred to himself as a “Regional Sales Manager” in formal correspondence with the City.

114. Payne stated that within MFP, Domi was considered a sales representative. She agreed that within MFP, Domi was not considered a Regional Sales Manager.<sup>192</sup> She agreed that Domi was hired in 1998 as a sales executive, and that he never received any promotion from that position.

Q: All right. Did you promote him?

A: No.

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<sup>188</sup> Domi 01/22/2003 at 99-100.

<sup>189</sup> Domi 01/22/2003 at 95.

<sup>190</sup> Domi 01/27/2003 at 113.

<sup>191</sup> Domi 01/27/2003 at 139-140.

<sup>192</sup> Payne 01/09/2003 at 112-113.

Q: Did Mr. Wolfrain promote him?

A: No. Basically, the way this would be is -- is maybe it's on his business card. How he was perceived internally was whatever we hired him and whatever was written in his contact so I'm not sure how we went from, I think it was sales rep, to regional sales manager except that there must have been some discussion around it.<sup>193</sup>

115. Payne agreed that it was incorrect and misleading for Domi to refer to himself as a Regional Sales Manager.

Q: And you'll agree with me that, the not -- the -- the concept that someone may be a manager may import for the -- to the outside world, the notion that somebody has greater experience than the person -- people who may report to them in their management capacity?

A: Yes.

Q: So putting it in the sales context, directly, the outside world might assume that a sales manager would have greater experience than a sales person?

A: Yes.

Q: And indeed, that that sales manager may have greater authority than in your sales person?

A: Yes.

Q: And that indeed, that sales manager may know more about the business of which they're a manager, than a sales person?

A: Yes.

...

Q: What you're saying in effect, Ms. Payne, if I've got it right is that Mr. Domi shouldn't have done this?

A: I would think he should have represented himself as sales representative, which I think was on his -- what's in his contract.

Q: Sales representative is what he was, is what you're saying? Right?

A: A sales representative.<sup>194</sup>

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<sup>193</sup> Payne 01/09/2003 at 109.

<sup>194</sup> Payne 01/14/2003 at 169, 172.

116. Domi admitted that he was not a Regional Sales Manager,<sup>195</sup> however, he did not see anything wrong with that misrepresentation.

Q: All right, but I'm talking outside of the company, you don't see anything wrong in -- in a letter that represents you to be the Regional Sales Manager, when in fact you're not?

A: I'm a sales -- I'm a salesman, I'm a sales executive, I'm a sales representative, I mean I've had a few different cards that said sales.

Q: As you sit here today --

A: Correct.

Q: -- do you see anything wrong with representing to the public, and in particular to the City, that you, Dash Domi, were the Regional Sales Manager at MFP?

A: I was not a Regional Sales Manager.

Q: Do you see anything wrong with representing that you were?

A: I -- I don't know how to comment on that question. I worked in sales, I was not a manager.

Q: Do you see anything wrong with representing yourself to the City as the Regional Sales Manager, when in fact that was not true?

A: I just can't see anything wrong with it.<sup>196</sup>

117. Pessione agreed that Domi's description as Regional Sales Manager was inaccurate, but blamed it on the fact that he probably created the letter using a previous response which contained that title.<sup>197</sup>

***b) Domi built an inappropriate relationship with Tom Jakobek***

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<sup>195</sup> Domi 01/23/2003 at 41.

<sup>196</sup> Domi 01/23/2003 at 45-46.

<sup>197</sup> Pessione 2/13/2003 at 51-52.

118. Domi built an inappropriate relationship with Jakobek. The City submits that the relationship was so inappropriate that Domi made an improper payment to Jakobek in the amount of \$25,000 in November 1999. There is no innocent explanation for the timing or frequency of contact between these two men. Domi and Jakobek have consistently attempted to minimize the nature of their relationship. They misled KPMG, the OPP, and the Commission about the nature and extent of their relationship. The City makes extensive submissions regarding their relationship in Chapter 18.

***i) Domi and Payne met with Jakobek***

119. Payne, Domi, and Wilkinson met with Jakobek on February 23, 1999.<sup>198</sup> Payne testified that Domi requested the meeting. The purpose of the meeting was to build MFP's profile with Jakobek by bringing in a senior MFP executive to explain what MFP could do for the City, and to share corporate information such as MFP's client base, size, locations, strategic business.<sup>199</sup> Domi agreed that the purpose of the meeting was to sell MFP to Jakobek.<sup>200</sup> During that short meeting, Domi agreed that Jakobek seemed to already know everything that he needed to know.<sup>201</sup>

120. Payne testified that she and Domi met with Jakobek on other occasions as well and that she observed the men to have a professional, but not overly warm relationship.

Q: Who arranged those meetings with Mr. Jakobek?

A: Dash.

Q: All right. Now, as you -- as you went along, got to know Dash better, saw the relationships that he had, would you say that -- that -- how would you characterize Mr. Domi's relationship with Councillor Jakobek?

A: Professional. Not overly warm.<sup>202</sup>

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<sup>198</sup> Payne 01/14/2003 at 161-162.

<sup>199</sup> Payne 01/14/2003 at 162-163.

<sup>200</sup> Domi 02/10/2003 at 76.

<sup>201</sup> Domi 02/10/2003 at 78-79.

<sup>202</sup> Payne 01/09/2003 at 144.

121. Domi testified that he considered Jakobek to be a difficult man:

A: He was cordial with me but I wouldn't say friendly to me. I mean, I was -- I attempted very hard, for sure.

Q: You attempted very hard to what?

A: Get his attention; get his time. Maybe he didn't like it, but I just did.

Q: Do you have any reason to believe that he didn't like it?

Q: He was always really brief or short with me. I mean, I'd say he tolerated me I suppose.<sup>203</sup>

122. As will be discussed in Chapter 18, Jakobek did much more than tolerate Domi.

***ii) Expenses associated with Jakobek***

123. According to Domi's records, from January 27, 1998, to the time Payne left on December 15, 1999, there were approximately thirteen entries with respect to entertaining Jakobek.<sup>204</sup> Jakobek denied that he received any entertainment from Domi except for:

- a. a breakfast meeting February 23, 1998, with Payne and Domi;
- b. a lunch meeting November 29, 1999; and
- c. the trip to Philadelphia, discussed below.<sup>205</sup>

***iii) Philadelphia – May 2, 1999***

124. On May 2, 1999, Domi chartered a private jet to fly to Philadelphia to watch a playoff hockey game. The Sky Charter flight to Philadelphia occurred on May 2, 1999. The flight register listed the following passengers: D. Domi, T. Jakobek, V. Nigro, H.

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<sup>203</sup> Domi 02/10/2003 at 171-172.

<sup>204</sup> Payne 01/10/2003 at 49, 54.

<sup>205</sup> Jakobek 05/11/2003 at 103-118.

Peerenboom, G. Peerenboom, and J. Ginou.<sup>206</sup> This flight cost MFP \$6420.<sup>207</sup> Domi's receipt for the Corestates Complex in Philadelphia identifies: "City of TO, Tom J., Vince".<sup>208</sup>

125. The flight to Philadelphia, and the various lies Domi and Jakobek told about the flight, will be discussed in much more detail in Chapter 18.

126. When Domi answered questions from his own lawyer, he unequivocally denied that Jakobek showed up for the flight to Philadelphia:

Q: -- if this is correct. Okay. Now, let us go to Philadelphia --

A: Okay.

Q: -- and that's at Tab 26. Maybe Tab 27 is easier to read which is Doc 42275. Do you have that?

A: Yes.

Q: The names involved in this case are yourself --

A: Yes.

Q: -- Mr. Jakobek, who you told us didn't show?

A: Right.<sup>209</sup>

127. After misleading the press for several months, Jakobek later confirmed that he was, in fact, on the flight to Philadelphia. As explained in a later chapter, Jakobek and Domi conspired to mislead the Commission and only told the truth when confronted by irrefutable evidence.

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<sup>206</sup> COT042273, 6:1:152.

<sup>207</sup> COT042272, 6:1:151.

<sup>208</sup> COT025617, 11:1:8; Domi 01/28/2003 at 82.

<sup>209</sup> Domi 02/12/2003 at 178.

***iv) Telephone calls and conversations with Jakobek***

128. During the period March 15, 1999 and October 12, 2000, Domi placed 135 calls to Jakobek and they had at least 76 conversations.<sup>210</sup> During this time he called Jakobek's:

- a. office number 50 times;
- b. cellular telephone number 77 times; and
- c. home 8 times.

129. As will be explained in Chapter 18, the two men had many conversations at crucial times:

- a. 11 conversations in May 1999, the month of the trip to Philadelphia and the release of the computer leasing RFQ;
- b. one conversation on May 26, 1999, the same day that Payne sent the letter terminating MFP's relationship with Lyons;
- c. 3 conversations between the date of the release of the RFQ and the date MFP submitted its bid in response to the RFQ; and
- d. 14 conversations in the blackout period between the date MFP submitted its response to the RFQ and the date that Jakobek moved his amendment to the P&F Report recommending that MFP be awarded the contract.

130. In addition, between October 10, 2000 and September 11, 2002, Domi placed 70 calls to Jakobek and they had at least 33 conversations. During this period, Domi called Jakobek's:

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<sup>210</sup> COT061285, 99:1:76; Domi 02/11/2003 at 45.

- a. new cellular telephone 61 times; and
- b. home 9 times.

131. The volume and timing of the telephone conversations between Domi and Jakobek is strong evidence of the inappropriate relationship between them.

132. On September 2, 1999, Jakobek invited Domi to go golfing at the Hunt Club. After the golf game ended, Jakobek extended an invitation to his house for drinks.<sup>211</sup> Jakobek also invited Andrew and Liczyk.

133. As for a November 29, 1999 dinner at the Chestnut Tree Restaurant, identifying Bob and Tom J., Domi was, for once, fairly certain that Jakobek attended.<sup>212</sup> Domi had arranged this meeting for Bob Wright, MFP's CFO, to discuss fleet leasing with Jakobek. It stuck out in his mind because it was the one time Domi brought a senior person to meet Jakobek.<sup>213</sup>

***c) Domi built an inappropriate relationship with Andrew***

134. Domi admitted that he had a good relationship with Andrew.<sup>214</sup> The City submits that Domi used his expense account and his cell phone to establish an inappropriate relationship with Andrew. This will be discussed in more detail in Chapter 21.

135. Andrew's name appears on approximately 10 receipts submitted by Domi. However, as discussed in more detail below, Domi testified that the fact that Andrew's name was on a receipt did not necessarily mean that Andrew attended that event. Similarly, Andrew may have attended events that were expensed simply as "City of Toronto", or for which Domi did not request reimbursement at all.

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<sup>211</sup> Domi 01/27/2003 at 84-85.

<sup>212</sup> COT025874, 33:1:28; Domi 01/29/2003 at 117-188.

<sup>213</sup> Domi 01/29/2003 at 117-118.

<sup>214</sup> Domi 01/30/2003 at 187-188.

136. It is impossible to know the full extent of the entertainment Domi provided to Andrew. For example, Domi can only say that he invited Andrew to dinner at Harbour Sixty Steakhouse “many times”.<sup>215</sup> Domi was not certain how many hockey games Andrew attended, although it was more than two or three.<sup>216</sup>

137. The City of Toronto submits that it is more likely than not, absent compelling evidence to the contrary, that if Domi wrote an individual’s name on a receipt, that person actually attended the event.

138. However, even considering only the events that one or the other admit to having attended together, Domi provided Andrew with an inappropriate amount of entertainment. Andrew asked Domi for personal favours and Andrew failed to maintain professional boundaries with MFP.

***i) Entertainment before July 30, 1999***

139. In his affidavit, Andrew indicated that he met Domi on or around March 12, 1999.<sup>217</sup> However on March 7, 1999, Andrew sent an email to his son suggesting that Andrew would ask Domi to obtain tickets to a playoff hockey game through the “player’s network”.<sup>218</sup> Andrew admitted that he must have met Domi before he wrote that email.<sup>219</sup>

140. Andrew testified that, given the early stage of their acquaintance at the time of the email, Domi must have suggested to Andrew that he could obtain tickets at Andrew’s request.<sup>220</sup> Andrew could not recall whether he followed through with his request to Domi; however, he was certain that Domi did not provide him and his son

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<sup>215</sup> Domi 01/30/2003 at 44-45.

<sup>216</sup> Domi 01/30/2003 at 186-187.

<sup>217</sup> Andrew Affidavit, para.37, 9/24/2003 at 23.

<sup>218</sup> COT015464, 63:14:26.

<sup>219</sup> Andrew 10/07/2003 at 117-118.

<sup>220</sup> Andrew 10/07/2003 at 119.

with any playoff tickets.<sup>221</sup> Andrew admitted that he was asking Domi for a personal favour for his son.<sup>222</sup>

141. On March 15, 1999, Andrew attended the Tie Domi Charity Dinner at the Royal York Hotel at Domi's invitation.<sup>223</sup> He indicated that he attended the dinner with Licyzk and they sat at the same table, together with Domi. MFP paid for these tickets.

142. On March 22, 1999, Andrew believed that he attended a hockey game at Domi's invitation.<sup>224</sup>

143. Jakobek invited Andrew to attend an April 24, 1999 hockey game. At this hockey game, they ran into Domi, with whom Jakobek was already acquainted. At Domi's invitation, Jakobek and Andrew joined him in the MFP box.<sup>225</sup>

144. On April 30, 1999, Andrew attended another hockey game at Domi's invitation. Andrew had originally denied attending this game in his affidavit.<sup>226</sup>

145. On May 21, 1999, only days before the release of the RFQ, Domi bought Andrew lunch at Al Frisco's.<sup>227</sup>

146. On June 18, 1999, Domi submitted a receipt for a dinner at Al Frisco's , marked "Jim Andrew and Rob W."<sup>228</sup> Wilkinson rejected the possibility that he attended dinner on this evening, as this was the same night that he closed on his new house and his in-laws came over for drinks and his son's birthday, all of which was marked in his wife's calendar.<sup>229</sup> Jim Andrew also denied being at this dinner.<sup>230</sup>

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<sup>221</sup> Andrew 10/07/2003 at 121-22.

<sup>222</sup> Andrew 9/25/2003 at 103.

<sup>223</sup> Andrew Affidavit, para.37, 09/24/2003 at 23.

<sup>224</sup> Andrew Affidavit, para.38, 09/24/2003 at 23.

<sup>225</sup> Andrew Affidavit, para.39, 09/24/2003 at 23-24.

<sup>226</sup> Andrew Affidavit, para.40, 09/24/2003 at 24; but see: Andrew 10/07/2003 at 6.

<sup>227</sup> Andrew 9/24/2003 at 280.

<sup>228</sup> COT025706, 63:14:35.

<sup>229</sup> Wilkinson 09/22/2003 at 133.

***ii) Entertainment after July 30, 1999***

147. Andrew testified that after MFP won the bid, Domi continued to entertain him, but not to the same extent.<sup>231</sup>

148. On August 3, 1999, at Domi's request, Andrew and Bulko met Domi and Wilkinson at the Holiday Inn on King Street.<sup>232</sup> The purpose of the meeting was to discuss the meaning of the Jakobek Amendment, which was approved by Council on July 27, 1999.

149. Andrew declined an invitation from MFP to attend the Cirque du Soleil on August 14, 1999.<sup>233</sup>

150. On September 2, 1999, Andrew, Jakobek, and Liczyk played golf with Domi at the Toronto Hunt Club. Jakobek set up this event.

151. On September 23, 1999, Andrew played golf with MFP at the Glen Abbey Golf Club.<sup>234</sup>

152. On October 27, 1999, Andrew met with his friend, Jack Logan, for an after-work drink at Harbour Sixty Steakhouse. As they were leaving, they ran into Domi, who told their waiter to charge their bill to Domi's tab. Andrew indicated that they graciously accepted Domi's hospitality.<sup>235</sup> Andrew agreed that he accepted such hospitality as a personal favour.<sup>236</sup>

153. Domi paid for a meal and or a drink that he did not even share with Andrew. There could be no legitimate business purpose to such a gesture. There was no meaningful difference between Domi picking up that tab and Domi handing Andrew the cash equivalent. There can be no doubt that Domi violated MFP's conflict of interest

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<sup>230</sup> Andrew Affidavit, para. 43, 09/24/2003 at 25.

<sup>231</sup> Andrew 10/8/2003 at 43.

<sup>232</sup> Andrew Affidavit, para.52, 09/24/2003 at 31-32.

<sup>233</sup> Andrew 09/25/2003 at 106.

<sup>234</sup> Andrew 9/25/2003 at 17-18.

<sup>235</sup> Andrew Affidavit, para.53, 09/24/2003 at 32.

policy on this occasion. In addition, Andrew demonstrated very poor judgment by accepting such a gift from Domi.

154. On November 4, 1999, at Domi's suggestion, Andrew met with Paul Godfrey and Domi at the Café Victoria in the King Edward Hotel.<sup>237</sup> Domi picked up the tab.<sup>238</sup> Andrew had told Domi that he was thinking of applying for the position of Commissioner of Corporate Services. Domi informed Andrew that Godfrey would know if the City had a preferred candidate and, if so, who it was. Accordingly, Domi set up this breakfast meeting between Andrew and Godfrey. Andrew testified that there was no discussion about MFP's interest in City business at this breakfast meeting.<sup>239</sup> The invitation was part of a pattern of conduct by Domi to do personal favours for Andrew and to build trust with Andrew.

155. Andrew testified that on December 23, 1999, Domi gave him a Cartier pen as a Christmas gift.<sup>240</sup> Domi did not deny this incident, but thought it took place in December 2000. Domi's version of events is supported by Birks receipt for a \$700 Cartier gold pen.<sup>241</sup> However, Andrew's version of events may be supported by Domi's bank statements, which indicate a \$1,230.50 Interac payment to Birks on December 20, 1999.<sup>242</sup>

156. The value of the pen was at least \$700, plus taxes. Andrew informed Domi that such a gift was inappropriate and he could not accept it. Domi picked up the pen from Andrew shortly after Christmas.<sup>243</sup> Andrew testified that he did not ask Domi to pick up

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<sup>236</sup> Andrew 9/25/2003 at 106-107.

<sup>237</sup> Andrew Affidavit, para.54, 09/24/2003 at 32-33.

<sup>238</sup> COT025875, 63:14:39.

<sup>239</sup> Andrew 9/25/2003 at 108-115.

<sup>240</sup> COT052989 at COT053011, 6:3:57; COT025919, 11:1:13; Andrew Affidavit, paras.55-56, 09/24/2003 at 34.

<sup>241</sup> COT025919, 63:12:23.

<sup>242</sup> COT082636 at COT082677, 85:1:31.

<sup>243</sup> Andrew Affidavit, para.56, 09/24/2003 at 34.

the pen, but instead told him that they would have to meet after the holidays so that Andrew could return the pen to him.<sup>244</sup>

157. Domi explained that he considered the pen to be a gift to a client.<sup>245</sup> He testified he never gave anyone else at the City a gift that approximated the \$700 pen, but that it had nothing to do with MFP winning the leasing bid.<sup>246</sup> Domi considered the pen to be both a personal and business gesture, and a legitimate business expense.<sup>247</sup> Flanagan considered the pen to be an inappropriate business expense that should not have been approved.<sup>248</sup> He went further to denounce such a gift, even if Domi had paid for it personally, stating that, “. . . [it] would show poor judgment to offer a gift of that order to a customer . . . [i]t’s just too expensive and too meaningful an item to offer to somebody in a situation where it’s important to maintain a sense of propriety”.<sup>249</sup>

158. The City submits that this gift violated MFP’s internal policies. It is an extravagant, inappropriate gift. It is evidence that Domi exercised no self restraint with respect to his expense account.

159. On January 8, 2000, Andrew attended another hockey game at Domi’s invitation.<sup>250</sup> Liczyk, her sister, and Viinamae also attended this game. They ate dinner at Harbour Sixty Steakhouse and then walked over to the Air Canada Centre for the game. Domi paid for dinner.<sup>251</sup> After the game, they went for a drink at the Armadillo Texas Grill. Domi paid for drinks at the Armadillo Texas Grill.<sup>252</sup>

160. Andrew sent an email, dated January 16, 2000, to his friend John Jenkin.<sup>253</sup> The message described how Andrew attended a hockey game with Dash Domi and then

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<sup>244</sup> Andrew 09/25/2003 at 117.

<sup>245</sup> Domi 01/27/2003 at 73-74.

<sup>246</sup> Domi 01/27/2003 at 82-83.

<sup>247</sup> Domi 01/27/2003 at 168, 170.

<sup>248</sup> Flanagan 02/19/2003 at 48.

<sup>249</sup> Flanagan 02/19/2003 at 54.

<sup>250</sup> Andrew Affidavit, para.45, 09/24/2003 at 27.

<sup>251</sup> COT025771, 13:2:2.

<sup>252</sup> COT025738, 13:2:4.

<sup>253</sup> COT015431, 63:12:18.

went to a nightclub with Tie Domi and some other players until 5:00 a.m. Andrew testified that this message was a “complete fabrication”.<sup>254</sup> The email also detailed how Andrew asked Dash Domi to have his brother Tie Domi autograph a shirt for Jenkin’s daughter.<sup>255</sup> Andrew agreed that this was a personal favour.

161. On September 28, 2000, Andrew attended a golf day with MFP, at its expense.<sup>256</sup> He could not recall who attended on behalf of MFP.

162. Domi did not think that he invited Andrew to the MFP sales meeting in Hawaii.<sup>257</sup> .

### ***iii) Domi telephone calls to Andrew***

163. Domi placed 112 phone calls from his cellular phone to the three numbers listed in his address book for Andrew.<sup>258</sup> This level of contact is surprising since Andrew was not Domi’s primary contact for the leasing relationship. This relationship was fuelled by Domi’s expense account and his willingness to provide entertainment to Andrew.

164. Between June 12 and July 27, 1999, after MFP filed its bid and during the period that City staff were evaluating the bid, Domi placed five calls to Andrew’s home or cell number.<sup>259</sup> Even in retrospect, Domi did not think it was inappropriate to call Andrew during this period.<sup>260</sup>

165. Andrew admitted that he was in contact with Domi between May 31, 1999 to July 27, 1999.<sup>261</sup>

166. During June and July of 1999, Andrew and Domi were in regular telephone contact. Andrew explained that this frequent contact was attributable to Domi’s

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<sup>254</sup> COT015431, 63:12:18; Andrew Affidavit, para.58, 09/24/2003 at 35.

<sup>255</sup> Andrew 09/25/2003 at 126.

<sup>256</sup> Andrew 09/25/2003 at 43.

<sup>257</sup> Domi 01/30/2003 at 193.

<sup>258</sup> Domi 02/11/2003 at 116.

<sup>259</sup> Domi 02/11/2003 at 119.

<sup>260</sup> Domi 02/11/2003 at 123-125.

<sup>261</sup> Andrew 10/8/2003 at 82.

aggressive telephone habits.<sup>262</sup> While the cellular phone records obtained for the Inquiry showed that there was significant telephone communication between these two men, they did not provide the whole picture. For example, the records did not track any office to office phone calls that may have taken place.

167. On June 2, 1999, Andrew called Domi from his cell phone twice; the first call lasted 4 minutes and 6 seconds. Andrew also spoke to Domi the next day, June 3, 1999. Andrew had no recollection of what he discussed with Domi, but was quite certain that he was simply returning Domi's earlier calls.<sup>263</sup>

168. On June 4, 1999, Domi called Andrew. Four days later, on June 8, 1999, Andrew called Domi. He explained that the purpose of this call was to obtain hockey tickets.<sup>264</sup> The fact that Andrew felt comfortable calling Domi for tickets while the RFQ was on the street and only three days before responses were due demonstrates the closeness and the inappropriateness of their relationship.

169. On June 10, 1999 at 4:05 p.m., Andrew called Domi.

170. On June 11, 1999 at 8:45 a.m., Domi called Andrew purportedly to simply inform him that MFP would be delivering its response to the RFQ in time.<sup>265</sup> The phone call lasted 2 minutes and 28 seconds. In his affidavit, Andrew indicated that this was not unusual and that such communication seemed to be an "acceptable practice" in the vendor community.<sup>266</sup>

171. A week later, on June 18, 1999, Andrew called Domi from his cell phone twice. These phone calls were minutes apart: the first at 2:07 p.m. lasting only 43 seconds, and the second at 2:16 p.m., lasting 2 minutes and 28 seconds. Finally, on June 25, 1999 Domi called Andrew at 9:26 a.m.

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<sup>262</sup> Andrew 10/8/2003 at 38.

<sup>263</sup> Andrew 10/8/2003 at 88.

<sup>264</sup> Andrew 10/09/2003 at 75-76.

<sup>265</sup> Andrew 10/8/2003 at 86-87.

<sup>266</sup> Andrew Affidavit, para.48, 09/24/2003 at 28-29.

172. Domi contacted Andrew on July 16, 1999, when he called him twice. These phone calls were also minutes apart: the first at 12:15 p.m. lasting 6 minutes and 9 seconds, and the second at 12:35 p.m., lasting only 54 seconds. Andrew testified that he would not have discussed any business with Domi at that point in time.<sup>267</sup> He speculated that they were speaking about sports or news. Then, Domi did not call Andrew again until July 28, 1999.

173. Domi continued to call Andrew frequently after City Council awarded MFP the leasing contract.

***d) Domi built an inappropriate relationship with Liczyk***

174. Wilkinson testified that Payne removed Ashbourne from the City account because Ashbourne was not getting to meet the right people.<sup>268</sup> Ashbourne could not get Liczyk to meet him or to attend a dinner with him. Domi did not have this difficulty. He estimated that he ate dinner with Liczyk at Harbour Sixty Steakhouse on between four and six occasions. Domi presumed that each dinner was associated with attending a hockey game at the Air Canada Centre.<sup>269</sup>

175. With Domi, Liczyk attended charity dinners, hockey games, private dinners and a hockey game in Ottawa to which she flew on a private jet paid for by Domi. They had many telephone conversations, including late at night. One such phone call lasted for 67 minutes and ended after 2:00 a.m. She invited him to her birthday party. He gave her small gifts.<sup>270</sup>

176. Domi named Liczyk six times on expense receipts and reports. However, because of Domi's record keeping, these receipts are both under-inclusive and over-inclusive.<sup>271</sup> Nevertheless, even if one only considers the telephone calls, entertainment

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<sup>267</sup> Andrew 10/8/2003 at 90.

<sup>268</sup> Wilkinson 9/22/2003 at 17-18.

<sup>269</sup> Domi 01/29/2003 at 158-159.

<sup>270</sup> Liczyk 11/05/2003 at 8, 12-17, 20, 58-59.

<sup>271</sup> Domi 01/29/2003 at 142-143.

that one or both of Domi or Liczyk admit, there was an inappropriate relationship between them.

***i) Entertainment prior to July 27, 1999***

177. Domi testified that he first met Liczyk at a Council meeting in January or February of 1999.<sup>272</sup> His first conversation with her occurred on March 15, 1999, when they sat at the same table at the Tie Domi Charity Dinner, to which he had invited her.<sup>273</sup> In the ensuing months, Domi frequently entertained Liczyk. He took her to numerous dinners and several hockey games to build his relationship with her.<sup>274</sup>

178. Domi testified that he never talked business in a box or at a hockey game.<sup>275</sup> Domi conceded that Liczyk attended “several” hockey games with him.<sup>276</sup> He did not know an exact number, but estimated that two or three of these games occurred after March 1999 and prior to June 11, 1999.<sup>277</sup> He also bought her numerous drinks and dinners both connected and unconnected to these hockey games.<sup>278</sup> Liczyk’s sister regularly attended these hockey games.<sup>279</sup>

179. On April 30, 1999, Liczyk (along with Andrew) watched a hockey game and had dinner in the MFP box.<sup>280</sup>

***ii) Domi arranged for Gian Frank to cut Liczyk’s hair***

180. At the April 30, 1999, hockey game, Liczyk and Domi discussed where she got her hair cut. Domi testified that he suggested that she get her hair cut by his best friend, Gian Frank.<sup>281</sup> Gian Frank was a hairdresser at Fiorio, who also cut Domi’s hair. Liczyk

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<sup>272</sup> Domi 01/23/2003 at 141-142.

<sup>273</sup> Domi 01/23/2003 at 147-148.

<sup>274</sup> Domi 01/23/2003 at 167.

<sup>275</sup> Domi 01/23/2003 at 152.

<sup>276</sup> Domi 01/23/2003 at 152.

<sup>277</sup> Domi 01/29/2003at 142.

<sup>278</sup> Domi 01/23/2003 at 153.

<sup>279</sup> Domi 01/23/2003 at 165-166.

<sup>280</sup> COT026018, 63:14:29; COT026026, 63:14:29; Liczyk Affidavit, para. 120, 11/03/2003 at 51.

<sup>281</sup> Domi 01/23/2003 at 161-162.

agreed, although she later testified that she felt this to be a bold and personal conversation.<sup>282</sup>

181. Liczyk's electronic calendar contained a hair appointment on May 6, 1999 between 7:00 p.m. and 9:00 p.m.<sup>283</sup> The subject line read: "Haircut w DASH (Fiorio)". Domi testified that he did not get his hair cut that day.<sup>284</sup> He acknowledged that Gian Frank usually finished his day around 7:30 p.m., and he could not explain why Liczyk's calendar would show an appointment at the end of Gian Frank's day.<sup>285</sup>

182. Domi admitted that he may have gone to Fiorio's that evening:

Q: Did you show up at Fiorio that evening Wanda Liczyk's haircut?

A: I don't think so. I don't know.

Q: Think about it carefully, Mr. Domi?

A: I'm thinking.

Q: Were you there at the same time as Wanda Liczyk?

A: I may have stopped in, but I didn't -- I'm not sure, actually.

Q: If Wanda Liczyk testifies, as I anticipate from her Counsel that she will, that you did show up?

A: I may have.

Q: You may well have?

A: Yeah, but, I can't recall. I mean that was '99, I don't know.<sup>286</sup>

183. Liczyk testified that she did not recall making any arrangements for Domi to meet her at Fiorio's; she simply remembered that Domi was present when she arrived and

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<sup>282</sup> Liczyk Affidavit, para. 121, 11/03/2003 at 51-52.

<sup>283</sup> COT013249, 63:7:26.

<sup>284</sup> Domi 01/23/2003 at 161-162.

<sup>285</sup> Domi 01/23/2003 at 163.

<sup>286</sup> Domi 02/10/2003 at 116-117.

then he left.<sup>287</sup> When asked if she felt any awkwardness because of Domi's presence at her haircut, Liczyk responded, "I would have asked him the question, you're not staying and then he said, no. I'm leaving".<sup>288</sup>

184. Domi recalled that he thought he heard back from Liczyk that she had her hair cut that day with Gian Frank.<sup>289</sup> Liczyk testified that, as evidenced by his phone records, Domi called her the next day to find out about her haircut.<sup>290</sup>

### ***iii) Flight to Ottawa – April 24, 2000***

185. On April 24, 2000, Domi rented a plane from Sky Charter Limited for a private flight to Ottawa to watch a hockey game. The flight cost \$5295.95, which he paid by personal cheque. There is no evidence that MFP reimbursed Domi for the flight.<sup>291</sup>

186. The flight manifest lists eight passengers: Dash Domi, Rob Godfrey, Paul Godfrey, Vince Nigro, and Wanda Liczyk. The other three passengers were unnamed and were signified by check marks.<sup>292</sup> Domi testified that, although he paid for the entire flight personally, he claimed that he did not know the other three individuals on the flight.

Q: When you say you don't know the other -- other individuals names, do you mean that there were other people on that flight who you did not know?

A: Yes. I didn't know them personally, no.

Q: This is a -- a flight that -- that you paid for personally?

A: Yes.

...

Q: Well, why would there be people on the flight that you didn't know? Explain that to us.

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<sup>287</sup> Liczyk 11/05/2003 at 86.

<sup>288</sup> Liczyk 11/05/2003 at 89.

<sup>289</sup> Domi 01/23/2003 at 162.

<sup>290</sup> Liczyk 11/05/2003 at 96-97.

<sup>291</sup> COT042276, 63:20:9; Wolfram 12/19/2002 at 120.

<sup>292</sup> COT042278, 63:20:9a.

A: I was attempting to get the right people, and I thought I did. And I -- I think somebody was invited by Paul and I believe Rob.

Q: That's two (2), someone invited by Paul and someone invited by Rob, that you didn't know, so that's two (2) people?

A: Yes.

Q: The third?

A: I don't know.<sup>293</sup>

187. It is impossible to believe that Domi would spend more than \$5000 of his own money on individuals whom he did not know and whose names he could not remember.

188. Liczyk paid \$700 for her own flight.<sup>294</sup> Domi testified that Liczyk offered to pay for her own flight to Ottawa, and that none of the other passengers did.<sup>295</sup> Wolfrain agreed that there was an appearance of impropriety surrounding Liczyk being on the flight, and that Domi should have given Flanagan a heads-up, particularly in light of MFP's Code of Conduct.<sup>296</sup> However, Flanagan did not agree that inviting the CFO and Treasurer of the City to such an event was inappropriate.<sup>297</sup> He reasoned that MFP's competitors entertained at comparable events at a comparable level of expenditure.<sup>298</sup>

Q: ... [W]hat about the invitation of a City Councillor, at the City of Toronto to be invited at MFP's expense to attend an out of town playoff game?

...

A: Again I think the expense and the nature of that event is not out of line, at all with other activities I'm aware the City participates in with MFP, MFP's competitors and firms in other lines of business. Again, I think it is a good comparison it costs \$5,000 to rent a box at the Air Canada Centre for one (1) regular season league game, plus all the expenses that go along with it, so it's essentially the same price, as I understand the -- that you can rent a six (6) or seven (7) passenger jet to go take you to Philadelphia or Ottawa for a game.<sup>299</sup>

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<sup>293</sup> Domi 01/29/2003 at 165-166.

<sup>294</sup> Liczyk 11/06/2003 at 15-16.

<sup>295</sup> Domi 01/29/2003 at 182-183.

<sup>296</sup> Wolfrain 12/19/2002 at 122.

<sup>297</sup> Flanagan 02/20/2003 at 134.

***iv) Prego Della Piazza – July 10, 1999***

189. Domi submitted an expense for a dinner at Prego Della Piazza on July 10, 1999.<sup>300</sup> Domi wrote “City of Toronto, Wanda” on the receipt. This date, July 10, 1999, was in the middle of the blackout period and it would have been completely inappropriate for Liczyk to have attended such a dinner.

190. Liczyk denied attending this dinner. She provided documents that supported her testimony and Commission Counsel obtained affidavit evidence to corroborate Liczyk’s evidence.<sup>301</sup> The City submits Liczyk should be believed on this point.

***v) MFP invited Liczyk to go to Hawaii***

191. Building on the strength of Domi’s relationship with Liczyk, Payne invited Liczyk to make a presentation at a MFP sales incentive seminar in Hawaii, held in November 1999.<sup>302</sup> The topic of the presentation would have focused on what an organization such as the City of Toronto was looking for in a partnership with a finance company. Payne testified that Liczyk declined the invitation because it was not appropriate for her to go.<sup>303</sup>

192. In cross-examination, it became apparent that Payne knew that the City of Toronto may have had a conflict of interest policy. When asked how to classify such an expense, Payne replied:

Well in that type of expense we would -- if Wanda had agreed to go to that event, we would have suggested to her to check her process internally, because we had done this before with clients in the States, and they paid their own accommodations, and their own -- their own flights, because they felt it was beneficial to them in building a relationship. So, I would assume had she agreed to it, she would have talked to her management team and got their approval. And this, again, is industry standard. ... So, inviting them is one (1) thing.

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<sup>298</sup> Flanagan 02/20/2003 at 142-143.

<sup>299</sup> Flanagan 02/20/2003 at 137-138.

<sup>300</sup> Domi 01/29/2003 at 151-152; COT025865, 6:3:50.

<sup>301</sup> Liczyk 11/05/2003 at 102-103.

<sup>302</sup> Payne 01/09/2003 at 121, 125.

<sup>303</sup> Payne 01/09/2003 at 125.

Whether th -- MFP paid or not obviously it has to be approved by the appropriate management team.<sup>304</sup>

193. Payne confirmed that part of the reason for requiring Liczyk to check the City's internal policies and pay her own way was to avoid the perception of impropriety.

Q: You were sensitive, in that circumstance, to the possibility that had Ms. Liczyk accepted the trip on an expenses-paid basis, that might have offended some internal policy at the City of Toronto, is that right?

A: I would be very surprised if -- for Wanda to have agreed to have MFP pay for it. She is a very senior person in the City. She had a budget, but it's kind of travel and expense. I'm not sure what the marketing budget is for the City, but I'm sure it's significant. So I would assume that she would have paid for it through her own budget.

Q: And th -- that, I take it, would have been to, at least in part, to avoid the perception that Ms. Liczyk was being, you know, lavishly entertained by a supplier of the City, is that right?

A: Hmm hmm.

Q: And that would have been a concern both of Ms. Liczyk's and yours?

A: Yes.<sup>305</sup>

194. When asked about a hypothetical situation wherein Liczyk accepted the invitation to Hawaii and asked MFP to pay for it, Payne expressed shock.

Q: So, then let's take it one (1) step down the road and say that she'd accepted not only your invitation, but she said, and you guys are paying. What would you have said then?

A: I would have been totally shocked.

Q: Because that would offend your sensibilities the [sic] MFP should pay for and be seen to be paying for a senior City official?

A: Yes.<sup>306</sup>

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<sup>304</sup> Payne 01/14/2003 at 44.

195. It is difficult to reconcile Payne's comments on Hawaii with her decision to approve Domi's flights on the private jet. The City submits that Payne's comments about Hawaii are self-serving and incredible.

***vi) Liczyk's 40th birthday party***

196. Domi also cultivated a less formal relationship with Liczyk. He was the only MFP employee invited to attend Liczyk's fortieth birthday party at her house on July 14, 2000, shortly after Liczyk signed the July 2000 lease rewrites that gifted \$2.5 million in profit to MFP.<sup>307</sup> Domi attended the party.

197. Domi testified that he may have sent flowers to Liczyk when her mother passed away, but that he could not recall sending flowers to her secretary, Giuliana Scarcello, in February 2001.<sup>308</sup> Giuliana Scarcello worked for Liczyk as her Administrative Assistant for over three years, from 1998 until Liczyk left the City.<sup>309</sup> In her affidavit, she remembered Domi to be a very nice person. She swore that, in February 2001, Domi sent her flowers when her grandmother passed away.<sup>310</sup>

***vii) Telephone calls between Domi and Liczyk***

198. Between March 8, 1999 and October 4, 2002, Domi placed 216 calls to Liczyk using his cellular telephone.<sup>311</sup> Of these calls, at least 62 calls were to Liczyk's house and 41 calls were to her cellular telephone.

199. Domi also placed 90 phone calls to Liczyk's office.<sup>312</sup>

200. Domi called Liczyk at home on October 27, 2000 at 12:45 a.m. and then again at 1:11 a.m.; the second call lasted for over an hour.<sup>313</sup>

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<sup>305</sup> Payne 01/14/2003 at 45.

<sup>306</sup> Payne 01/14/2003 at 48-49.

<sup>307</sup> Domi 01/27/2003 at 40; Liczyk 11/06/2003 at 69.

<sup>308</sup> Domi 01/29/2003 at 144; Domi 02/10/2002 at 130-131.

<sup>309</sup> Scarcello Affidavit, para. 1, 09/01/2004 at 72.

<sup>310</sup> Scarcello Affidavit, para. 9, 09/01/2003 at 74.

<sup>311</sup> COT084378, 98:2:12.

<sup>312</sup> Domi 02/11/2003 at 143.

201. The calls to Liczyk's house and cellular telephone are evidence of an improper relationship between Domi and Liczyk. Regardless of the subject-matter, the fact that Liczyk spoke to Domi for over an hour at 1:00 a.m. means that their relationship had crossed professional boundaries.

**e) Other City Staff**

202. Prior to June 11, 1999, Domi only knew Andrew in I&T. After that date, he extended his network, entertaining Bulko, Viinamae, Leggieri, and Marks at various times.<sup>314</sup> Domi admitted that, despite the fact that he could not meaningfully participate in discussions, he hoped his relationships with Liczyk and the individuals in I&T would have a positive influence on the ability of MFP to extend the term of the leases.<sup>315</sup>

203. Domi denied that he sent event tickets to City employees with instructions that if they could not attend, they should feel free to pass those tickets on to another individual.<sup>316</sup> When asked about Liczyk and Jakobek's conflicting evidence on this matter, Domi conceded that he may have done so.<sup>317</sup>

**f) Other City Councillors and City fundraisers**

204. After the City awarded the RFQ to MFP in July 1999, Domi also entertained other City Councillors. One of these Councillors was Disero, who attended some hockey games with Domi.<sup>318</sup> Domi could not recall meeting with Councillors Feldman, Nunziata, or Deputy Mayor Case Ootes.<sup>319</sup> He may have had a meeting with Councillor Berardinetti in his office.<sup>320</sup>

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<sup>313</sup> Domi 02/11/2003 at 158-159.

<sup>314</sup> Domi 01/23/2003 at 193-194.

<sup>315</sup> Domi 01/23/2003 at 199.

<sup>316</sup> Domi 02/10/2003 at 151.

<sup>317</sup> Domi 02/10/2003 at 151-153.

<sup>318</sup> Domi 02/10/2003 at 80-81.

<sup>319</sup> Domi 02/10/2003 at 82-83.

<sup>320</sup> Domi 02/10/2003 at 84-85.

205. MFP also showed great support for mayoral events. These included golf tournaments, Mayor Lastman's Ball, the moose in front of the MFP building. MFP sponsored Mayor Lastman's golf tournament in September 7 and 8, 1999 in the amount of \$10,000.<sup>321</sup> Payne testified that Domi approached her about sponsoring the golf tournament and she approved.<sup>322</sup>

206. Wolfraim found all of the donations to mayoral events to be consistent with MFP's conflict of interest policies and Code of Conduct, with the exception of the Mayoral Campaign donation, since MFP did not support political campaigns.<sup>323</sup> Wolfraim explained his approval of such expenses as a result of MFP's "ambitious sales and marketing plan ... to increase our business", with the corresponding plan to raise MFP's public profile.<sup>324</sup>

***g) Domi used his expense account to entertain individuals with connections to the City of Toronto***

207. Domi also used his expense account to entertain people who were extremely well connected at the City of Toronto. In particular, Domi entertained Vince Nigro and Rob and Paul Godfrey.

***i) Vince Nigro***

208. Domi agreed that more than 50 of his expense reports named Nigro as having attended.<sup>325</sup> Nigro worked in the Mayor's office and had worked on political campaigns for Jakobek.

209. Nigro denied being present for a number of these dinners. However, Domi testified that if Nigro's name appeared on receipt, then it was likely that Nigro was in attendance:

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<sup>321</sup> Payne 01/09/2003 at 70-71; COT029074, 2:2.1:166; COT029075, 14:2:11.

<sup>322</sup> Payne 01/09/2003 at 72.

<sup>323</sup> Wolfraim 12/19/2002 at 131-132.

<sup>324</sup> Wolfraim 12/19/2002 at 132-133.

<sup>325</sup> Domi 01/29/2003 at 114-115.

I was spending more time with Mr. Nigro than anybody else, at the time. More often than not, I'd say he was with me.<sup>326</sup>

210. Domi testified he thought that Nigro and Jakobek had a long-standing relationship. Domi observed a decent relationship between them, despite the fact that Domi was under the impression that Jakobek did not like anybody.<sup>327</sup>

211. Domi explained that when he met with Jakobek, he liked to bring Nigro along for "support".<sup>328</sup> He testified that he and Nigro entertained Jakobek on four or five occasions, and also met with Jakobek at City Hall on two or more occasions.<sup>329</sup>

***ii) John Danson***

212. Domi's records also showed six entries for Danson, Mayor Lastman's former campaign manager.

213. Domi explained that he brought Danson to Montreal because he knew a large network of people, including people at the City, that Domi hoped to meet.<sup>330</sup> Domi went on to explain that the business purpose of bringing Danson, Prato, and Godfrey on the flight to Montreal was to "build a network of people, clients, individuals, that I did not have at that time, zero".<sup>331</sup>

214. Payne suggested that:

I'm not sure how Dash got to know John Danson, but John Danson has a company that supplies training and education to both the public sector and the private sector. A very successful individual. I would imagine that Dash would spend time with him to better understand how he could provide some of John Danson's company's services to his potential clients or existing customers.<sup>332</sup>

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<sup>326</sup> Domi 01/29/2003 at 137.

<sup>327</sup> Domi 01/28/2003 at 39-40.

<sup>328</sup> Domi 01/29/2003 at 127.

<sup>329</sup> Domi 01/29/2003 at 127-129.

<sup>330</sup> Domi 01/28/2003 at 55-56.

<sup>331</sup> Domi 01/28/2003 at 59.

<sup>332</sup> Payne 01/10/2003 at 69.

***iii) Rob Godfrey and Paul Godfrey***

215. Domi's records revealed five entries for Rob Godfrey<sup>333</sup> and three entries for Paul Godfrey. Payne testified that she did not know what these meetings were about.<sup>334</sup> Payne herself met with Domi and Paul Godfrey once, with the aim of working with the Toronto Sun.<sup>335</sup>

216. Domi purchased a \$500 pair of cufflinks for Rob Godfrey, which he expensed to MFP. He explained that this gift was also both personal and business.

I thought that – again, it's personal/business, like both of them work hand in hand for myself. That's just how I work.<sup>336</sup>

217. He explained that so long as he was thinking about business when he bought the cufflinks for Godfrey, then it would be legitimate to charge the expense to MFP.<sup>337</sup>

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<sup>333</sup> Payne 01/10/2003 at 72.

<sup>334</sup> Payne 01/10/2003 at 72.

<sup>335</sup> Payne 01/10/2003 at 73.

<sup>336</sup> Domi 01/27/2003 at 170.

<sup>337</sup> Domi 01/27/2003 at 181-182.

## 6. MFP encouraged Domi to build inappropriate relationships

218. MFP encouraged Domi to build inappropriate relationships and to use his expense account in inappropriate ways. MFP:

- a. gave Domi a limitless expense account;
- b. approved clearly inappropriate expenses relating to private jet trips;
- c. gave Domi no training on how to use that account ethically; and
- d. provided no meaningful oversight of his use of the expense account.

### ***a) MFP gave Domi a limitless expense account***

219. Domi testified that he had no limit on his expense account and received no training on the nature of a legitimate business expense.<sup>338</sup> Domi submitted 213 expense reports to MFP which Domi linked to the City of Toronto or which named individuals connected with the City.

220. No one at MFP ever suggested to Domi that there was a limit on the amount to be spent on a single client, prospect, or event, or that there was a reason to differentiate between private sector and public sector clients in this respect.<sup>339</sup>

221. Payne testified that that she would expect Domi to use his expense account to network and build relationships.<sup>340</sup> She agreed that there was nothing in his agreement, nor in the policy manual, that set a limit on Domi's expense account.<sup>341</sup> Payne also felt that there were no real restrictions that applied to entertainment expenses.

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<sup>338</sup> Domi 01/27/2003 at 167.

<sup>339</sup> Domi 02/10/2003 at 133.

<sup>340</sup> Payne 01/09/2003 at 100.

<sup>341</sup> Payne 01/09/2003 at 100.

Q: Right. So that, I think is entertainment, so if I'm right about the entertainment expenses, you would say that they need -- they -- as long as they're socially palatable, to use my words, they need to have a -- a business purpose for MFP; is that right?

A: Yes.

Q: And beyond that, are there any other restrictions that should apply to entertainment expenses?

A: No.<sup>342</sup>

222. Domi expensed almost \$100,000 in two years. Wolfraim testified that he expected expenses for a salesperson to be around \$25,000 per year. Domi's expenses were double that amount.<sup>343</sup> Wolfraim denied that he ever looked at or tracked Domi's expense accounts, or knew whom Domi entertained.<sup>344</sup>

223. Flanagan also agreed that there were no limits on any sales representative's expense account at MFP.<sup>345</sup> He testified that expense reports of \$2000 to \$4000 a month would not have caused him any particular concern.<sup>346</sup>

***b) MFP specifically approved inappropriate expenses for private jets***

224. Domi sponsored three private chartered flights. He expensed two of these flights to MFP: one flight to Montreal and one flight to Philadelphia. Domi personally paid for the third chartered flight to Ottawa.<sup>347</sup> Domi flew Nigro to Montreal, Jakobek to Philadelphia, and Liczyk to Ottawa.

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<sup>342</sup> Payne 01/14/2003 at 38.

<sup>343</sup> Wolfraim 12/19/2002 at 102-103.

<sup>344</sup> Wolfraim 12/19/2002 at 103-104.

<sup>345</sup> Flanagan 09/19/2002 at 64.

<sup>346</sup> Flanagan 02/19/2003 at 73.

<sup>347</sup> Wolfraim 12/19/2002 at 108.

***i) Montreal – April 17, 1999***

225. The Montreal flight occurred on April 17, 1999. Domi rented a plane from Sky Charter Limited for \$5662.76.<sup>348</sup> The proof of payment to Sky Charter Limited was a credit voucher, which may have been attached to a certified cheque, for a flight to Montreal for a hockey game.<sup>349</sup> The flight manifest showed the following passengers: Dash Domi, John Danson, Vince Nigro, Tony Miele, John Prato and Rob Godfrey.<sup>350</sup> Domi and Payne agreed that she approved this flight, in advance.<sup>351</sup> He testified that he did not tell her who the potential passengers would be.

226. Domi submitted an April 17, 1999 receipt for the tickets purchased from Billeterie Centre Molson in Montreal. Domi wrote “City TO, Vince, John Danson, Tom J.” on the receipt.<sup>352</sup> Domi denied that Jakobek was at the Centre Molson that night and could not explain why he wrote his name on the receipt.<sup>353</sup> Jakobek testified that he was not at the game.<sup>354</sup>

***ii) Philadelphia – May 2, 1999***

227. The Sky Charter flight to Philadelphia occurred on May 2, 1999, two weeks after the flight to Montreal. The flight register listed the following passengers: D. Domi, T. Jakobek, V. Nigro, H. Peerenboom, G. Peerenboom, and J. Giniou.<sup>355</sup> This flight cost MFP \$6420.<sup>356</sup> Domi’s receipt for the Corestates Complex in Philadelphia identifies: “City of TO, Tom J., Vince”.<sup>357</sup>

228. The flight to Philadelphia and the lies Domi and Jakobek told about the flight will be discussed in much more detail in Chapter 18.

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<sup>348</sup> Wolfraim 12/19/2002 at 108; COT026006, 6:1:45; COT042267, 6:1:46; COT042269, 6:1:148; COT042270, 6:1:149; COT042271, 6:1:150.

<sup>349</sup> Wolfraim 12/19/2002 at 111; COT026006, 6:1:45.

<sup>350</sup> Wolfraim 12/19/2002 at 112; COT042271, 6:1:150.

<sup>351</sup> Payne 01/10/2003 at 65; Domi 01/28/2003 at 54.

<sup>352</sup> COT025614, 11:1:12.

<sup>353</sup> Domi 01/28/2003 at 50.

<sup>354</sup> Jakobek 05/22/2003 at 108.

<sup>355</sup> COT042273, 6:1:152.

<sup>356</sup> COT042272, 6:1:151; COT025617, 11:1:8.

<sup>357</sup> COT025617, 11:1:18; Domi 01/28/2003 at 82.

229. Payne agreed that she personally approved the expense for the flight to Philadelphia.<sup>358</sup> Payne testified that at no time did Payne ask, nor did Domi tell her, who would be on the plane.<sup>359</sup> Payne explained the expense as follows:

MFP is well known as a relationship company. A good part of our work was building these relationships with our client base at all different levels within the organizations. ... But, the one (1) that we see here is where we -- where we chartered or rented a small plane to take a number of our clients to a hockey game. And we actually did it a number of times. I think there was two (2) or three (3). And this was one (1) of those expenses. I think it's -- yes, the Philadelphia game.

...

Q: So, I take it, when Mr. Domi came to you for approval, he explained the business purpose for this trip?

A: Well, the business purpose was to bring a number of clients to the game to discuss how we could work with these -- with these particular individuals within the customer base, with our clients.<sup>360</sup>

230. Payne maintained that even after the flights to Montreal and Philadelphia, she did not ask Domi who attended the games.<sup>361</sup> Rather, she “. . . trusted the sales force to make sure that the caliber of individuals were there and that they would be sensitive to who would attend this event -- or any event actually, any event”.<sup>362</sup>

231. The City submits that the Commissioner should reject Payne's evidence on this point and conclude that Domi did tell Payne that Jakobek was on the flight to Philadelphia. As Domi pointed out, his “entire effort was his expenses.” It was all he had to talk to Payne about: who he was meeting, where and when. Domi must have told Payne that the Budget Chief of the City of Toronto was on the flight. If he didn't, she would have asked. Domi did not try to hide Jakobek's participation in the trip from Payne - he included Jakobek's name on the expense form. Domi would have bragged about his coup in getting Jakobek on the flight. He would not have hid the fact. At that time, Domi had no reason to hide Jakobek's involvement. When Wolfram was recalled

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<sup>358</sup> Payne 01/10/2003 at 57.

<sup>359</sup> Payne 01/10/2003 at 61.

<sup>360</sup> Payne 01/10/2003 at 57-58.

<sup>361</sup> Payne 01/10/2003 at 66-68.

to give evidence in September 2004, he generally acknowledged the logic of this analysis.<sup>363</sup>

232. When questioned in cross-examination about her expectation as to whether the City of Toronto staff on the Montreal and Philadelphia flights should have paid for their own expenses, Payne stated that she would expect so if they were senior executives.

Q: So, let me just talk to you then, about what your expectation would be on a trip like the Philadelphia trip and the Montreal trip. Are you saying to me that, that had there been invitations extended to City employees on that trip, and representatives of the City, including Councillor Jakobek, that the invitations would have been extended on the basis that they should be paying for the trip?

A: Yes, if they're senior executives, yes.

Q: That was the nature of the invitation you think was extended?

A: I would have thought so.

Q: Do you have any evidence that that was the nature of the invitation that was extended?

A: No.<sup>364</sup>

233. There is no evidence Payne ever passed this belief on to Domi. This approach would be entirely inconsistent with MFP's approach to entertaining.

234. In his testimony, Wolfraim considered this to be a "considerable departure from how we have done things in the past".<sup>365</sup>

From my own personal perspective, I'd say this is pushing the envelope pretty hard as to what's reasonable and what's not, in terms of corporate culture and so forth. I wasn't aware of it at the time. I would have had expected normally, for an expense like this or in undertaking something unusual like this Irene would at least come and talk to me about it and explain what she wanted to do and why she wanted to do it.<sup>366</sup>

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<sup>362</sup> Payne 01/10/2002 at 67-68.

<sup>363</sup> Wolfraim 09/28/2004 at 53-56.

<sup>364</sup> Payne 01/14/2003 at 50.

<sup>365</sup> Wolfraim 12/19/2002 at 118-119.

<sup>366</sup> Wolfraim 12/19/2002 at 114.

235. Payne permitted Domi to book two private jets in two weeks to fly people, including a City Councillor, to hockey games. This was an extraordinary expense, even by MFP standards. Payne's approval of such expenses clearly told Domi that there were no financial or ethical limits on his use of his expense account.

***c) MFP provided no meaningful oversight of Domi's expenses***

236. MFP provided no meaningful oversight of Domi's expenses. No one at MFP measured Domi's expenses against existing MFP policies. No one ever challenged Domi on any of the expenses he claimed, even when he claimed expensive pens from Birks or dinners with the City of Toronto CFO during the blackout period for the computer leasing RFQ.

237. The MFP Expense Report policy stated:

All expenses must be presented in a timely manner, a date, reason for and amount of all expenses claimed must appear on the form and it has to be approved by the senior vice president or the most senior manager of the unit or the vice president, if delegated by the senior vice president.<sup>367</sup>

238. Wolfraim agreed that MFP implemented this process by requiring employees to place their expenses on a standard expense claim form and to provide the details of the expense to justify it.<sup>368</sup> The policy provided that the Senior Vice-President had to approve expenses. In the case of Domi, Wolfraim said that Payne was responsible for approving his expenses.<sup>369</sup>

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<sup>367</sup> Wolfraim 12/18/2002 at 43; Payne 01/09/2003 at 64-65.

<sup>368</sup> Wolfraim 12/18/2002 at 43.

<sup>369</sup> Wolfraim 12/18/2002 at 43-44; Wolfraim 12/19/2002 at 102.

***i) Payne's view of the process***

239. Payne described the process she employed to approve expense accounts.<sup>370</sup> She was in charge of 80 individuals, approximately 30 of whom were salespeople. Payne put four sales managers in place: two in Canada (Rollock and Ashbourne) and two in the United States (Robert Karkrus and Tim Moon).<sup>371</sup> Payne also had an executive assistant, named Christine Vivaldo ("Vivaldo"). Payne testified that the sales representative would write up the expense, the sales manager would review the expense and sign off, then Payne's executive assistant, would review each expense. If Vivaldo had any concerns, she would bring them to Payne's attention. Otherwise, Payne would sign off.<sup>372</sup> Occasionally, Human Resources would do spot checks.

240. According to Payne's description of the process, Rollock, the sales manager, would approve Domi's expenses and send them to Vivaldo for review.<sup>373</sup> Then, if Vivaldo thought it necessary, she would point an expense out to Payne. If not, then Payne would sign off.

Q: That would be the process? And when you -- when she would bring you those monthly expenses, I take it that you would at least have a quick look at what MFP's money was being spent on?

A: I didn't go into any detail.

Q: I'm not talking about detail. I'm just talking about due diligence. I take it you would -- you would have gone -- to some extent, gone through the expenses quickly to see what MFP's money was being spent on?

A: No.

Q: So am I to take it that you would not, in any review, have done anything other than look to see whether there was a sign off by Mr. Rollock and if your executive assistant did not point out anything that concerned her, you would just sign?

A: I would probably scan the front page, just from the point of view of dollar value, any big numbers. But I -- Christine was very, very, as you can see from the books that she kept, very detail orientated, and I relied on her to go through

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<sup>370</sup> Payne 01/09/2003 at 65-66.

<sup>371</sup> Payne 01/13/2003 at 160-161.

<sup>372</sup> Payne 01/09/2003 at 65-66.

<sup>373</sup> Payne 01/10/2003 at 40-41.

those, because you have to remember I had -- well, you can see [sic] by my calendars, very hectic days from 7:00 in the morning until 9:00 at night.<sup>374</sup>

241. Payne reiterated that she relied on Rollock and Vivaldo for the detailed review of expenses:

Q: Is -- is it fair to say, Ms. Payne, that you would have done no detailed review of the individual expenses being submitted by your sales reps?

A: No detailed review.

Q: You relied exclusively on Mr. Rollock and Ms. Vivaldo for that review?

A: I think so.<sup>375</sup>

242. When asked about whether she was fulfilling her own responsibility for ultimately approving expense reports, Payne testified:

Q: So, in effect, the approval if I can call it that, of the expenses, although you're signature ultimately appears on the document, the approval was, in fact, done by Ms. Vivaldo and Mr. Rollock?

A: The review was done by those individuals.

Q: And as long as they approved it, you would approve it, isn't that right?

A: Yes.

Q: So, the approval, Ms. Payne, was in fact done by Ms. Vivaldo and Mr. Rollock, do you agree with that?

A: The approval -- my signature is on the approval. I was the last person to look at it. They were to review it and sign off on it.

Q: All your signature indicates, Ms. Payne, if I've got your evidence right, is that you saw the document, you saw Ms. Vivaldo's initials on it, you saw Mr. Rollock's initials on it and you sign it yourself. That's all it indicates, isn't it?

A: Yes.

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<sup>374</sup> Payne 01/10/2003 at 41-42.

<sup>375</sup> Payne 01/14/2003 at 17.

Q: Your signature doesn't give any indication to the company that you've done any degree of analysis on your own. Isn't that right?

A: Yes.

Q: That all the analysis has, in fact, been done by Ms. Vivaldo?

A: And sales management.

Q: So I suggest to you, Ms. Payne, in fact, you delegated the approvals to those two (2) people. You agree with that? On those facts as you've just testified?

A: Yes.

Q: And that was not your company's expectations, Ms. Payne. That's not what you told us yesterday. You told us yesterday that your company's expectation was that you were doing the approvals.

A: The company's expectation was that I would finally approve it, which I did.

Q: I take it that included in that was their final expectation that the expenses that you were approving were consistent with the company's policies?

A: Yes.

Q: They were looking to you for that?

A: Yes.<sup>376</sup>

243. Payne never provided Vivaldo or Rollock with a copy of MFP's expense policy.<sup>377</sup> Instead, Payne relied on the training and information supposedly provided by Human Resources.

Q: So you would want MFP's entertaining activities to be consistent with the policies of the customer as well as MFP's policies; right?

A: Yes.

Q: Yeah, because -- just to step away from that for a second, I take it that to the extent, for example, that MFP was seen to be participating in conduct that was offside of a customer's policy, that might reflect badly on MFP?

A: Well we -- we assume that the customers knew their policies. There was no intent of MFP, any of the staff at MFP, to do anything that didn't make sense for

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<sup>376</sup> Payne 01/14/2003 at 24-25.

<sup>377</sup> Payne 01/14/2003 at 26-27.

either the client or our own image as a public company, as you mentioned. So we didn't follow every policy two thousand (2000) and some clients, however, you know, we -- we trusted in our people, that they would follow the direction or the leadership of the company. And Peter Wolfrain is probably one of the most conservative individuals in -- in this whole area. And he -- he portrayed that throughout his management team, or the style throughout his management team, and we all took that. And in fact, as I mentioned the other day, you know, expenses were -- ranged from the lowest, you know, as little as fifteen hundred (1500) to whatever. And there was a bit different style by reps, for instance, Dash Domi would take the clients out to the hockey games, that was his sport. We had guys who, you know, lots of golf, you know, with foursomes and/or tournaments. So it was the style of the individual that -- but to our knowledge, that they wouldn't do anything that was wrong for the client or for our company.

Q: Just going back to the question I asked you, Ms. Payne, and I guess what you're saying in effect is, that you would not want MFP sales people to knowingly violate a customer's entertainment policy?

A: No.<sup>378</sup>

***ii) Rollock testified that he never reviewed Domi's expenses and was not asked to do so***

244. Rollock disagreed with Payne's statements about her delegation of Domi's expense reports to him. He testified that he was never expressly or specifically asked to review Domi's expense reports.<sup>379</sup>

I have reviewed the evidence of Irene Payne. Ms. Payne testified that she delegated the review of the details Mr. Domi's expense reports to me. She said I would then pass the report to Ms. Payne's assistant, Christine Vivaldo. Ms. Payne would only look for my initial or signature and then approve the expense report (evidence of Irene Payne, January 14, 2003 at pages 21-22). I disagree with Ms. Payne's statements... .

The initials on Mr. Domi's expense report from May 1999, being Document COT0-25611, and June 1999, being Document COT0-25682 are not mine (my initials are 'J A R'). In fact, I have never reviewed or approved Mr. Domi's expenses.

I never trained Mr. Domi on what expenses were appropriate to submit or how to complete expense reports, nor was I asked to do this. I did not have any training

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<sup>378</sup> Payne 01/14/2003 at 39-40.

<sup>379</sup> Rollock 06/10/2004 at 8.

from human resources staff at MFP or anyone else about MFP's expense policies.<sup>380</sup>

245. Rollock testified that Domi did not provide him with expense reports for his approval. Rollock never provided Domi with any instruction or guidance on the nature of an appropriate expense for his expense reports. Rollock considered Domi to be a senior employee and expected him to have enough business experience to know the nature of a valid expense.<sup>381</sup>

Q: Did Mr. Domi ever provide you with any expense accounts or reports to approve?

A: Not to the best of my knowledge. I can't remember Dash bringing any expense accounts to me.<sup>382</sup>

246. Rollock testified that any of Domi's expense reports submitted after May 1999 – after Rollock's conversation with Payne about Domi taking on the City of Toronto account – would have been reviewed by Payne. Domi reported directly to Payne. Rollock's expectation would have been that there would have been no other review prior to Payne, except perhaps Vivaldo.<sup>383</sup>

247. The City submits that Rollock's evidence should be adopted over Payne's on this point. Rollock was a credible witness who offered a plausible explanation of his role and responsibility. Payne consistently attempted to minimize her role in supervising Domi.

### ***iii) Role of Flanagan after February 2000***

248. In February 2000, Flanagan replaced Payne as the person ultimately responsible for the approval of the business expenses of the sales staff at MFP.<sup>384</sup> He initiated a process whereby the expense reports would go to accounting first for a clerical review

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<sup>380</sup> Rollock 06/09/2003 at 208-210; also Rollock Affidavit, paras. 20, 22, 23, 06/09/2003 at 208-210.

<sup>381</sup> Rollock 06/10/2003 at 11.

<sup>382</sup> Rollock 06/10/2003 at 10.

<sup>383</sup> Rollock 06/10/2003 at 98.

<sup>384</sup> Flanagan, 02/20/2003 at 102, 106.

to ensure, for example, that there were correct receipts for all items.<sup>385</sup> Flanagan remained ultimately responsible for approving the substance of the expenses.<sup>386</sup>

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<sup>385</sup> Flanagan, 02/20/2003 at 103.

<sup>386</sup> Flanagan, 02/20/2003 at 112-113.

**d) Domi submitted falsified expense reports**

249. The Commission will never be able to determine the precise extent of Domi's entertaining of City employees and officials because Domi falsified expense reports he submitted to MFP.

**i) Domi expensed meals if he thought about business during the meal**

250. As noted above Domi saw entertaining clients as his raison d'être : "[m]y entire effort of work period is my expenses".<sup>387</sup> He explained that as long as he discussed or thought about the City of Toronto during a meal, he would expense the meal to MFP. It was not necessary that anyone from the City be present for the meal.

Q. I take it your evidence is that you would – that that would be a legitimate business expense, so long as you were thinking about business in general?

A. I was focused on business, yes.<sup>388</sup>

251. According to Domi so long as he had business on his mind, it was acceptable to submit any expense that he incurred during that time frame.<sup>389</sup> Although Domi testified that he believed his practices were legitimate, he did not tell anyone at MFP that he was writing down the names of customers who were not present when he incurred the expense.<sup>390</sup>

252. The City of Toronto submits that it is more likely than not, absent compelling evidence to the contrary, that if Domi wrote an individual's name on a receipt, that person actually attended the event. Throughout his evidence, Domi attempted to understate the amount of contact he had with senior City representatives. His incredible

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<sup>387</sup> Domi 01/29/2003 at 83, 85.

<sup>388</sup> Domi 01/27/2003 at 172-173.

<sup>389</sup> Domi 01/27/2003 at 182.

<sup>390</sup> Domi 01/29/2003 at 92-93.

explanation of how he filled out receipts is simply another manifestation of this tendency.

253. Wolfram acknowledged in his testimony that Domi had falsified some of the expenses he submitted to MFP.<sup>391</sup> During reviews of Domi's expenses, Domi conceded that some names appeared on his expense report that were not in attendance. Wolfram further acknowledged that according to MFP policy, falsifying expenses is an offence that may lead to termination of employment.<sup>392</sup> Wolfram explained that Domi was not fired for falsifying his expenses because, as part of the whole Inquiry process, MFP had encouraged its employees to tell the truth, and MFP had "deferred a discussion of the matter until it is appropriate".<sup>393</sup> His draw has remained at the same amount: \$100,000.

254. Nigro explained that he took a similar approach to his expense reports at MFP. If he incurred an expense while he was physically located in the City of Toronto, then he would expense the amount to MFP re: the City of Toronto.<sup>394</sup> It did not matter whether or not he was doing City of Toronto business. Flanagan criticized Nigro's approach to his expenses:

Well, I think those statements don't make much sense, and certainly it's not what's understood at MFP, and it is not legitimate to submit an expense and label it as an expense incurred in pursuing business with the City of Toronto, when nobody from the City of Toronto was in attendance, but you happened to be within the City of Toronto, it's -- it was not the policy or . . . practice.<sup>395</sup>

***ii) Domi had Pessione complete his expense reports for him***

255. Pessione testified that he used to complete Domi's expense reports for him.<sup>396</sup> He performed this task because Domi was new to the company and Domi asked him for a favour. Up until March 2000, most of the expense chits had names on them, which

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<sup>391</sup> Wolfram 12/19/2002 at 126-127.

<sup>392</sup> Wolfram 12/19/2002 at 126.

<sup>393</sup> Wolfram 12/19/2002 at 128.

<sup>394</sup> Nigro 01/20/2003 at 22.

<sup>395</sup> Flanagan 02/19/2003 at 45.

<sup>396</sup> Pessione 02/13/2003 at 98.

Pessione transcribed onto Domi's expense forms.<sup>397</sup> However, after March 2000, almost none of the expense chits had names on them. When the chits were blank, Domi instructed Pessione to fill out the form using the same names as previous, or to add a new client name to the list. He would not provide specific instructions for each chit.<sup>398</sup> Pessione never wrote on any receipts that he received.<sup>399</sup>

256. Domi agreed that he would accumulate receipts over a period of a couple of months and hand them to Pessione.<sup>400</sup> Pessione would put the expenses on a spreadsheet and submit them. Domi could not provide an explanation for why, after March 2000, he suddenly stopped writing names on his receipts.<sup>401</sup> Domi testified that if he handed in a receipt with no writing on it, he expected Pessione to write something down arbitrarily.<sup>402</sup> He did not review the expense reports prepared by Pessione.<sup>403</sup>

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<sup>397</sup> Pessione 02/13/2003 at 98-99.

<sup>398</sup> Pessione 02/13/2003 at 100-101.

<sup>399</sup> Pessione 02/13/2003 at 104.

<sup>400</sup> Domi 01/27/2003 at 160.

<sup>401</sup> Domi 01/28/2003 at 12-13..

<sup>402</sup> Domi 01/27/2003 at 163-164.

<sup>403</sup> Domi 01/27/2003 at 181.