

# **CITY OF TORONTO COMPUTER LEASING INQUIRY**

## **RESPONSE TO FINAL SUBMISSIONS**

### **ON BEHALF OF JAMES (JIM) ANDREW**

#### **PART I**

##### **RESPONSE TO THE SUBMISSIONS OF LANA VIINAMAE**

1. In the closing submissions of Lana Viinamae, much time and effort is spent on one hand establishing that she was the senior City Manager responsible for the Year 2000 Program, its planning, program development and implementation, its significant achievements, i.e., bringing the program in on time, on budget and with no service interruptions to the City and, on the other hand, where problems arose or where issues or concerns have been raised and focussed on through this Commission hearing process, deflecting all accountability or responsibility for these matters and pointing at others as being the cause or creators of the problems or issues. Generally, the target has been Jim Andrew although Ms. Viinamae has as well pointed the fickle finger of guilt at Brendan Power, Line Marks, Katherine Bulko (all of whom reported to her) and as well, at Wanda Liczyk, Len Brittain, Ken Colley and others in the Finance Department.
2. Mr. Andrew did not have a program management role in the Year 2000 Project at the City. Mr. Andrew was not accountable for the budget of that program at any

time. Mr. Andrew did not receive a Year 2000 Program bonus (Ms. Viinamae did). None of the specific accountabilities in the job description for Executive Director, Information & Technology (IT) referred to the Year 2000 project. The only mention of the Year 2000 Project in that job description (077299) is at "Reporting Relationships" where it is noted that one of the 10 direct reports to the Executive Director I&T was the Director, Year 2000 Project.

3. All of Mr. Andrew, Michael Garrett, the City's Chief Administrative Officer and even Margaret Rodrigues confirmed that that relationship was administrative and not functional.
4. Ms. Viinamae stated that on only one occasion, just as she was selected to be the Year 2000 Project Director did she meet with Ms. Rodrigues at which meeting Mr. Andrew was not in attendance. Ms. Rodrigues strongly disagreed with this proposal by Ms. Viinamae. Ms. Rodrigues testified that it would be too cumbersome for Lana to report through Mr. Andrew and for Mr. Andrew to report to her and thus she, Ms. Viinamae and Mr. Andrew had an understanding that for Year 2000 Project matters (not associated with IT matters), Ms. Viinamae would report to her directly.<sup>1</sup>
5. In her testimony, Ms. Rodrigues entirely disagreed with Ms. Viinamae's submission that all meetings she had with Ms. Rodrigues included Mr. Andrew. In her testimony, Ms. Rodrigues variously stated:

- (a) she did not agree that that one specific meeting mentioned by Ms. Viinamae was the only meeting they had without Mr. Andrew;
  - (b) she would go to Ms. Viinamae's office to meet with her as and when she needed;
  - (c) there were many occasions where she and Ms. Viinamae met where Mr. Andrew was not there;
  - (d) she and Ms. Viinamae worked together fairly frequently without Mr. Andrew being present;
  - (e) Mr. Andrew was included in meetings by Ms. Rodrigues because of his very substantial technical knowledge (on IT);
  - (f) Mr. Andrew's role in the Year 2000 Project and in meeting with Ms. Viinamae and Ms. Rodrigues was to provide advice on IT matters or Year 2000 Program matters that affected IT and to act for Ms. Rodrigues on Year 2000 matters in her absence.<sup>2</sup>
6. Mr. Andrew was absolutely clear that Ms. Viinamae and Ms. Rodrigues met on a regular ongoing basis without his participation. From time to time, Mr. Andrew was invited to these meetings to provide IT-related information and advice. Mr. Andrew considered this operational/reporting relationship to be appropriate as

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<sup>1</sup> Margaret Rodrigues Testimony, November 20, 2003, p.21, 1 1-20.

<sup>2</sup> Margaret Rodrigues Testimony, November 20, 2003, pages 20, 21, 22, 23, 30.

Ms. Viinamae in her position as Year 2000 Project Director was a member of Ms. Rodrigues' Senior Management Team.<sup>3</sup> Mr. Andrew was a member of that Senior Management Team as well. Generally, the Department's Senior Management Team did not include a more senior executive as well as one of his "direct reports".

7. It is respectfully submitted that Ms. Viinamae has intentionally misrepresented her reporting relationship as the Director of the Year 2000 Project with Mr. Andrew in his position as Executive Director IT in order to deflect liability from herself.
8. Following Ms. Rodrigues's departure from the City, Mr. Andrew was appointed to the Year 2000 Steering Committee. He was a member of that Committee. The role played by Mr. Andrew was to serve as the City's IT adviser to the Steering Committee, a role he had previously played with Ms. Rodrigues. Mr. Andrew served in a staff (advisory) capacity **not** in a line capacity, i.e., as the supervisor of the Director of the Year 2000 Project.
9. This reporting relationship is defined in the Y2K Business Continuity Report dated November 23, 1998. That report was drafted by Ms. Viinamae and Year 2000 staff reporting to her. Ms. Viinamae was the contact person named in the report and the report was signed by Ms. Rodrigues and Mr. Garrett. Mr. Andrew had no role whatever in drafting or reviewing that report, did not receive a copy

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<sup>3</sup> (01900)

of that report and was not even named on the circulation list for it. Ms. Rodrigues, when asked about Mr. Andrew's role in Year 2000 Project reports (including the above report of November 3, 1998) stated that these reports came to her from Ms. Viinamae for her review and approval and she thought she may have gone to see Mr. Andrew about the reports.<sup>4</sup> Mr. Andrew was clear that the reports were never brought to him by Ms. Viinamae for his review or consideration and neither did Ms. Rodrigues involve him in the report approval process despite her unclear and speculative assertion that she thought she may have involved Mr. Andrew in the process. She did not. Neither Ms. Rodrigues nor Ms. Viinamae provided documentation of any kind to support or corroborate their belief or speculations in this regard.

10. Mr. Andrew states that he had no role whatever in the preparation of the Year 2000 reporting documentation at either the program design and development stage or with respect to the budgeting and reporting stages. These accountabilities were at all material times assigned to the Year 2000 Project Director and Mr. Andrew played no role in them from a management or supervisory perspective.
11. At paragraph 63 of her closing submissions, Ms. Viinamae confirms two points related to the Year 2000 Program:

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<sup>4</sup> Margaret Rodrigues Testimony, November 20, 2003, p.39, 1 6-8.

- (a) that after having completed the drafting of the Y2K Business Continuity Report on November 3, 1998, she staffed the management positions for each of the Year 2000 Project's program areas including the PMO; and
  - (b) she established the policy and protocols for the Year 2000 Program to report monthly to the Policy and Finance Committee (PFC) and as well, to Council. These reports were to be thorough status reports on the program, its targets, achievements and proposed additional or revised initiatives.
12. Mr. Andrew had no role in the development of these program reporting procedures and protocols and neither did he play any role in their development, submission to, approvals by or discussions at PFC or Council regarding them. This was one more duty exclusively assigned to Ms. Viinamae in her position as Year 2000 Project Director. There is no evidence to support Ms. Viinamae's contention that she consulted Mr. Andrew regarding these matters or that he provided her with advice or guidance in these matters.
13. At paragraphs 67 to 69 of her Closing Submissions, Ms. Viinamae discusses several other Y2K Program accountabilities for which she held sole responsibility and with which or in which Mr. Andrew played no role. By April 1999, Ms. Viinamae and her managers had fully staffed the organization with a full complement of 450 employees. As well, manager accountabilities, i.e., sub-program goals, objectivities and activities had been established and program implementation commenced. By April 1999, IBM reported that the City's year

2000 Project was on track to achieve its objective. Reports to PFC and Council were being made in a timely manner and feedback from Council was positive. For these hugely positive results, Ms. Viinamae accepts full responsibility.

14. In addition, Ms. Viinamae confirmed that she managed the PMO as well as the twelve other programs in the Year 2000 Project. She chaired weekly PMO meetings, she reviewed and consulted with activity or sub-program managers on their programs, targets, results, proposed changes, etc.. Armed with all this information and documentation, she would then meet with the Year 2000 Steering Committee to review matters and obtain their comments and approvals associated with the program and the recommendations of the PMO (which reported to Ms. Viinamae).
15. At paragraph 71 of her Closing Submissions, Ms. Viinamae confirmed that once proposals were submitted by her to the Y2K Steering Committee and once they had made their recommendations, she would compile a final report for submission to the PFC and to Council. Mr. Andrew played no role whatever in these aspects of the Year 2000 Project management according to Ms. Viinamae.
16. At paragraph 70 of her Closing Submissions, Ms. Viinamae states that Mr. Andrew brought Mr. Power to her one day and informed her that he would be working with IT. Both Mr. Power and Mr. Andrew testified that Ms. Viinamae interviewed Mr. Power for a contract position related to the EDS Mainframe contract. There is simply no good reason for either Mr. Andrew or Mr. Power to misconstrue this particular fact. It is respectfully submitted that Ms. Viinamae

has in her submissions done what she did in her testimony, i.e., attempt to protect herself by blaming others. It is fair comment that Mr. Power made a number of errors with respect to the computer leasing contract (the RFQ, the Report to PFC and Council and the Master Lease Agreements). That said, Ms. Viinamae wrongfully seeks to distance herself from Mr. Power who, along with Bob Batten, managed the External Partners and Agreements Group and reported to Ms. Viinamae. It is submitted that the testimony of Mr. Andrew and Mr. Power in this matter should be accepted over Ms. Viinamae's self-serving evidence.

17. As to paragraph 72 of her Closing Submissions, wherein Ms. Viinamae states that Mr. Andrew informed her shortly after Mr. Rodrigues's employment with the City ended that she, in her position as Year 2000 Project Director, would report to him, and did so until February 2000, i.e., about when Joan Anderton commenced working in the position as Commissioner, Corporate Services, the fact is that:
  - (a) there is no evidence or documentation to that effect;
  - (b) there is no evidence that the reporting relationship between Ms. Viinamae and Mr. Andrew changed in any manner or that he accepted new and additional responsibilities related to the Year 2000 Project;
  - (c) this is neither the evidence of Mr. Garrett nor of Ms. Liczyk; and finally, and most convincingly,
  - (d) it was not the evidence of Mr. Andrew.



18. Without doubt, Mr. Andrew, in his capacity as a member of the Year 2000 Steering Committee and its IT technical adviser, would provide advice and guidance to Ms. Viinamae in her role as Project Director. That said, this is a staff function, not a line function. Mr. Andrew did not supervise or manage the Year 2000 program or Ms. Viinamae. By his admission, he provided Ms. Viinamae advice and guidance on the needs, requirements, objectives, etc. of the IT Division as such information was a critical aspect of the Year 2000 Program and the cost of such needs in terms of hardware and software acquisitions was to be a substantial portion of the Year 2000 Program budget.
  
19. As Mr. Andrew stated in his testimony, the separation between the role of Year 2000 and IT was not simple. Part of his role as the Executive Director IT was to wear the hat as technical (IT) adviser to the Steering Committee. That said, Ms. Viinamae is not correct when she states that Mr. Andrew either was or informed her that he was to be her director or immediate superior in a "line" sense. That relationship makes absolutely no sense from an organizational perspective and there is no evidence (except Ms. Viinamae's protestations) to support that proposal. It is submitted that, in this as well, Ms. Viinamae is not to be believed. Mr. Andrew played no leadership role in the Year 2000 Project.
  
20. With respect to paragraph 82 of Ms. Viinamae's Closing Submissions, both Mr. Garrett and Mr. Andrew stated that the organization chart (070850) on which Ms. Viinamae's position as Y2K Director is shown reporting to the Executive Director IT did not reflect the organizational reality at the City but rather reflected the fact

that management did not want a broad span of control at the Commissioner level and that this relationship was for administrative and not operational purposes. There is plentiful documentation referred to in Mr. Andrew's examination in chief that supports his and Mr. Garrett's contention.

21. From a strictly organizational perspective, it is incorrect to bury a trans-city project of such profile four levels down in the City's organizational structure. Finally, the fact is that throughout the term of the Year 2000 Project, Ms. Viinamae earned a higher total income than Mr. Andrew did. Mr. Andrew did not qualify for the special bonuses, benefits or commissions granted to all City employees who participated in the Year 2000 Project.
  
22. With respect to paragraph 84 of Ms. Viinamae's Closing Submissions, it is true that Ms. Viinamae and Mr. Andrew were friends and friendly. It is true they talked regularly. That said, Mr. Andrew was left out of many Year 2000 Project matters which Ms. Viinamae chose not to disclose to or discuss with him. Many other issues were shared by her with him in his capacity as IT adviser to the Y2K Steering Committee. Mr. Andrew stated and firmly believed that Ms. Viinamae ran the Year 2000 Project without seeking sufficient advice, guidance or information from him or others on the Steering Committee. Good examples of this include her executing the quarterly lease rate factor sheets for almost a year and a half without bringing this to Mr. Andrew's attention. Neither did Ms. Viinamae consult or advise Mr. Andrew prior to about February 1, 2000 that she had been the sole signatory on several of the leasing documents. In such

situations, the duty of a subordinate manager who is uncertain or unclear as to how to proceed on a matter of such significance should refer that or such matters to her supervisor. If Mr. Andrew were Ms. Viinamae's supervisor, she should have consulted him in advance with respect to such issues as signing lease rate factor documents, signing lease documents and even prior to sending out her memorandum of October 1, 1999. The fact is that if Mr. Andrew were (he was not) her direct line manager, she should have referred these and other issues to Mr. Andrew. She did not and in those (failures) she failed to meet the appropriate or a reasonable standard of care. If Mr. Andrew were not her direct line manager as he represents and insists, then again Ms. Viinamae's behaviour in signing the lease rate factor documentation without referring it first to someone who knew or understood the protocols, in signing the leasing documents without first checking with legal or finance to determine whether she was empowered to sign such documents as she did on behalf of the city and on sending out the October 1, 1999 e-mail without first checking to determine the circumstances under which Finance had made the decision to proceed with 5 year leases was negligent.

23. The fact is that Mr. Andrew and Ms. Viinamae were friends and "chatted" regularly. What Ms. Viinamae failed to do on a regular basis is consult with Mr. Andrew or other Senior City Managers (Mr. Brittain, Ms. Liczyk, Mr. Colley or Mr. Shultz) with respect to Year 2000 Project management-related matters. Rather than ask other Senior City Managers about protocols or procedures, Ms. Viinamae acted. On all these (three) matters and many more, Ms. Viinamae

acted without authority and without following the operational protocols that existed in the City's bureaucratic organization. For Ms. Viinamae, timing was everything and compliance with protocols or procedures caused delays. Delays were unacceptable to Ms. Viinamae.

### **The Request for Quotation - re Lana Viinamae**

24. Mr. Andrew has already explained his role in this process vis-à-vis Brendan Power and he has little of substance to add to that position. Mr. Power was an experienced and capable former senior provincial civil servant whom Mr. Andrew knew well and trusted. Mr. Power was selected by Mr. Andrew to serve as the IT representative involved in drafting the RFQ. Mr. Andrew discussed this with Mr. Power who agreed to perform that role after which Mr. Andrew spoke with Ms. Viinamae.
  
25. The position taken by Ms. Viinamae with respect to the RFQ through all stages, i.e., its drafting, terms and conditions, its evaluation and the selection of the successful candidate from 6 leasing companies and the City's price to purchase is simply "that she had no knowledge or experience in leasing or finance (financial analysis); that she did not read the RFQ or participate in its being drafted or its analysis and that on no occasion did she even discuss the RFQ or the responses to it with anyone either in the City or the various prospective suppliers.

26. Simply put, Ms. Viinamae's defence parallels the three monkeys with hands covering their eyes, mouth and ears respectively (see no evil, speak no evil and hear no evil).
27. For a Senior Program Manager such a defence is absolutely untenable. For the director of Toronto's Year 2000 Project, such a defence in whole or in part is nothing short of irresponsible.
28. It is not questioned that Ms. Viinamae did not have prior experience in the IT leasing process. That said, she certainly had a duty in her position to develop at least a general background understanding of the process which she might well be working with for a period of several years. Leasing knowledge and information was readily available from various sources around Ms. Viinamae. She worked with or around Mr. Andrew, Mr. Power and Ms. Bulko, all of whom had considerable leasing knowledge and experience. She was likely acquainted with or could have readily become acquainted with publications on leasing such as those from the Gartner Group. She could have sought analytical information from financial staff in Mr. Brittain's Division or from Purchasing staff in Mr. Pagano's Division. The fact is that information on leasing was readily available around Ms. Viinamae and there was a duty on her in her position as Year 2000 Project Director to seek and obtain a reasonable degree of information. At Ms. Viinamae's organizational level there is simply no excuse for not seeking and obtaining at least a functional if not a working level of knowledge regarding leasing, leasing RFQ's, financial analysis of leasing and purchasing options, etc..

Much of what was called for with respect to drafting the RFQ, its terms and conditions had to do with issues of timing, steps to be taken, equipment needs, and program details and dimensions. Certainly a contribution from Ms. Viinamae in these areas could and should have been made. The "ignorance" defence by Ms. Viinamae is nothing short of an abrogation of responsibility on the part of Ms. Viinamae. It has no merit whatever and should be rejected by this Commissioner.

29. Ms. Viinamae received a copy of the draft RFQ on at least two occasions. On the first occasion, May 18, 1999, it was sent to her and to Mr. Franey by Mr. Power who wrote: "attached for your review and comment is a draft of the lease RFQ". Ms. Viinamae alleges that she did not open the attachment because the issues referred to by Mr. Power were more related to Mr. Franey's organizational responsibilities. Ms. Viinamae was incorrect not to open the attachment and review the RFQ as drafted. She certainly knew the program, its dimensions, term, etc., however, despite her extensive program knowledge and despite being specifically requested to review the document, she chose not to do so and further chose not to inform Mr. Power of her choice. Ms. Viinamae rejected "curiosity" and chose not to engage.
30. On the second occasion, May 26, 1999, while she was acting in Mr. Andrew's absence as Executive Director IT, Mr. Power again sent her a draft of the RFQ by way of a copy of an e-mail to Mr. Brittain. Again Ms. Viinamae chose not to

engage and neither opened nor reviewed the e-mail. Neither did she inform Mr. Power that this had been her choice.

31. Had Ms. Viinamae bothered to open the e-mails from Mr. Power she could certainly have provided substantive (program) and procedural input. With the greatest respect, there is no good excuse for having failed to review the RFQ on the two occasions it was forwarded to her requesting her input. At paragraph 112 of her Closing Submissions, it is Ms. Viinamae's submission that she was simply too busy. That excuse is unacceptable.
32. In the next few paragraphs of her closing Submissions, Ms. Viinamae goes on to state:
  - (a) that prior to leaving on holiday, Mr. Andrew did not direct her to review the RFQ or tell her to take on the day-to-day activities of the position but rather to deal with any issues that arose;
  - (b) that even when Mr. Andrew was on vacation he would log on and pick up e-mails.
33. The fact is that Mr. Power knew that Ms. Viinamae was acting as Executive Director IT and sent the document to her for review. The further fact is that there is no evidence that while on his one week holiday in Scotland that Mr. Andrew was also carrying on the City's business. Mr. Andrew did not testify to that fact.

34. Mr. Andrew testified that he left Ms. Viinamae in charge while he went on vacation from May 25, 1999 to June 2, 1999. Ms. Viinamae also testified to this arrangement. When one takes on the additional responsibilities of a more senior position even on a short-term basis, the role is to perform the principal duties and responsibilities of that position. One of the principal duties of Mr. Andrew's position was to provide advice, guidance and leadership to direct reports on an ongoing basis as requested. In this case, the duty on Ms. Viinamae was to do exactly that, i.e., to review the draft RFQ and consult with Mr. Power upon his request for such input. Anything short of that would not have met the appropriate role or standard of care on the part of an acting Executive Director IT.



## **Review of RFQ Responses - Lana Viinamae**

35. At paragraph 115 of her Closing Submissions, Ms. Viinamae takes the position that Brendan Power was the IT head on the RFQ and that Mr. Power was supervised exclusively by Mr. Andrew. At paragraphs 2 and 3 of his Closing Submissions, Mr. Power states that he had substantial training and experience both in drafting IT leasing RFP's and RFQ's and in coordinating the drafting of IT leasing RFP's and RFQ's however, he did not consider himself a computer leasing expert. The reason given by Mr. Power in the commentary to paragraph 2 of his Submissions is he was not an expert in calculating or assessing lease rates. That function in the subject lease rate analysis was performed by Nadir Rabadi under the direction of Messrs. Altman and Brittain.
36. Mr. Power states at paragraph 3 of his Submissions that he spoke to Ms. Viinamae (not Mr. Andrew) regarding "the types of experts or outside consultants that would or might be needed. Mr. Power did not believe it was within his responsibility to seek authority to access experts. He considered this the responsibility of Ms. Viinamae". Mr. Andrew was unaware of such enquiries by Mr. Power. If he had been made aware of this or these enquiries by either Ms. Viinamae or Mr. Power, he would have considered retaining a leasing consultant.
37. It is submitted that Ms. Viinamae was very much a part of the RFQ management process. Mr. Power is clear that he reported on RFQ related (drafting, analysis and selection) issues to Ms. Viinamae and that he spoke with her regarding his abilities, limitations and options or alternatives to his serving as the IT lead in the

Project. At paragraph 5 of his Closing Submissions, Mr. Power confirms that he "had discussions about retaining outside experts, including legal counsel, with Ms. Viinamae within a week or two of Council approval".

38. Mr. Power technically reported to Ms. Viinamae in her position as Year 2000 Project Director. Although on a special assignment at the request of Mr. Andrew, he continued to report at all times to the Y2K Director and continued to provide her with advice and information on problems, issues and concerns as he was obligated to do in a bureaucratic organization. It is untrue that Ms. Viinamae was uninvolved in the RFQ and that, due to her "lack of knowledge or training regarding either leasing or the RFP/RFQ process she stood "helplessly by on the sidelines unable to participate". Ms. Viinamae was very much part of and involved in the RFQ drafting and evaluation process.

### **Review of the RFQ Responses**

39. At paragraphs 115 - 120 of Ms. Viinamae's Closing Submissions, she makes a concerted effort to establish that Mr. Power and Mr. Andrew were together the IT contacts on the report (to PFC) and as well that together they headed up the RFQ. On the second point, Ms. Viinamae relies upon a letter dated August 21, 2001, written by a third party at MFP but signed by Dash Domi as proof in support of her contention. Mr. Domi is somewhat less than an unimpeachable witness and this proposal should be given no weight.

40. In support of the first point, Ms. Viinamae relies upon the testimony of Mr. Rabadi. With the greatest respect, that summary does not reflect the testimony of Mr. Rabadi. Mr. Rabadi participated in the analysis of the RFQ responses as the FI lead. He reported to Messrs. Altman and Brittain and kept others at Finance including Ms. Liczyk and Martin Willischuk informed as necessary. In that analysis, he sought advice from Messrs. Power, Altman and Brittain to double-check his numbers (calculations). When Mr. Rabadi required IT related technical information for his analysis on the bids, for the report to PFC or for use in preparing briefing notes, he directed e-mails to Mr. Power, Ms. Viinamae and Mr. Andrew. Usually these were sent to Mr. Power with copies to Ms. Viinamae and Mr. Andrew (as well as to Messrs. Brittain and Altman). By so doing, Mr. Rabadi was correctly communicating with the IT lead (Mr. Power) while providing advice and information to interested and involved managers whose duty it was to be informed in such matters. Examples of such communication between Mr. Rabadi and Mr. Power include e-mails on June 25, 1999 (031948), July 2, 1999 (031855) and (014350), July 6, 1999 (014140), July 7, 1999 (014219) and July 11, 1999 (031872). Examples of e-mails from Mr. Power to Ms. Viinamae and perhaps others include: June 27, 1999 (031848), July 5, 1999 (031859) and July 6, 1999 (014212). Finally, there are the e-mails on the Report from Ms. Viinamae to Mr. Rabadi, Mr. Power or Mr. Andrew or some combination of them including: July 5, 1999 (012257), (013811), July 7, 1999 at 1:28 a.m. (014211).
41. With respect to the Report to the PFC, Mr. Andrew and Mr. Rabadi worked together over several hours on July 9, 1999 with Ms. Liczyk by telephone at her

home reviewing and revising the final Report. Mr. Andrew along with Ms. Liczyk was to sign the Report and thus when it came to that final stage, it was Mr. Andrew who represented IT. It was Mr. Andrew and Ms. Liczyk who were ultimately accountable for the shortcomings or limitations of that Report.

42. That said, Ms. Viinamae was to have been involved in the RFQ (drafting) and the Report (drafting). Involvement in these was incumbent on her in her position as Director, Year 2000 Project. If it is accepted that she did not play a full and proper role in these activities, it should be found by this Commission that such involvement was a duty of her position which she failed to perform.
43. It is submitted that with respect to drafting the Report to PFC, Ms. Viinamae was a principal participant. Her involvement throughout that process (from June 25, 1999 - July 8, 1999) was exceeded only by Mr. Rabadi and Mr. Power.

### **The Council Report**

44. In Part V., The Council Report of her Closing Submissions, Ms. Viinamae denies having read the entire report or having made revisions to the Report, and denies any role other than responding to specific questions that Mr. Rabadi sent to her on July 2, 1999, and providing boilerplate comments to Mr. Power in reply to his e-mail of July 6, 1999.
45. Ms. Viinamae's reasons for taking no substantive role include:
  - (a) she had no training or experience in leasing,

- (b) others more senior to her would provide the report with a thorough review,  
and
- (c) the financial parts would not make sense to her.

This from a senior bureaucrat whose budget was most adversely affected by the financial issues and recommendations in the Report.

- 46. Without doubt, Ms. Viinamae should have participated more actively in the preparation of the Report.
- 47. What is most peculiar is that on two occasions when asked to review the draft Report, she responded in a manner that would result in the person to whom she responded on the Report concluding that she had reviewed the Report and was giving her full response to the questions asked.
- 48. To Mr. Power's e-mail request on July 5, 1999 to Ms. Viinamae (013559) that she give the draft a "rigorous review and sent your comments to me at home", she responds with solid points on issues relevant to IT, i.e., recommendations permitting City officials to enter agreements and on the central administration of the program by IT.
- 49. To Mr. Power's e-mail request of July 6, 1999 (014212) confirming that he had made minor changes to Nadir's report, Ms. Viinamae responds: "Looks good. Has Wanda seen and approved it?".

50. It is respectfully submitted that Ms. Viinamae did not take as active a role in drafting the Report to Council as she should have and rather than telling others around her that she had little knowledge of or interest in learning about leasing or the issues contained in the Report to Council, she actively led them to believe that she was an active participant in the process.
  
51. As Director of the Year 2000 Project, Ms. Viinamae had a duty to actively participate in the drafting of the Report to Council. She was not the Finance lead (Mr. Rabadi was), Mr. Rabadi actively kept others in the Finance Department involved in issues, problems or concerns. Mr. Power on his part kept Ms. Viinamae and Mr. Andrew informed of issues, problems and concerns as well. Despite that, Ms. Viinamae has taken the position that her role in this Report drafting process was minimal. The evidence does not support Ms. Viinamae's contention. In addition, she had an active duty to participate in the drafting of the Report that was of critical importance to the Year 2000 Project (constituting 25% of its total budget) as well as to her formal Division, IT. Ms. Viinamae failed to comply with that positive duty to participate in the drafting of the Report.
  
52. At paragraph 134 of her Closing Submissions, Ms. Viinamae incorrectly states that she provided input to the Council Report only because the Year 2000 Program was to be the donor of part (the majority) of the funds for the acquisition of hardware and software. Although true in part, it should be noted that at all material times Ms. Viinamae was responsible for the activities of the PMO and commencing in January 2000 of the CMO, both of which were charged with

managing the acquisition and distribution of hardware and software, the placement of these on lease and the budgeting for such acquisitions. It should also be noted that Ms. Viinamae considered herself to be one of the City officials authorized to carry out the recommendations in the Council Report (see Recommendation No. 5).

53. It is submitted that in stating that her input to the Council Report was given as a client of the leasing program, Ms. Viinamae is incorrect. Her input was given on a program for which she was responsible and for an office or consecutive offices the PMO and the CMO over which she was the responsible senior manager. The program budget was in large part from the Year 2000 Project. Acquisition and distribution of hardware and software fell within her program accountabilities and as well she believed herself to be the appropriate, City official, authorized to carry out the program recommendations and more specifically to execute master lease agreements, lease rate factors and other critical City documentation. Ms. Viinamae was the sole contact person from either IT or the Year 2000 Project named on that Report.
54. As the sole named contact from IT and the Year 2000 Project, Ms. Viinamae would be obligated to field questions, issues or concerns on all issues related to budget, program (asset) management and to some degree, carrying out recommendations. At paragraph 136 of her Closing Submissions, Ms. Viinamae has once again too narrowly defined her role and responsibilities with respect to the Report.

## **Drafting the RFQ and Brendan Power**

55. At paragraph 7(f) of his Closing Submissions, Mr. Power discusses the issue of Vendors of Record and specifically that in his April 1999 meeting with Ms. Viinamae and later in his discussions with Mr. Andrew that they both talked of only having one vendor of record (p. 11).
56. That was not Mr. Andrew's testimony. Mr. Andrew testified that only MFP qualified by offering a price better than the City would otherwise have had to pay by financing the acquisition directly. Mr. Rabadi's evaluations are found at 014127 (MFP's price of \$38,260,329.00 over three years if purchase option is not exercised or \$43,204,665 over three years if purchase option is exercised at three years) at 014115 to 014126 and at 014128, 014129 and 0142130.
57. Mr. Andrew testified that any number of vendors could have been "vendors of record". To Mr. Andrew, the term "vendors of record" did not connote an exclusive or "sole source" relationship. Peter Wolfram of MFP concurred with Mr. Andrew's opinion. Mr. Wolfram testified that he was surprised that only one (MFP) vendor had qualified at a price less than the City could have funded the purchase of hardware and software. Mr. Wolfram was well-acquainted with the fact that a "vendor of record" connotation did not necessarily grant exclusivity. Had one of the other bidders had a more competitive bid, i.e., at a price lower than the City's purchase/financing price, then there would have been no exclusivity whatever. Both Mr. Andrew and Mr. Wolfram expressed surprise that only MFP of the six bidders beat the City's financing price.



### **The 90 Day Guarantee Period**

58. The RFQ called for a minimum of 90 days from the closing of the RFQ during which monthly lease rates quoted under the lease had to remain in effect (June 11, 1999 - September 9, 1999). At paragraph 7(a) of his Closing Submissions, Mr. Power states that in his experience that 90 day term appeared reasonable. There is no documentation or evidence indicating that this particular issue was raised or discussed by any of the principals involved in drafting the RFQ (Messrs. Power, Rabadi or Beattie) or their supervisors (Ms. Viinamae, Mr. Andrew, Mr. Spizarsky, Mr. Pagano, Mr. Altman or Mr. Brittain). This issue relates to a general procedural guideline, not one that would be specific to IT, Purchasing or Financial Projects. None of the principals or their managers/directors prepared a time line or acknowledged the steps to be taken within that 90 day period. Clearly, operational planning was critical but was never performed or even considered.
59. Such operational planning or time lines are too important to say that they are the responsibility of any one person. The failure to perform a critical analysis of the 90 day time line and the steps that had to be taken as well as the failure of the principals to communicate the time line issue to their managers and directors and as well the failure of certain, if not all the direct managers (at least), to review the RFQ so that they understood the time lines and pressures upon them and their staff are all critical failures.

60. It is irresponsible for Ms. Viinamae to take the position she does at paragraph 147 of her closing submissions, i.e., that she bore no responsibility to review the RFQ or the responses thereto. All managers of the leads on the RFQ drafting project (Messrs. Altman, Spizarsky and Ms. Viinamae) had a duty to communicate with their direct reports on issues, concerns or problems. That the 90 day period did not arise as an issue is surprising indeed.
61. It is not necessarily that the period chosen was too short. Rather, the issue is that no plan was drafted or implemented to manage the 90 day time period. That the 90 day window could be extended upon request was an available option according to Mr. Power and Mr. Wolfraim is a further point that should have been included in such a written time management plan (Testimony of Brendan Power, March 6, 2003, p.15, p.18, l.52, p.13, l20-25).

**Section 1.1.21 of the RFQ - Future Software Acquisitions Contemplated**

62. On July 12, 1999, Mr. Rabadi sent an e-mail to Wanda Liczyk, Mr. Brittain and Mr. Altman (013055) entitled Leasing Report wherein he made the following comments:
- (a) a 5 year lease results in a lower lease cost per annum than does a 3 year lease subject to calculating in incremental costs such as costs of upgrades, maintenance costs, etc. (see also 031872 dated July 11, 1999);

- (b) because these incremental or additional costs could be significant according to IT, therefore finance should perform a cost-benefit analysis (at the end of the 3 year lease) to determine which (3 or 5 year);
  - (c) the analysis in the Report to Council deals with \$43.15 m. of equipment which IT provided to us (Finance) for this RFQ;
  - (d) there will be more leasing proposals (exceeding \$43.15 m.) commencing in 1999 itself.
63. On the basis of the above e-mail, it is clearly incorrect for those representatives of Finance (named above) to accept the position that \$43.15 m. was a leasing program cap, that future acquisitions (hardware and software) were not contemplated or that they were unaware of such intentions.
64. Mr. Brittain alleged in his testimony that he had anticipated that the \$43.15 m was a cap and that an additional 5% to 10% over that sum was acceptable. The fact is that at no time did Mr. Brittain who is charged with responsibility for such revenue issues ever raise this matter with Rabadi, i.e., in reply to this e-mail or at all, to Ms. Viinamae, to Mr. Andrew or to Ms. Liczyk. Neither did Ms. Liczyk raise this issue with any of the above-named individuals. Mr. Andrew adopts the submissions of MFP with respect to the issue of a \$43.15 m. cap and the fact that it was common knowledge at all material times (or should have been if senior bureaucrats had bothered to read e-mails sent to them by direct reports and others engaged in the leasing/refresh program) that there was no cap on the

amount of assets to be placed on the lease with MFP. The limits to the IT refresh program was not based on a number; rather, it was based on Departmental budgets, priorities and demands.

### **Five Year Leases**

65. Mr. Andrew did not inform Ms. Viinamae of the change to the lease term and neither did he play any role in that change, i.e., from 36 months to 60 months. Neither did Mr. Andrew inform Ms. Viinamae of that decision by Finance to extend the term of the lease in the last week of September or at all.
66. Mr. Andrew was unaware of the decision to extend the lease from three years to five years until October 2, 1999, the day after he received a copy of Ms. Viinamae's e-mail establishing that at the request of Finance, the lease had been extended to five years from three.
67. Mr. Andrew was never aware or made aware prior to the October 1, 1999 e-mail of Ms. Viinamae that the decision had been made to extend the lease to five years from three years. In fact, it is Mr. Andrew, whom on October 2, 1999, writes an e-mail to Wanda Liczyk, Ms. Viinamae and Mr. Power that the letter to the Commissioners should as well be sent to Jeff Griffiths (014233). Clearly, at that point in time, Mr. Andrew still was of the belief that the City was going with three year leases although four and five year leases were available to those divisions having more severe budgetary constraints (015587 and 015588).

68. Mr. Andrew was well aware of the Jakobek amendment which had been approved by the P&F Committee and later by Council. As well, he had been made aware throughout July, August and September that the Finance Department was interested in finding savings in the leasing program and that if incremental costs over and above the three year lease term warranted it, i.e., did not exceed the lease costs for years 3 to 5, then the City, by moving to 5 year leases, would effect a much needed cost savings (015673 and 013055), a move highly valued by the Finance Department at the City.
69. Mr. Andrew, Ms. Viinamae and Mr. Power were all aware of budgetary pressures at the City.

**September 21 Meeting, Ms. Liczyk, Mr. Brittain, Rob Wilkinson and Dash Domi**

70. There are two electronic diary entries related to the first of the meetings on September 21 and September 22 (064004, i.e., Len Brittain) and (013253, i.e., Wanda Liczyk). On September 20, 1999, Mr. Wilkinson faxed a cover sheet, handwritten note and charts to Ms. Liczyk for discussion at that meeting (036589 - 036592). The memorandum of Mr. Wilkinson compares a 60 month lease with a 36 month refresh cycle against a 36 month lease with a 36 month refresh cycle. Mr. Wilkinson prefers the former because of its constant annual lease payments.
71. Shortly after that meeting, which Ms. Liczyk states she only attended for about 15 minutes, Ms. Liczyk e-mailed Mr. Brittain confirming that Mr. Andrew had called

and wished to meet with Mr. Brittain and Mr. Glenn Vollebregt (who for no good or known reason did not appear as a witness at the Inquiry) to finalize "this leasing stuff" (015551).

72. The handwritten notes of the meeting of September 22, 1999 entitled MFP Lease Payments (064006) indicates that attendees of that meeting were Glenn Vollebregt, Don Altman, Len Brittain, Lana Viinamae and Jim Andrew. Mr. Andrew stated that he attended before the meeting started, informed the attendees that he had a meeting with his acting Commissioner, gave his apologies and left within a few minutes. Ms. Viinamae remained and participated at the meeting.
73. Issues and facts discussed at the meeting, according to notes (015770), included:
  - (a) Fact: MFP was the approved vendor of record for IT hardware and software.
  - (b) Fact: acquisition and distribution of hardware and software to be placed on lease will be managed in the PMO (the contract area of IT).
  - (c) Fact: Purchasing will review the purchasing and distribution model to be prepared by the PMO (Ms. Viinamae's report).
  - (d) Fact: acquisitions (PO's) put on lease with MFP quarterly for three years, i.e., every quarter throughout the term of the lease.

- (e) Fact: a letter would be sent to Commissioners and SJS Directors announcing the program.
- (f) Fact: 12,000 desktops would be replaced, a number not budgeted for.
- (g) Fact: enquiries were to be made regarding the source of funding for all hardware and software acquired.
- (h) Fact: the cost of IT software and hardware acquisitions would be broken down to the division level for the 2001 budget.
- (i) Fact: software would be acquired and placed on a 5 year lease with a possible 3 year refresh if the price of technology decreases sufficiently.
- (j) Fact: if 12,000 desktops are acquired, the cost to refresh at 36 months may be prohibitive. Thus, should consider a staggered refresh, i.e., 1/3 at the end of each of 3, 4 and 5 years.
- (k) Issue: how will Finance determine which department or division's budget or contribution for IT upgrades (information from Len Brittain needed).
- (l) Fact: Glenn Vollebregt was to notify departments with guidelines on paying for their IT acquisitions.
- (m) Fact: looking into 5 year terms and may need to obtain information on maintenance costs for years 3 – 5.
- (n) Fact: if the City decides on 5 year maintenance packages, then leases should be increased to 5 years.

74. It is therefore not fair or accurate for Ms. Viinamae to state as she does at paragraph 174 of her Closing Submissions that she played no role in the decision to extend the term of the lease from 36 to 60 months. Neither is it correct or appropriate for her to propose that she learned of this change from Mr. Andrew in the last week of September or at all. Mr. Andrew was unaware of the move from 36 to 60 month lease terms at all times throughout September. He knew what the letters to the Commissioners dated September 30, 1999 said (or were to say) (015587 – 015589) and more specifically he was aware that the 3 year leases were the standard with those departments or divisions wishing for 4 or 5 year leases having the opportunity to enter these. Mr. Andrew was not aware of the change to 5 year leases across the board until sometime after sending his e-mail of October 2, 1999 (014233).
75. It is Ms. Viinamae in her e-mail of October 1, 1999 (105649) who confirms that at the request of Finance 60 month lease terms were the standard for IT hardware and software at the City. There is no written evidence that Ms. Viinamae disagreed with or protested this decision and neither do any of the senior IT or Finance management group recall her raising concerns about this increased lease term.
76. With respect to her allegations at paragraph 175, from the meeting of September 22, 1999 with Len Brittain and Glenn Vollebregt, she was well aware that longer terms leases were being considered because of their impact on budgetary pressures. She was further aware that at the meeting of September 22, 1999, a



critical consideration regarding extending the term of the lease beyond the warranty period (3 years) was the cost of maintenance. Ms. Viinamae may well not have looked into these costs if the lease were extended from 3 to 5 years however, she surely would have known that this would be an IT activity and that if she did not either look into the issue or assign someone to look into the issue then it likely would not be done. Ms. Viinamae had every good reason to raise the flag because she would have known on September 22, 1999 that the appropriate due diligence on maintenance costs that would be incurred in extending the lease to 5 years had not been performed. Ms. Viinamae did not raise this issue with anyone.

77. The allegation at paragraph 178 of Ms. Viinamae's Closing Submissions that Ms. Marks recalled Ms. Viinamae informing her that Mr. Andrew had informed her (Viinamae) that the lease term would be five years has no probative value. Neither was Ms. Marks a particularly good witness.
78. With respect to the statement at paragraph 182 of her Closing Submissions, the fact is that Ms. Viinamae had a duty to acquaint herself with the RFQ, the bid responses and the successful response from MFP. She cannot simply rely upon Mr. Power where she is responsible for the program (or much of the program) and as well for the lion's share of the program's budget.
79. Senior Managers at the Director level have a duty to manage the activities of their direct reports. They have a duty to know and understand what affects their program and how their program and its objectives are impacted. Ms. Viinamae

had a duty to be curious and to obtain information and advice from her direct reports, particularly with respect to issues, problems and concerns.

80. With respect to the allegations at paragraphs 187 – 190 of Ms. Viinamae's Closing Submissions, Mr. Andrew supports several points made therein including: that Mr. Brittain was incorrect in determining that the role of his division came to an end at this time. The fact is that at the meeting of September 22, 1999, Mr. Brittain was made aware that there would be quarterly lease rate factors (forms) that would apply to all acquisitions made during that quarter; and that a five year cost analysis should have been performed by Mr. Brittain's Division with input from Ms. Viinamae regarding maintenance costs for lease terms exceeding the warranty period. It was not an IT analysis to determine the cost implications of increasing the lease from 3 to 5 years. Certain information (regarding maintenance costs and likely life expectancy ranges) would be available through IT however, the actual analysis as was the case in June 1999 would be performed by Finance and more specifically, within Mr. Brittain's Division.

81. Mr. Brittain is the sole City employee who attended both the September 21, 1999 meeting with Rob Wilkinson of MFP at which extended leases and their substantial cost savings was discussed and as well the September 22, 1999 meeting at which these concepts and other issues were discussed by City managers. All that is missing are Mr. Brittain's analytical notes regarding the move from 3 to 5 years. Despite Mr. Brittain's generally poor recollection of his

involvement in these meetings, meetings with Ms. Liczyk, tasks given him by Ms. Liczyk which he should have undertaken but which he apparently did nothing on and reporting obligations he owed to Ms. Liczyk which he cannot recall performing and likely did not perform, the fact remains that Mr. Brittain was in the unique central position to perform the appropriate analysis, recommend the least expensive lease payment option to Ms. Liczyk and have her confirm the acceptance of that (or some other) option in a manner such that the paper trail was complete and appropriate. Despite this, Mr. Brittain had no recollection of any role he may have played in the move to extend the lease on October 1, 1999. All Mr. Brittain could argue at the end of the day was that IT should have performed the financial analysis on a 5 year lease and brought this forward to him. Such a position is nonsensical in the circumstances. The financial analytical function for the lease at 3 years was performed by Mr. Rabadi and even Ms. Liczyk stated that she relied upon Mr. Brittain to perform the 5 year analysis to ensure it made good financial sense. Finance, and in particular, Mr. Brittain, cannot abrogate its/his duties and responsibilities to its/his clients.

**Involvement of Mr. Andrew – 3 – 5 Year Leases:**

82. With respect to paragraphs 196 – 203 of Ms. Viinamae's Closing Submissions, the fact is that the efforts by counsel to undermine Mr. Andrew's evidence are trite and ineffectual. The evidence noted above including the e-mail of Mr. Andrew dated October 2, 1999, mitigate against Mr. Andrew knowing in September that a decision had been taken by Finance to move to 5 year leases.

Mr. Andrew certainly knew from a variety of sources that extended leases were being contemplated. As well, he was well aware of the reasons for such considerations. Mr. Andrew was not asked to assign staff to provide advice or information on maintenance costs post-warranty to the 60 month mark and neither did Ms. Viinamae mention or discuss such an issue or input with him. Mr. Andrew was unaware that Ms. Liczyk had requested that Mr. Brittain perform a 3 vs. 5 year comparative analysis for leases.

83. As Ms. Viinamae has repeatedly stated that she and Mr. Andrew were constantly in contact with one another. That said, Ms. Viinamae was extremely independent, played her cards close to her vest and seldom, if ever, came to Mr. Andrew seeking his information, advice or guidance (the provision of which, upon request, is one of the duties of Mr. Andrew's position). Ms. Viinamae preferred to take her own counsel and to lead without third party advice or input.
84. After he read Ms. Viinamae's e-mail of October 1, 1999, Mr. Andrew learned that the decision regarding five years had been made due to financial (budgetary) pressures. Mr. Andrew understood the financial reality and accepted it. It was not what he wanted however, it could work for the City in a cost effective manner.
85. With respect to paragraph 200 of Ms. Viinamae's closing submission, it should be further noted that when Mr. Wilkinson started to discuss and demonstrate the 3 vs. 5 year lease rates on August 3, 1999, Mr. Andrew directed him to discuss this with Finance which MFP did shortly thereafter. Mr. Andrew has acknowledged speaking with Mr. Wilkinson following the September 21, 1999 meeting with Ms.

Licznyk and Mr. Brittain and as well having requested and received one chart from Mr. Wilkinson comparing a 3 year lease with 36 month refresh, i.e., at 3, 4 and 5 years against a 60 month lease with a 36 month recess, i.e., at 5, 6 and 7 years with the cost to refresh declining at the rate of 10% per annum. That chart is Begdoc 029302. All that said, Mr. Andrew has stated that he knew that options on lease terms were being considered, that there were various financial pressures driving these and that once the decision was made (by Finance), the decision would be final. He learned of the decision on October 2, 1999.

86. At paragraph 213 of her Closing Submissions, Ms. Viinamae wrongly inferred that when she appeared before the Policy and Finance Committee (PFC) which she did weekly as Year 2000 Project Director, that she responded to Year 2000 Project issues only after being invited by Mr. Garrett or Mr. Andrew to so respond. Such a suggestion is absolutely untrue. Ms. Viinamae represented her program to the PFC on an ongoing basis. Mr. Andrew played no such role. Rather, his role in Y2K was limited to membership on the Year 2000 Steering Committee principally as a consultant on IT matters.

### **Sale - Leaseback**

87. Throughout her Affidavit, Ms. Viinamae accepts responsibility for the Year 2000 project, for the functioning and management of the activities of the PMO and after January 1, 2000, the CMO. One of the duties of the PMO and the CMO was to set up the program governing the acquisition and distribution of IT equipment (hardware and software) and the placement of same onto the lease.

The PMO and later the CMO established practices, procedures and forms for the acquisition and distribution of IT hardware and software which was then to be placed on lease. There are numerous documents to this effect, including the following: 031620, 031621 – 031633, 014255. Thus, Ms. Viinamae was the central management person responsible for IT hardware and software acquisitions, placement of these on lease, distribution of acquisitions across the City and paper management. The budget for acquisitions was principally from Year 2000 and thus Ms. Viinamae was the appropriate managing director for the subject activities. Mr. Andrew did not direct Ms. Viinamae and Ms. Marks to manage these functions. Ms. Viinamae alone was responsible for these functions. Ms. Marks reported to her as did others including Ms. Leggieri, Ms. Bulko and Mr. Power. The role of Ms. Viinamae where issues, problems or concerns arose with such programs or activities would be to seek information, advice and guidance in such matters from Mr. Andrew. Ms. Viinamae chose not to do so and thus she is entirely responsible for any problems, issues or concerns that arose within the program that she failed to refer to Mr. Andrew. Proof is in the pudding. It is Mr. Andrew's contention that Ms. Viinamae failed generally to communicate problems, issues or concerns to him. There are few e-mails or documents exchanged between Ms. Viinamae and Mr. Andrew that are inconsistent with Mr. Andrew's contention.

88. With respect to paragraph 227 of Ms. Viinamae's Closing Submissions, the fact is that Ms. Viinamae has a duty to ask questions regarding such matters as schedules, deadlines timetables and the like. Ms. Viinamae should have

acquainted herself with the terms and conditions of the RFQ and MFP's response thereto. Where you are accountable for a program or program delivery, you have and hold a duty to learn about and understand the parameters and activities of that program. Program plans, activities and priorities can only be developed where one fully understands the program. Program planning is the first step in program management. Ms. Viinamae in this section of her Closing Submissions appears to be making a case that program planning is either not necessary or should be provided to a Project Director (senior manager) by an even more senior executive. This is absolutely incorrect. Planning is a critical stage entirely overlooked by Ms. Viinamae.

89. Such issues as "it was a big task" (paragraph 229), "I needed more help" (paragraph 229), "there was no way for the PMO/CMO to know if invoices had been paid" (paragraph 230), "the PMO/CMO was not collecting and compiling all the appropriate information" (paragraph 231), "serial numbers of equipment were not obtained and kept in electronic form" (paragraph 232), are all indicative of the fact that program planning, a critical upfront activity to be performed by Ms. Viinamae was not performed and that the program suffered badly as a result of Ms. Viinamae's "seat of the pants" approach to planning. Where such issues exist, they ought to have been brought in a timely manner to Mr. Andrew or the Y2K Steering Committee. They were not or at least there is no evidence that they were.

## **Review of Lease Rate Factors**

90. Once again, Ms. Viinamae refuses to take any responsibility for the problem or issue associated with lease rate factors. Lease rate factors should have been reviewed by Len Brittain's Division on a quarterly basis before any equipment was placed on lease for that (ensuing) quarter. The appropriate division in Finance to perform that particular analysis is likely Mr. Brittain's division because it was they (Rabadi) who performed the original (and identical) comparative financial analysis on the RFQ in June 1999.
  
91. Despite the above fact and despite the fact that she "had no leasing experience" and "didn't even know what lease rate factors were", Ms. Viinamae made the decision to sign the lease rate factors forms and did so without any knowledge, training or experience and without referring the matter of LRF signatures to Mr. Andrew (another issue or problem that should properly have been referred to the Executive Director for advice or information).
  
92. In his testimony, Mr. Power denied having told Ms. Viinamae simply to sign the LRF's and further denies that he told her that the LRF's had been forwarded to Finance for review. In fact, Mr. Power's testimony was that he was unaware that these LRF's were coming to Ms. Viinamae or that she was simply signing them and returning them to MFP. When he learned this (after about four quarters), he explained to Ms. Viinamae that she should not be signing them but that she should be referring them to Finance for review and analysis to determine whether the lease rates offered by MFP remained competitive.



93. Apparently Ms. Viinamae did this for the next LRF (which was signed by Ms. Liczyk) however, the next LRF thereafter was once again executed by Ms. Viinamae alone.
94. Ms. Viinamae had a duty to obtain information about the LRF's, their meaning and how they should be utilized and analyzed. Ms. Viinamae appeared to be more interested in getting the equipment acquired and distributed quickly than in planning and organizing the program reasonably and appropriately which would require that cheques and balances including the analysis and approval by Finance of LRF's be implemented and complied with. Ms. Viinamae has been called a wartime general in these hearings. The reference to a "wartime general" is to one for whom the achievement of the goal or objective justifies the means. With the greatest respect, the title is a misnomer. A good wartime general is one who follows the rules and regulations, who plans the program in a comprehensive manner and who then effectively implements that plan. Without good plans there can only be chaos (and the very occasional miracle). In the case of Year 2000 and the PMO/CMO there could be and only was the former.
95. Ms. Viinamae had no plan and spent no time considering how to deal with the Lease Rate Factors. She should have reviewed these with Mr. Andrew and Ms. Liczyk or Mr. Brittain. She did not and as a result, the City lost its ability to monitor and control price increases. If she indeed had given the LRF's to Mr. Power and later to Ms. Bulko who informed her that these (though signed by her) were being sent to Finance for analysis, she would have known why they were to

be sent to Finance and as well she ought to have enquired as to whom at Finance these were being forwarded. Such enquiries with follow-up to the contact at Finance by Ms. Viinamae would have been reasonable in the circumstances. She made no such enquiry but rather finds solace in blaming Mr. Power, Ms. Leggieri and Ms. Bulko.

96. No one in Finance acknowledged receiving or reviewing these LRF's on any occasion from Ms. Viinamae or her reports. No one in Finance performed the appropriate comparative analysis of lease rates to assure themselves that the price remained competitive. Had Finance done that analysis, they would likely have contacted Ms. Viinamae to question her on the price increases contained in the LRF's or to discuss an approach to MFP.
97. What Ms. Viinamae is attempting to do is protect herself from any liability or responsibility for the LRF's and any additional price increases caused to the City by their having increased in price. If Finance is to be believed, i.e., that they did not receive the LRF forms, then Ms. Viinamae's staff, Mr. Power, Ms. Leggieri and Ms. Bulko whom she alleges informed her that they had forwarded the LRF's to Finance for analysis, simply misled her (or worse, lied to her).
98. Alternatively, if her staff are believed, i.e., that the LRF's were forwarded to Finance but that Finance failed to engage in their analysis or to seek information on them from her or others in IT on how these should be analyzed, then Ms. Viinamae will be viewed as having appropriately managed her staff who quite properly delivered the LRF's to finance but Finance failed to perform the analysis,

failed to protect the City's best interests from price increases for the equipment placed on lease during that quarter. Either way, Ms. Viinamae accepts no responsibility and points to others as the scapegoats.

99. Once again, Ms. Viinamae has a duty to know to whom at Finance the LRF's were going, to ensure that the analysis has been performed, to know that if the rates are "excessive" that MFP can be approached and negotiated with. Simply put, she had a duty to understand the LRF activity and to communicate with those involved in it (Messrs. Brittain and Colley). Again, Ms. Viinamae failed or neglected to communicate with Finance on this program-related matter. Mr. Andrew or Mr. Power knew the LRF process and could have provided her with direction had she sought it. That said, Ms. Viinamae failed to communicate her lack of knowledge (concerns, issues or problems) related to the LRF's to them and thus her failure to communicate with them prevented them from providing her with advice, guidance and information regarding the processing of LRF's.

### **Signing Authority**

100. At paragraph 288 of her Closing Submissions Ms. Viinamae admits to having been the sole signatory on behalf of the City of certain leasing documents (Program Agreement and Equipment Schedules) that ought to have been signed by appropriate City signing officials. Eventually documents replacing those signed by Ms. Viinamae were signed by an appropriate City official, Wanda Liczyk. Ms. Viinamae does not state that prior to executing the subject leasing documents, she discussed her authority with the appropriate or any officials at

the City. Rather, she simply assumed that she had the appropriate signing authority and that that signing authority was a sub-set of her contract management duty, i.e., to centrally manage the leasing contract as set out in the 'Conclusion' section of Report No. 4 as adopted by the Council of the City of Toronto at its meeting held on July 27, 28, 29 and 30, 1999 (018151 to 018156 at 018156).

101. In support of that contention, she points to the fact that she was a signatory of the Certificate of Incumbency. The Certificate of Incumbency (030296) is perhaps unclear as to its meaning unless one reads the entire document in which case it is clear that there are designated individuals who in their positions can sign such documents on behalf of the City (Novina Wong and Wanda Liczyk or in their absence, Jeff Abrams and Al Shultz).
102. It would appear that Ms. Viinamae granted herself authority to sign contractual documents on behalf of the City without understanding the Certificate of Incumbency and without referring this particular issue to Ms. Liczyk, Mr. Doyle, Ms. Wong or Mr. Andrew.
103. The issue as to whether or not Ms. Viinamae was authorized to execute contractual (leasing program) related documentation on behalf of the City related not to her lack of leasing experience but rather to her failure to comprehend the duties and responsibilities of her position. Her position did not include such responsibilities. The positions of others did.

104. At paragraph 293 of Ms. Viinamae's Closing Submissions, she discusses her awareness that she was only a co-signatory of the documents she signed. From Ms. Liczyk, we learned that when documents arrived in her office, she relied on the fact that the senior program manager (in this case Ms. Viinamae) had performed the appropriate degree of due diligence. Ms. Scarcello would perform the typical support function of checking for the program manager's signature and tab where Ms. Liczyk was to sign. That said, Ms. Liczyk relied on the fact that all due diligence had been done and she simply signed the documents without performing further due diligence, i.e., document review, analysis or oversight. According to Ms. Liczyk, that function was to be performed by Ms. Viinamae on these documents.
105. Unfortunately, the signing protocols were not followed. Reasons for this are numerous. No one apparently communicated or understood the needs or expectations of the others. Communication was poor and exceptions or variations from normal practice were not just tolerated but rather were the norm.
106. Responsibility for this failed communication rests principally with Ms. Viinamae and Ms. Liczyk but secondarily with Mr. Domi and Ms. Scarcello. Bureaucratic organization requires that policies, practices, procedures, guidelines or protocols be followed.
107. Where, at paragraph 296 of Ms. Viinamae's Closing Submissions, reference is made to Mr. Domi's rather liberal access to Ms. Liczyk's office and the fact that Ms. Bulko (and as well Ms. Leggieri) were aware that Mr. Domi was breaching

signing protocols and causing disruption in workflow, the fact is that this information (issues, problems or concerns) should have been communicated up the chain of command to Ms. Viinamae and likely from Ms. Viinamae to Mr. Andrew (as this related to the CMO, a section within IT). Either Ms. Viinamae or Mr. Andrew should have immediately raised these issues and concerns with Ms. Liczyk. Mr. Andrew was completely cut off on the issues of program (CMO) delivery by Ms. Viinamae's independence and Ms. Viinamae failed to communicate directly with Ms. Liczyk as a result of which this particular problem continued and the effectiveness of the CMO's program delivery (paper flow) was adversely effected on an ongoing basis. Bureaucracy demands "perfect" information and communication. Ms. Viinamae's failure to communicate on workflow problems, issues and concerns was a major cause of the confusion in the PMO and the CMO.

108. It is the duty of more junior officers such as Ms. Leggieri and Ms. Bulko to report such matters upwards to Ms. Viinamae. It is further the duty of Ms. Viinamae to communicate these concerns effectively so that the approval process operates exactly pursuant to the 'known' procedures that had been established and implemented. Procedures and practices were to have been designed, implemented and monitored by Ms. Viinamae and her direct reports in the CMO to ensure compliance with them.
109. It would appear that the known procedure was not known or sufficiently well known by staff in the CMO engaged in the rollout of the leasing program. The

failure by Ms. Viinamae to define for CMO staff by way of guidelines or procedures the practices and protocols of the CMO and her failure to monitor the activities of CMO staff to ensure compliance with these practices and protocols is a further planning/implementation failure on the part of Ms. Viinamae.

### **Cap at \$43 Million**

110. Mr. Andrew pleads and relies upon the 14 points at paragraph 306 of Ms. Viinamae's Closing Submissions, at the evidence of Mr. Brittain mentioned previously in these submissions and on the related submissions in MFP's Closing Submissions and at paragraph 11 (c) of Mr. Power's submissions.
111. Counsel for the City of Toronto raised the concept of "silos" to describe the variance in the testimony at the Inquiry of the Finance department witnesses (Len Brittain, Don Altman and Nadir Rabadi (the Finance representatives)) versus those in IT (Jim Andrew, Lana Viinamae and Brendan Power (the IT representatives)).
112. In various correspondence (i.e., 015673, 016097), Mr. Rabadi refers to the "cost of further equipment in excess of \$43.15 m which IT intends to lease with full details (\$43.15 m was estimate provided by Brendan Power...)". Clearly, Mr. Rabadi was well aware that (1) \$43.15 m was an estimate, not a cap, (2) that more IT hardware and software over and above that number or value would be acquired and (3) that there would be acquisitions after the 90 day window (012822).

113. In an e-mail to Meredith Hewitt of KPMG dated November 15, 2001 (012321), Mr. Rabadi confirms that he well knew there would be acquisitions after the 90 day period. "I just wanted to make sure that MFP would not restructure the monthly lease payments due after October 1, 1999, each subsequent quarter on contracts already executed prior to September 30, 1999".
  
114. Mr. Rabadi then continues to confirm that both Mr. Brittain and Mr. Altman were well aware that there would be purchases after September 30, 1999 (downstream acquisitions), that the price of these downstream acquisitions would be governed by Lease Rate Factors provided to the City by MFP and that these Lease Rate Factors would have to be analyzed to ensure that the City's lease price was a good deal to the City. "Don or Len clarified to me verbally that once a lease contract is executed prior to September 30, 1999, the monthly instalments would be fixed for three years and would not change for those lease agreements already executed over the subsequent quarters and would be fixed for 36 months in agreements executed in those periods". Mr. Rabadi understood full well what had been proposed by IT in the equipment refresh program. Unfortunately, he left Mr. Brittain's division on about July 15, 1999, leaving behind an information void. It is clear that Mr. Altman had not engaged at all on this activity, leaving the financial input up to Mr. Rabadi and Mr. Brittain.
  
115. Len Brittain knew even more than Mr. Rabadi did. Mr. Brittain in his notes of the September 22 meeting with Glen, Lana and Jim (who was not in attendance), called MFP the Vendor of Record for IT hardware and software leasing,



something he denied in his testimony before the Commission. In his interview with KPMG, Mr. Brittain apparently stated: "He [did] not believe that the City was constrained by the \$43 million expenditures. He believed the purpose of the RFQ was to establish a Vendor of Record for the leasing program [which] would finance all future equipment leases ... The City spent approximately \$20 million in software additions over and above the \$43 million". (12998 at p3).

116. Further, to KPMG, Mr. Brittain, like Mr. Rabadi, stated that Purchasing ought to have been more active in not only drafting the RFQ but as well in determining whether or not the bids complied with the terms of the RFQ. Purchasing ought to have played the lead role in tying all aspects of the RFQ together (013033).
117. To KPMG and as well, in his testimony at the Commission, Mr. Brittain testified that once Council approved the IT leasing program, there would be no further role for his division. Part of the problem here appears to be that once Mr. Rabadi moved to his new position later on about July 15, 1999, the ball with respect to the IT Leasing program was dropped by Mr. Brittain's Division and others in Finance. Mr. Brittain, who knew there would be downstream acquisitions, knew that there would be quarterly LRF's to be analyzed by his Division to ensure that the cost of downstream acquisitions by the City was reasonable and knew that the \$43 m total for acquisitions had been exceeded by almost \$5 million by January 7, 2000, took no steps to ensure that these issues were dealt with or responded to.

118. Mr. Brittain neglected to make any enquiries with respect to quarterly lease rate factors and how these were being processed, the cost of IT hardware and software acquisitions and that these were well over \$43 million, whether, after January 7, 2000, there would be additional downstream acquisitions, or whether he knew there were ongoing acquisitions or not. Certainly Ms. Liczyk was aware that there were ongoing acquisitions by the IT leasing program. Mr. Brittain had a duty to refer this "problem" situation to Ms. Liczyk. He failed to refer this matter to her despite his duty to do so.
119. Mr. Andrew does not accept the "two solitudes" or "silo" approach being proposed by City counsel.
120. Finance was well aware of the nature and scope of the IT leasing program and its operation. In particular, they were well-acquainted with the concept and reality of Vendor of Record status granted to MFP and its meaning; with Lease Rate Factors, how they worked and that these should be reviewed and analyzed quarterly by Finance before downstream acquisitions occurred, that downstream acquisitions would occur, that there was either no cap of \$43 m (that this was merely an estimate of the value on lease by September 1999) or that the value on lease had exceeded \$48 million by January 7, 2000 and that acquisitions continued thereafter. Despite that knowledge, Mr. Brittain failed to communicate on these topics with Ms. Viinamae, Mr. Andrew, Ms. Liczyk or anyone. Mr. Brittain had a duty to communicate with Ms. Liczyk about these items of which he knew if he considered any of them to be a problem, issue or concern.

121. To KPMG, Mr. Brittain stated that he did not believe the city was constrained by the \$43 m amount for expenditures. This statement was absolutely consistent with both the evidence and as well, with Mr. Brittain's behaviour when dealing specifically with program leasing commitments exceeding \$43 million (012998).
122. It is submitted that the documentation and Mr. Brittain's evidence given to KPMG ought to be accepted as honest and true. Mr. Brittain's testimony at trial, i.e., that there was a limit of \$43 m plus (or minus) 10% should not be accepted. When pushed on such points, Mr. Brittain's pattern of behaviour was generally to state that he did not recall. It was this mechanism that Mr. Brittain reverted to when pushed on Ms. Liczyk's contention that she had assigned the 3 vs 5 year lease cost analysis to Mr. Brittain and that he had recommended the latter as the preferred option. Mr. Brittain ought not to be believed in that regard either.
123. Don Altman, whose evidence at the Inquiry was timid and self-serving on most matters including the issue of a \$43 m budget for the IT acquisition program, informed KPMG that he did not view the \$43 m "as a ceiling placed on authorized spending". Both of Messrs. Brittain and Altman recanted on this point and blamed poor note taking by KPMG as the cause of such inaccuracies. That said, it is submitted that the KPMG notes were accurate and that all of Mr. Brittain's Division as well as IT and Year 2000 Project were aware at all times that \$43.15 m was not to be a maximum expenditure.
124. Neither, of course, did anyone at IT or in the Year 2000 project.

125. This did not mean that the maximum program expenditure was open ended as was proposed by the City. Quite the opposite. Maximum program expenditures were to be governed by the budgets of the various City departments and divisions. For some City departments, the budget permitted substantial IT acquisition with three year leases. For other programs, the budgets were much tighter or the acquisition of IT hardware and software was a lower priority and thus few acquisitions would be made or perhaps the leases could be for longer terms (see the letters of September 30, 1999 to Commissioners) (015588-015589).
126. The onus to acquire hardware and software under the program was placed on the Commissioners and their senior program managers. If they had the budget, the need or the interest in such acquisitions, then such acquisitions could proceed. It is for exactly that reason (the decentralization of the City's departments, programs and IT function, that centralized IT was unable to assess or estimate the actual budget for or timing of acquisitions in a timely manner. Mr. Andrew's "vision" despite the hyperbole emanating from the submissions of the City's counsel, was not one of gross excess. Rather, it was a model that accommodated the decentralized IT needs of the city's programs and activities. If there was space in the budget and if the senior manager considered it to be of such a priority, the appropriate senior official could approve the acquisitions and

the CMO would process the paperwork and accommodate the acquisition and ensure its placement on the master lease agreement.<sup>5</sup>

#### **Recommendation #4, Periodic Reporting to PFC**

127. Recommendation No. 4 of the Report to Council required that the CFO and Executive Director IT report back to the Policy and Finance Committee periodically on new leasing proposals and financial impact for the balance of the equipment and software.

#### **To Report Periodically**

128. The variables for reporting back are not chronological, rather they are driven by events, i.e., upon the occurrence of "new leasing proposals" and with respect to the "balance of the equipment and software".
129. The actual determination of what constituted a new lease proposal (as opposed to one already in the contemplation of IT) can be a rather subjective determination. That said, IT or Year 2000 Project would presumably be the lead division/department in determining what constituted a new lease proposal and thus would inform or communicate with Finance regarding its acquisition plans or proposals. IT would be the lead in determining when the balance of the equipment and software had been acquired and when to take this documentation

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<sup>5</sup> Testimony of Jim Andrew, September 29, 2003, p.70, line 21-72, l.4

or information to Finance so that Finance could perform the required financial impact analysis for referral to the PFC.

130. What constituted a new lease proposal would likely be determined by either the Year 2000 Steering Committee of which Ms. Liczyk was a member or by Mr. Andrew in his capacity as Executive Director, Information and Technology.
  
131. The determination of when the balance of the equipment and software had been acquired would be made by the CMO headed up by Ms. Viinamae who ought to have brought such issue or concern to the Year 2000 Steering Committee or to Mr. Andrew at the appropriate time. There is no evidence that Ms. Viinamae approached Mr. Andrew and informed him that the balance of equipment and software had been acquired by the time Mr. Andrew left the City on February 2, 2001. Mr. Andrew certainly would have had substantial information on acquisitions however, there is no evidence that the balance of the equipment and software had been acquired. Again, it is submitted that the wording of the recommendation is so imprecise as to be meaningless. The City Clerk bears liability for ensuring that the wording of Council Reports is clear, accurate and precise.
  
132. Mr. Andrew was well aware that the Year 2000 Project was reporting to the Budget Committee on a regular basis. As well, Mr. Andrew knew that the Year 2000 Project was working on budgetary matters for extended periods at the end of 1999 and in early 2000 as well as at the end of 2000 and in 2001. The Year 2000 Program's budget was Ms. Viinamae's budget and he relied on her

approaching him when the program's conditions reflected when to approach Finance in order to report on acquisitions (the balance thereof) or new lease proposals.

133. Mr. Andrew was of the opinion that Ms. Liczyk would disclose to PFC and Council in a timely manner when particular software had been acquired and added to the lease. She would have that information from the budget process. Mr. Andrew did not participate in the preparation of the July 12, 2000 Report of the CFO to the Budget Advisory Committee in which Ms. Liczyk set out the substantial collateral benefits that the Year 2000 Program had provided to the City (034333). Neither was Mr. Andrew a participant in Ms. Liczyk's report of March 15, 2001 to Council advising that software had been added. Neither was his acting replacement James Ridge approached by Ms. Liczyk to the best of Mr. Andrew's knowledge.
134. Mr. Andrew had no idea that Ms. Liczyk had not been reporting to PFC and Council about new leasing proposals (Oracle, etc.) on an ongoing basis.

#### **January 17, 2001 Meeting**

135. Mr. Andrew was not a party to this meeting nor was he invited. It was a meeting between MFP and the CMO, i.e., Ms. Viinamae and her staff, chaired by Ms. Liczyk. The meeting apparently had to do with the amount and value of items on lease. Two months later, Ms. Liczyk reported on the budget pressures emanating from Year 2000 and the IT equipment and software on lease. Ms.

Liczynk invited Ms. Viinamae and did not invite Mr. Andrew to that meeting because she was well aware that Ms. Viinamae and not Mr. Andrew managed the CMO and that it was her (Year 2000) budget that was causing budgetary pressure. The e-mail of Kathryn Bulko to Ms. Leggieri, Ms. Marks and Pino Fuoco dated January 8, 2001 (15707) clearly indicated that the subject of the meeting was the "lease portion of the budget".

### **Oracle**

136. In response to the allegations contained in Ms. Viinamae's Closing Submissions, Mr. Andrew has little further to say.
137. Had Mr. Andrew remained on in the position of Executive Director, IT, the number of network licenses required by the City would have reached 10,000 expeditiously. Mr. Andrew's successor was not an IT manager but rather was a senior program manager who was transferred laterally into the position. Technological (IT) growth in an environment like the City is a product of the technical initiatives introduced into the environment by the senior IT officer.
138. To Mr. Andrew, the December 1999 acquisition of 10,000 enterprise licenses was reasonable and appropriate in the circumstances. In addition, the prices at which the licenses were acquired was quite exceptional to Mr. Andrew who had been trying to acquire such licenses for the City at a reasonable price for about five years.



139. The City failed to produce good, reasonable or representative numbers of enterprise license users despite the fact that in an Auditor's report dated February 6, 2002, more than two years prior to the Auditor testifying at this Inquiry, the Auditor reported that it was "highly unlikely the City would need 10,000 licenses in the foreseeable future". Mr. Andrew strongly disagrees with that conclusion and further states that while he was at the City he fully expected that the 10,000 licenses would have been in place and in use shortly after the acquisition.
140. At paragraph 447 of her Closing Submissions, Ms. Viinamae states that Mr. Griffith of Oracle informed her that maintenance would have to be paid up front rather than annually. Mr. Griffith, of course, denies this. The fact is that such a statement makes absolutely no sense and serves only Ms. Viinamae in her effort to deflect blame from herself to others for absolutely every aspect of the failures arising on her watch and from her activity. Maintenance was billed annually by Oracle and was paid annually by MFP. The same would certainly have been true for the City. Ms. Viinamae, seeking support for her nonsensical position, looks to the letter of Oracle and the purchase order (where there is no reference to timing of the payment of maintenance fees) and then states finally that no one informed her of when maintenance fees were to be paid.
141. It is respectfully submitted that it is incumbent on Ms. Viinamae to make reasonable enquiries regarding such straightforward matters as when

maintenance charges were to be paid. No such enquiries were contemplated or made by Ms. Viinamae.

142. With respect to the allegations contained at paragraph 480 of Ms. Viinamae's Closing Submissions, Mr. Andrew admits that he was at Metro Hall throughout December 30, 1999. On December 31, 1999, he worked at the Don Mills Road computer facility. Mr. Andrew has no recollection of having met with Mr. Garrett and Ms. Viinamae on December 30, 1999 at Mr. Garrett's office or at all. In the two ensuing paragraphs Ms. Viinamae tries to buttress her argument by stating that Mr. Andrew would have had to be with her in order to obtain Mr. Garrett's signature on the Y2K delegated approval form. Mr. Andrew recalls no such Year 2000 Steering Committee meeting on December 30, 1999.
143. Although Mr. Andrew was a member of the Year 2000 Steering Committee, his signature is not on the approval form. Obviously, the signatures of Ms. Liczyk and Ms. Viinamae were sufficient for Mr. Garrett to make the decision to execute the form.
144. With respect to the meeting of the Year 2000 Steering Committee on December 30, 1999, which he does not recall attending but which he may well have attended, Mr. Andrew has absolutely no recollection of any discussions or decisions regarding Oracle. Councillor O'Brien did not attend and generally his attendance and signature were required, at least according to Ms. Liczyk. Unfortunately, there were no written guidelines on what constituted a quorum at

Steering Committee meetings that would have clarified many of the issues raised by Ms. Liczyk, Ms. Viinamae and Mr. Andrew.

145. With respect to the allegations contained at paragraph 496 of Ms. Viinamae's Closing Submissions, again Mr. Andrew has no recollection of the discussion alleged or the decision to add reference to having approved the Oracle acquisition at the Steering Committee meeting of December 30, 1999, in the minutes of January 6, 2000. Mr. Andrew is marked as absent from the meeting of January 6, 2000 as is Ms. Liczyk. Despite that, Ms. Viinamae insists they were both present on January 6, 2000, that for the second consecutive time the minutes of the Steering Committee meeting were incorrect and that Mr. Andrew and Ms. Liczyk both agreed (at a meeting they may not have attended) to amend the minutes of the previous meeting. The transaction may well have been approved however, that speaks more to Ms. Viinamae's dogged determination to accomplish what she sets out to do without consideration of the City's protocols, parameters, procedures or practices.
  
146. With respect to the allegations contained at paragraph 507 of Ms. Viinamae's Closing Submissions, the fact is that if Ms. Viinamae wished to prove that they had used her entry card to enter onto Mr. Garrett's floor at Metro Hall, she could have sought information from the City. That would have confirmed such card use. She did not make such enquiry and it is submitted that by that refusal an adverse inference should be drawn against Ms. Viinamae.

147. It is indeed odd that Councillor O'Brien was absent from both the December 30, 1999 and the January 6, 2000 meetings of the Year 2000 Steering Committee, that both Ms. Liczyk and Mr. Andrew would testify that in such circumstances, i.e., without the politician on the Committee that the meeting either would not take place or would merely be an information meeting and that only Ms. Viinamae recalls that that meeting was in fact a decision making meeting, that at that meeting the decision on Oracle was taken on behalf of the Steering Committee by Ms. Liczyk and Mr. Andrew (although they have no recollection of such meeting, of conducting business or of making that decision). The Minutes of the meeting do not include a reference to that decision and it is only at the meeting of the Steering Committee on January 6, 2000, a meeting that Councillor O'Brien did not attend, that Mr. Andrew and Ms. Liczyk do not recall attending and which in the Minutes of the meeting they are listed as absent, that there is written acknowledgement of the decision to acquire Oracle software made at the meeting of December 30, 1999.

## **The Business Case**

148. Ms. Viinamae in her Closing Submissions, raises the issue that written business cases were not obligatory at the City. That said, the PMO and the Steering Committee almost without exception required written business cases for all other program submissions. Particularly in a program managed by a Steering Committee outside the City's normal purchasing protocols, practices and procedures the use of written business cases was important if not critical.
149. Mr. Andrew is correct when he testified that all other major Y2K decisions had written business cases associated with them.<sup>6</sup>
150. Ms. Viinamae knew this as well. In defence of her not having provided a business case for the Oracle acquisition, Ms. Viinamae states:
- (a) None of the Steering Committee members asked her to provide a business case;
  - (b) Ms. Liczyk and Mr. Garrett signed the approval form without having seen a business case;
  - (c) to the best of her knowledge there were no business cases written for Novell or Microsoft NT, both of which are enterprise agreements and both of which formed part of the desktop standard;

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<sup>6</sup> Testimony of Jim Andrew, September 29, 2003, line 25, p. 159, line 4

(d) finally, Ms. Viinamae relies on the fact that the Oracle acquisition, with or without a business case, was a good deal for the City. In support of this she refers to the fact that Mr. Andrew in his testimony agreed with this statement.

151. Where the issue is one of form or compliance with procedures, none of the defences proposed by Ms. Viinamae is relevant. The practice was that written business cases were required for presentation to the Steering Committee. Ms. Viinamae knew this well. Ms. Viinamae was entirely accountable and responsible for putting the written business cases for all aspects of the Year 2000 Program together and before the Steering Committee. It was not incumbent on Steering Committee members to remind Ms. Viinamae that each submission required a written business case. Ms. Viinamae knew these were required. There is no evidence before this Commission as to whether or not business cases were written and submitted to the Steering Committee for Novell or Microsoft NT or why they were or were not drafted and submitted.

152. Ms. Viinamae was responsible for the submission of a business case on Oracle to the Steering Committee. None was submitted. Negotiations with Oracle were entered into in October or November 1999, at a very late date. It appears to have been a last minute decision entered into without appropriate documentation and deliberation. Mr. Andrew, Ms. Liczyk and Ms. Viinamae all knew and understood the benefits of Oracle and that it was a good deal for the City. That said, a written submission should have been made to the Steering Committee by

Ms. Viinamae on Oracle. None was made. The oversight is entirely the responsibility of Ms. Viinamae.

### **MFP Testimonial**

153. At paragraph 564 of her Closing Submissions, Lana Viinamae refers to Al Shultz as a former Metro Finance Officer. Al Shultz was not from Metro. Rather, he was from North York. It would appear that the practice of providing testimonials to suppliers was a practice in North York. Mr. Andrew checked with Ms. Liczyk regarding providing a testimonial to MFP. She advised him that it had been generally accepted at North York and thus that she had no problem with such activity. Again, there were no policies, procedures or "City" practices related to such testimonials.

### **Jeff Lyons**

154. At paragraphs 581 to 583 of her Closing Submissions, Ms. Viinamae attempts to minimize her role and relationship with Mr. Lyons. The fact is that Mr. Lyons acted to positively influence the selection of the candidate to replace Mr. Andrew as Executive Director of IT following Mr. Andrew's departure from the City on February 2, 2001.
155. Mr. Andrew testified that he heard that Mr. Lyons was actively lobbying on behalf of Ms. Viinamae's candidacy and further that she either requested of Mr. Lyons that he act on her behalf or had done nothing or little to prevent Mr. Lyons from

this course of action. Mr. Andrew stated that he met with Ms. Viinamae at City Hall after he had left the City to discuss with her the folly of having Mr. Lyons act on her behalf. This, of course, Ms. Viinamae denied. Mr. Andrew warned her against such open support from Mr. Lyons. This was not merely a casual mention.<sup>789</sup>

### **IT Intelligence**

156. With respect to the allegations at paragraph 584, it should be remembered that the relationship of Ms. Viinamae and Jeff Lyons in December 1998 and at various times thereafter has been reviewed and reconsidered in the third phase (re Dell Computers) of this Inquiry. It is submitted that Ms. Viinamae is a likely candidate to be Mr. Lyon's IT contact official. Ms. Viinamae tried hard to minimize her relationship with Jeff Lyons. That said, Ms. Viinamae knew that Mr. Lyons was well-connected at the City and it is known that Ms. Viinamae "desperately" wished to be Mr. Andrew's replacement as Executive Director IT. She knew Mr. Lyons well and it is submitted that she was prepared to go to any length to be promoted to the position she believed she should have.

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<sup>7</sup> Testimony of Jim Andrew, October 9, 2003, p. 6-8

<sup>8</sup> Testimony of L. Viinamae, October 15, 2003, p. 130-132

<sup>9</sup> Paragraph 583, L. Viinamae Closing Submissions



## **PART II**

### **SUBMISSIONS OF THE CITY OF TORONTO**

157. Chapter 21 of the City of Toronto's final submissions is dedicated to Jim Andrew. It is disturbing when generalities and hyperbole are entwined to create a damaging illusion that is creative but is as well, knowingly inaccurate.
158. In the overview section of the Executive Summary, the City draws the conclusion that "Andrew favoured leasing as a way to avoid constant scrutiny of the IT budget by Council and was intrigued by the possibility of outsourcing responsibility for asset management and disposition"
159. In support of this allegation, the City refers to a statement made by Mr. Power on his testimony.
160. Mr. Andrew testified that the decision to lease rather than to purchase was a financial decision. Mr. Andrew was well aware of the City's budgetary constraints, that to Councillors the benefits of IT were not well understood and thus from a budgetary perspective, IT was a low priority and was generally chopped substantially at budget time. Mr. Andrew also knew the benefits of IT and generally acted as a sales representative for an IT program. As IT technology evolved extremely quickly and as new IT products entered the marketplace frequently and as prices continued to fall, the pattern of IT

acquisitions in government and industry was increasingly away from purchasing and more commonly directed toward leasing. One of the reasons for this development or progression was that cost was matched with use over a period of time. Various pre-amalgamation cities had IT leases including Scarborough (with MFP), Metro, Toronto and others. The Province had long since switched to leasing. Mr. Andrew knew and understood this fact and the financial benefits flowing from it. Wanda Liczyk understood the benefits of leasing as well. She clearly understood that leasing over the reasonable lifetime of IT equipment would serve to coordinate price and use. Leases flatten out payments for IT equipment over time. From the financial perspective, this is a positive result, one to be sought and achieved where possible.

### **The Selection of a Single Vendor of Record**

161. What is forgotten by the City in their effort to focus on the outcome rather than how it occurred is that of the six leasing bidders, only one, MFP, beat the City's own price to purchase.
162. The analysis was not one of selecting a number of prospective bidders so that the City could go to them quarterly and seek out lease rate factors for each of those factors. Rather, the RFQ was a price analysis. The analysis was to select a successful bidder or bidders and those successful bidders or bidder would be all those (the class) of bidders whose price to lease was less than the price the City would have to pay to finance and purchase. Only MFP beat the City's own price and thus only MFP fit the class criteria. The analysis was performed by

Finance, not IT. The RFQ complied with the process established and monitored by PMMD. Unfortunately, neither of those divisions actively considered that the selection of one vendor could have a down side. Both approved the selection of MFP exclusively as did the Policy and Finance Committee (PFC) and Council.

163. The City repeatedly relies upon testimony of Brendan Power which it then submits as the logic of Mr. Andrew. It is unfair and simply incorrect to draw such an inference. Mr. Power is not Mr. Andrew and neither should he be offered by the City as the Oracle of Andrew.
164. The decision to proceed to one Vendor of Record was a natural result of the RFQ, its analysis and the result, i.e., where only one vendor passed under the bar. The result was viewed as appropriate by PMMD and Mr. Brittain's division confirmed repeatedly that it made good financial sense.
165. In Chapter 6, the City states that Mr. Power drafted the RFQ, something which Mr. Andrew disagrees. The RFQ was a product of input from IT (Andrew, Viinamae and Power) and from Finance (Brittain, Altman, Rabadi, Spizarsky and Beattie). Much time has been dedicated to how the RFQ drafting was and ought to have been drafted in Mr. Andrew's Closing Submissions. Suffice to say that Mr. Power was the IT lead in the drafting of the RFQ but that much input was to have been provided from Finance (Special Projects) and from Purchasing. Insufficient assistance was provided particularly on the part of Purchasing. It is Purchasing that ought to have had the expertise in leasing. They did not. It is Purchasing that ought to have provided advice and guidance with respect to

purchasing issues. They did not. It is Purchasing who ought to have sat down with the client department to understand clearly what it was that they wished to achieve with the Request and worked with the client to ensure the achievement of those objectives. They did not.

166. The City takes the position that the failure to draft the leasing RFQ is a failure of IT's. This is incorrect. There is no question but that, based on the duties and objectives set out in the job description of the Director, PMMD position that the lead in the IT acquisition RFQ (and its drafting) was PMMD.
167. At paragraph 37 of Chapter 6, the City blames Andrew for the shortcomings in the drafting of the RFQ. Indeed, Mr. Andrew is accountable for some of those shortcomings. That said, accountability should be shared with Mr. Andrew by Mr. Pagano (PMMD), Mr. Brittain and Ms. Liczyk.
168. Mr. Power was the IT lead, not the de facto lead. The problem was more with the absolute failure of Mr. Beattie, the PMMD lead, to engage or participate in the process. Mr. Power and Mr. Rabadi did what they could. Purchasing, where intimate knowledge of the acquisition process, policies, practices, protocols and systems resides, where the knowledge of when one uses either the RFP or RFQ and where officers are duty bound to provide advice and guidance to line managers in these areas, failed, refused or simply neglected to play the role it is mandated to play. The result, it is submitted, is due to Purchasing's abject failure to know, understand or play the role of City purchasing agent and advisor on all matters related to the leasing (acquisition) process.

169. A good example of the above is found at paragraph 75 to 79 of Chapter 6 of the City's Closing Submissions. The issue as to whether or not the RFQ was the appropriate document is one of which PMMD should take the lead. PMMD is accountable for ensuring that acquisitions across the City government comply with City guidelines, policies, practices and procedures. (According to Mr. Pagano, there were blessed few actual guidelines, policies or procedures. Rather, the City seemed to follow practices and little was in writing). The mandate of PMMD is to provide advice and guidance to the departments (in this case, IT) on all aspects of the acquisition process. The first step to be taken by PMMD should be an interview where the program manager and purchasing officer discuss their objectives, needs and how they wish to proceed. Advice and guidance should then be provided by PMMD on how to achieve these objectives and needs. The fact is that Beattie did not understand his role and in his testimony, he narrowed the role of PMMD to little more than ensuring that the "boilerplate" had been added. At paragraph 78, the City wrongfully concludes that it was up to IT to inform PMMD of their needs. In reality, it is up to PMMD to learn of and understand the needs of the client department and to construct an acquisition plan for and with them that works and is in compliance with Purchasing Division guidelines, policies, practices and procedures.

**Domi Phone Call to Andrew, June 11, 1999, 8:45 a.m.**

170. With respect to paragraphs 101-103 of Chapter 6 of the City's Closing Submissions, it should be noted that Purchasing had failed or neglected to add

written "black out protocols" to the RFQ. Neither, apparently, did Purchasing have practices or procedures with respect to a blackout period or at least none have been produced during this Inquiry.

171. Mr. Andrew had been at the Province of Ontario where there were written guidelines on blackout periods and protocols. He testified that at all times he knew of these protocols and complied with them. Further, he testified that on one occasion he spoke with Irene Payne with respect to Mr. Domi's breach of the blackout protocols.
  
172. The protocols, according to Mr. Andrew, were that there was to be no conversation between vendor and City representative while an RFP was out on the street or being analyzed and voted on by Council. Mr. Andrew repeatedly confirmed that he had complied with the blackout protocols and there is no evidence whatever that he did not do so. On one occasion while the 1997 Councillor's IT equipment lease was out, Mr. Andrew had lunch with Irene Payne and others from MFP. Mr. Andrew agreed that that lunch would breach the blackout protocols. That said, PMMD was conducting a telephone quote and Mr. Andrew had no idea when he went to lunch with Ms. Payne that the quote process was ongoing. It is easy to say that Mr. Andrew ought to have checked with PMMD (Spizarsky). However, it would equally have been easy for Mr. Spizarsky to provide Mr. Andrew with a written record as to when the telephone quote would be conducted and when the supplier would be selected. That was certainly part of the protocol with respect to the May 31, 1999 RFQ.

173. At Paragraph 40 of Chapter 1 of the City's Closing Submissions, the City concludes that Mr. Andrew simply ignored the blackout period. Nothing could be further from the truth. A principal duty of Mr. Andrew's position was to be the face of the City's IT Division with suppliers and prospective suppliers. Mr. Andrew confirmed that throughout the blackout period he would return the telephone calls from vendor's representatives including Mr. Domi. Mr. Andrew however did not permit bid-related or RFQ-related discussions with them but rather, if such issues arose, he directed them to the appropriate spokesperson (i.e., in the RFQ, to Dave Beattie). Further, Mr. Andrew completely removed himself from the bid analysis process so that no one could criticize him for any apparent "conflict of interest" issues, i.e., chatting with a particular supplier and then participating in an evaluation of bids, particularly where price was not the sole criteria for selection.
174. There is no evidence whatever to support the City's submission that Mr. Andrew even innocently breached blackout protocols let alone actively and intentionally ignored them.

### **Post-July 30, 1999 Entertainment by MFP**

175. At Chapter 5 of the City's Closing Submissions, the City has dedicated 16 paragraphs (paragraphs 147 – 162) to Domi's entertainment of Mr. Andrew after July 30, 1999 (i.e., after the Council approval). These include:
- (a) A breakfast meeting of August 3, 1999 at which Mr. Andrew and Ms. Bulko met with Messrs. Domi and Wilkinson to discuss sale and leaseback (the number of desktops rolled out) and the impact of the Jakobek Amendment on the IT leasing RFQ;
  - (b) A golf game on September 2, 1999 which was set up by Mr. Jakobek and to which Mr. Domi was invited by Mr. Jakobek;
  - (c) Attendance at MFP's annual charity golf tournament on September 23, 1999;
  - (d) Mr. Domi paid for Mr. Andrew and his friend Jock Logan's drinks at Harbour 60 Steakhouse. This was not during business hours, was unrelated to business and was not a violation of any conflict of interest guideline then in effect at the City. It its representation at paragraph 153, City Counsel cashes in on its never ending refrain that City bureaucrats should be paranoid about the evil intensions of those around them (i.e., especially the "rogues at MFP", Chapter 1, paragraph 1).
  - (e) Mr. Domi invited Mr. Andrew to meet with Paul Godfrey on the misguided believe that he would have information regarding the competition to select



the Commissioner, Corporate Services (Mr. Godfrey had no information and his answers to questions in response to Mr. Andrew's counsel's questions clearly indicate that Mr. Godfrey had no information, had no informed discussion with Mr. Domi in advance and was interested in little more than a free meal). In fairness, Mr. Andrew should have declined Mr. Domi's offer to speak with Mr. Godfrey.

- (f) The Cartier pen – Whatever year it was given in is irrelevant (the City has the argument wrong in any event). The important point here is that when Mr. Andrew opened the gift, he realized what it was, telephoned Mr. Domi, informed him it was inappropriate and asked that he pick it up from Mr. Andrew's office. Mr. Domi did so.
  - (g) January 8, 2000 at which time Mr. Andrew attended a Leafs hockey game at the invitation of Mr. Domi. Mr. Domi paid for dinner at Harbour 60 and after the game, Mr. Andrew, Mr. Domi and others in the group went for drinks at Armadillo Texas Grill. Mr. Andrew drank diet Coke and left shortly after arrival.
  - (h) On September 28, 2000, Mr. Andrew attended MFP's annual charity golf tournament.
176. Mr. Andrew, in his Closing Submissions, discussed conflict of interest and the fact that the City had few, if any, written directives or guidelines regarding this issue. There were modest and nebulous guidelines at Metro and as well in Mr. Andrew's employment contract (which contained a four corners clause at

paragraph 15). For guidance on the interpretation of conflict of interest guidelines, Mr. Andrew was required to observe more senior City officials or seek advice and guidance from these same individuals. What he observed and what he learned as a result of his enquiries was that the practices in which he participated in were appropriate, i.e., reasonable in all the circumstances. He observed Joe Halstead, Joan Anderton, Mike Garrett, Wanda Liczyk and many others. He discussed conflict of interest matters and situations with Mr. Garrett and Ms. Liczyk both of whom confirmed for Mr. Andrew that his activities were acceptable and consistent with existing guidelines. No one spoke to Mr. Andrew about his behaviour or attendances. No one criticized his activities or participation, not even Joan Anderton who in her self-serving letter feigned shock and surprise at the practices of her fellow Commissioners. She then states that they, Ms. Liczyk and Mr. Halstead, informed her that was the way business was done in Toronto. That is what they told Mr. Andrew as well.

#### **Domi Phone Calls to Mr. Andrew**

177. Eleven paragraphs of Chapter 5 of the City's Closing Submissions (paragraphs 163 – 173) are dedicated to telephone calls between Mr. Andrew and Mr. Domi between May 31, 1999 and July 30, 1999 (the blackout period). During this period, five telephone calls exceeded 1.5 minutes. One of these occurred the day after Mr. Andrew returned from vacation and related to marketing of sporting goods. Another related to Mr. Andrew's role as convenor of a large baseball tournament (June 18). Mr. Andrew acknowledged that at least one of Mr. Domi's

phone calls was inappropriate (concerned the RFQ or the bids) and that he spoke with Mr. Domi about this. Later he spoke with Ms. Payne about Mr. Domi's breach of the blackout protocol. The fact is that Mr. Andrew was at all times honest and straightforward in his testimony regarding the blackout period and his activities. Mr. Andrew's evidence was honest and his credibility remained intact throughout. Mr. Andrew's testimony should be believed regarding the nature of his telephone contacts during the blackout period.

178. In Chapter 2 of the City's Closing Submissions, the City attempts to outline the organizational structure of senior staff at the City. At paragraph 127, with respect to Mr. Andrew, the City attempts to take the equation one step further but without any reference as to the information on which they rely to support the conclusion. The statement made is "that Andrew failed to provide Anderton with accurate and relevant information regarding the limits Council had imposed on his ability to place hardware and software on lease with MFP".
  
179. it is expected that the source of the information is Joan Anderton herself. Based on her self-serving and generally inaccurate evidence with respect to others, and with respect to Mr. Andrew, it is respectfully submitted that Ms. Anderton's version of what briefing she received from Mr. Andrew in about February or March 2000 should not be preferred to that of Mr. Andrew and if any of her testimony is given credence, it should be given credence along with a few grains of salt.

## **Role and Responsibility of Jim Andrew: Chapter 21**

180. In its analysis, the City fails to set out the parameters of the position held by Mr. Andrew. As Executive Director Information and Technology, Mr. Andrew is the Chief Information Officer for the City of Toronto.
181. The Principal duties of that position in all the circumstances are:
- (a) strategic planning and priorities;
  - (b) program planning, development and implementation;
  - (c) the provision of advice, information and guidance on all matters related to IT to all City officials;
  - (d) managing a staff of about 400 through 9 direct reports (plus an administrative role with the Director of the Year 2000 Program); and
  - (e) developing and maintaining state of the art IT knowledge and information.
182. The challenges facing Mr. Andrew in the role of IT Executive Director were daunting particularly if one considers the challenges faced including:
- (a) the integration of 7 IT programs, facilities and systems, none of which was appropriate for the new amalgamated City;
  - (b) budgetary pressures that annually worsened due to the limited IT knowledge or appreciation of certain powerful councillors;

- (c) continued staff cutbacks resulting often in the more marketable staff members leaving and the less marketable staff continuing their employment;
  - (d) fundamental, major and critical IT projects that required priority focus (i.e., SAP, Year 2000); and
  - (e) a system that virtually prevented staffing full-time continuing employees into the Division in less than a year.
183. Without focusing on either the duties or activities of Mr. Andrew's position, without making any attempt to understand that the City had virtually blindfolded Mr. Andrew and handcuffed his wrists by tragically cutting his budget and driving away his best senior IT staff, the City simply concludes that Mr. Andrew failed to protect the City from the malfeasance of MFP. The City's concerted attempt to make this point continuously fails to comprehend how government functions.
184. Mr. Andrew, as Executive Director, does not scrutinize the activities of his direct reports or of their direct reports. Rather, programs are discussed at management meetings or with Directors who are then directed to plan, organize, develop, manage or implement changes to programs or activities. Mr. Andrew does not then scrutinize their activities. He provides general direction and on an ongoing basis, as they come to him and seek information or guidance he provides same to them. As issues, problems or concerns arise they may consult him (they may consult with their peers or others as well) or they may choose to

work their way through such issues, problems or concerns. Mr. Andrew is there for his senior managers to consult. The provision of advice and information was probably Mr. Andrew's strongest ability.

185. To develop and maintain the cutting edge expertise required of a Chief Information Officer required that Mr. Andrew have critical knowledge of the IT industry including suppliers, products, downstream products, R & D and as well, be acquainted with representatives of those prospective suppliers whose products might be of interest to the City.
186. Combined with the duties of the position were the directions from the CAO of the City, Michael Garrett, who demanded that senior officials of the City get the message out to the business community that the new City of Toronto was open for business, and the demands of the Mayor's office that Mr. Andrew provide them with industry contacts who would both sponsor and participate in the City's charity (United Way) activities.
187. At paragraph 5 of the City's Closing Submissions, they list five areas in which Mr. Andrew failed to exercise good judgment.
188. With the greatest respect to the City, there is no merit in any of those allegations except that Mr. Andrew accepted entertainment from MFP that in retrospect was excessive.

189. That said, the City had virtually no written guidelines, policies or protocols related to entertainment or conflict of interest. Mr. Andrew spoke with the most senior of City officials and all confirmed for him that his behaviour was in compliance with expectations. Mr. Andrew failed to demonstrate good judgment in asking Mr. Domi if he could obtain NHL playoff tickets for his son in Texas. There were other occasional incidents as well that demonstrated poor judgment (the trip to Atlanta, Georgia during Masters Week), etc.. Overall, Mr. Andrew complied with the standards and behaviours that he observed of and discussed with more senior City officials. No senior City official on any occasion ever questioned his activities or attendances.
190. With respect to the City's allegations at paragraph 6 of the Closing Submissions, Mr. Andrew did not fail to discharge his responsibilities as a senior manager (the Executive Director). The City has simply failed to understand the nature and scope of the duties and responsibilities of Mr. Andrew's position. Mr. Andrew has repeatedly reviewed the nature and scope of the duties and responsibilities of his position and will not repeat this.
191. Suffice to say that Mr. Andrew did not have a duty to supervise the activities (of drafting, etc.) of Mr. Power. Mr. Power had a duty to confer with or seek advice or guidance from Ms. Viinamae or Mr. Andrew if he experienced issues, problems or concerns with RFQ-related activities. If such advice or guidance were sought of Mr. Andrew, he would have been obligated to provide same. Mr.

Power did not approach Mr. Andrew with respect to such issues and thus no such advice or guidance was provided.

192. With respect to "business cases", although the PMO used business cases for Year 2000 activities and while the acquisition of IT hardware and software at least initially was a program of the Year 2000 project, Ms. Viinamae, Year 2000 Project Director, did not put together a business case, did not request that either Year 2000 or IT put such an approval for the IT acquisition program through the Steering Committee. Rather, this initiative proceeded through the ordinary course of approvals, i.e., through the senior bureaucracy (CFO and CCS), Committee (PFC) (BAC) and Council. There were no policies, guidelines or procedures governing the use of business cases and thus proceeding according to the generally-accepted practices at the City should not and indeed cannot be criticized.
193. The City's interests were not jeopardized by Mr. Andrew's conception of a leasing program. The concept was based on a three-year lease during which a refresh strategy could be based, reflecting such factors as new, additional products (upgrades) placed on leases downstream, equipment life expectancy, etc.. The three year lease model with residual additional acquisitions on a quarterly basis (for three years from the quarter of acquisition) made good economic sense when combined with the fact that if the prices of the vendor(s) of record became uncompetitive the City could consider its alternatives including not purchasing that quarter, a LRF negotiation, purchasing or drafting a further RFP or Q with



which to govern all downstream acquisitions. Mr. Andrew's model did not contemplate one vendor of record. Rather, it contemplated that any number of vendors that beat the City's own price to finance and acquire IT equipment would be successful vendors of record to whom the City would turn on a quarterly basis for lease rate factors. (The lowest LRF's for that quarter would be the successful vendor.)

194. Mr. Andrew's vision had worked exceedingly well on the 1997 Councillor's lease. Granted, the scale was much smaller however, downstream acquisitions were made, the lease was fixed for three years and at the end of the lease, equipment placed on lease was returned on time or purchased outright.
195. Mr. Andrew anticipated that this IT Leasing program would be similar. Mr. Andrew expects it would have been similar and worked well except for the fact that Finance decided to move from a three to a five year fixed term lease. Mr. Andrew was never consulted regarding that fundamental change to the lease. He should have been. Ms. Liczyk testified that she expected that Ms. Viinamae and Mr. Brittain were given the task to assess the merits of a five (5) year lease versus a three (3) year lease. Although Ms. Viinamae denies having been assigned such a task the fact is that if she were assigned such a task she ought to have consulted with Mr. Andrew. Such consultation on matters affecting IT were a fundamental duty of Mr. Andrew's position. If it is found that Ms. Viinamae were given that assignment by Ms. Liczyk then it was her failure to communicate and not Mr. Andrew's failure to question the move to five years that

caused or contributed to the fiasco that arose from a fairly reasonable and straightforward vision.

196. The budget for IT acquisitions was never to be open ended in the IT model. Rather, the budget for the program was to be premised on how much each of the City's departments wished to expend from their own departmental budgets on IT hardware and software. The actual cap would be based on cost-benefit analysis to be done by the individual departments and divisions. This approach is absolutely consistent with the decentralized organizational model in place at the City. To criticize that approach is to bring into question the City's own organizational model with both a centralized (corporate) IT division as well as decentralized IT functions in each of the program areas throughout the City bureaucracy.
  
197. At paragraphs 10 to 16 of the City's Closing Submissions, the City misconstrues Mr. Andrew's accountabilities with his responsibilities. At the end of the day, Mr. Andrew is accountable for errors or omissions committed by members of the IT division. That said, Mr. Andrew plans and develops an IT strategy/program which is implemented and managed by his program directors. Paragraph 10 of the City's Closing Submissions is an accurate reflection of the duties of the Executive Director, IT position. Such sub-programs as operational and security policies and standards, multi-year plans, daily budgeting activities, etc., were generally performed by direct reports of Mr. Andrew, i.e., at the Director level.

198. With respect to budgets, please keep in mind that never in Mr. Andrew's term as Executive Director at the City did IT exceed its budget.
199. It should be recalled that when Counsel for the City lead Mr. Andrew through the various qualities reasonably expected of a senior executive for the City, she did so "at 30,000 feet". Mr. Andrew demonstrated a keen sense of public service, good judgment in an ever-changing environment without benefit of written policies, procedures, guidelines or protocols and led by example (as he had Mr. Garrett, Wanda Liczyk, Joan Anderton and other Commissioners to look to for such leadership). Mr. Andrew was not perfect however, those were not times conducive to perfection. Perfection was not defined and neither were there written guidelines or directives to assist a senior department official. Bureaucracy or bureaucratic organization relies on good, clear, unambiguous policies, practices, procedures, guidelines and protocols. As well, it relies on meaningful and accurate job descriptions and organization charts. Finally, it relies upon trained and knowledgeable people performing the duties of their positions at a fully satisfactory level. This was not the model that had been thrown together at the post-amalgamation City of Toronto. Bureaucratic organization works where senior managers delegate programs and activities to less senior managers. It is then incumbent on the less senior managers to communicate upward on issues, concerns or problems. The superior manager is not charged with the activities set out at paragraphs 25 and 26 of the City's final submissions. Rather, these are tasks that are delegated to senior working level officers or junior managers (Rabadi and Altman on the Finance side).

### **Knowledge of the Procurement Process**

200. It is submitted that the City's Chief Procurement Officer, Lou Pagano, should have had the same comprehensive and broad knowledge of the procurement process as Mr. Andrew was obligated to have of IT. The City's model that department or division management should be the lead on purchasing requisitions is fundamentally flawed. The role of senior program managers is the management of their programs. The role of the City's Procurement Officer is to provide advice and guidance on all aspects of the procurement process to City management. In 1999, PMMD absolutely failed to understand its role in the purchasing (leasing) process and were unequipped to advise on leasing-based acquisitions. Apparently they had muddled through a few leases previously but they had no knowledge or training of the leasing process, and had no written guidelines, policies or procedures and had no practices or protocols on which to rely in a lease situation. Rather than informing IT (Mr. Power or Mr. Andrew) that they were unequipped to perform their role in the procurement process, the purchasing officer assigned to this leasing project did nothing more than check to ensure that the boilerplate was in place and check for appropriate "buzz" words. PMMD and in particular Mr. Pagano absolutely and utterly failed the City in the IT acquisition program.

201. The City's position that by taking no significant action PMMD did nothing wrong while Mr. Power who realized the limitations of PMMD took on their responsibilities as well as those of IT was entirely at fault is fundamentally

flawed. Errors of omission on the part of PMMD made Mr. Power's task that much more difficult. Mr. Beattie apparently made no effort to involve Mr. Spizarsky or Mr. Pagano or anyone else in PMMD. The role of PMMD is not to add boilerplate and to check for the use of "appropriate" catch phrases or buzz words.

### **Conflict of Interest**

202. For the sake of brevity, Mr. Andrew will not fully repeat his position on conflict of interest guidelines that were in effect for him. At paragraph 33 of the City's Closing Submissions, they have correctly stated the guidelines in his employment agreement. Mr. Andrew's employment agreement also contained at paragraph 15 a four corners clause which technically meant that the guidelines at Metro had been superseded by those in his employment agreement. The conflict guidelines in his employment agreement is two sentences long. That said, it raises "conflict of interest or the perception of one". Mr. Andrew repeatedly referred issues of conflict or potential conflict that he had or considered as potential issues of conflict to various Commissioners and the CAO. Their interpretations of such situations were relied upon by Mr. Andrew. As well, Mr. Andrew relied on their practice, tests or behaviour and as well on the fact that if his behaviour were or might be perceived as inappropriate or questionable, one of them would approach him with their concern. None ever did.

203. It is the interpretation of where the "bar" is to be placed, i.e., at what height, that is the issue where conflict of interest guidelines are sparse and unclear. Good

managers refer issues of potential conflict to their superiors, monitor the activities of their superiors and emulate that behaviour. Mr. Andrew did all of this and should not be criticized for doing what is reasonable and appropriate in the circumstances.

204. The City of Toronto's conflict of interest policy was not introduced into the City until after Mr. Andrew had resigned from the City. He cannot be held to that standard *nunc pro tunc*.

205. Mr. Andrew's position entailed developing and maintaining comprehensive IT industry knowledge, consulting with and exchanging information with industry representatives on products, the marketplace and the city's short and long term needs. The role is far different from the role of Purchasing (PMMD) where such contact is not a duty of the Director of PMMD's position. Commission counsel attempted to hold Mr. Andrew to the standard established (at a later date) by Mr. Pagano. The City in their closing submissions attempt the same thing. Both are incorrect. Mr. Andrew's position required contact with suppliers and one objective of such contact was to develop relations. How does a senior City IT executive do this? Lunches? Charity golf games? Coffee? Events? It is only with respect to the issue of "frequency" of contacts with MFP that Mr. Andrew agrees that he did not demonstrate good judgment.

206. With respect to paragraph 44 of the City's Closing Submissions, the fact is that the City had no policy or practice (or culture) of reporting contacts with suppliers or seeking permission for such contacts prior to attending same. Perhaps the

issue of frequency or reporting of contact should be instituted into or at least considered for inclusion into the City's conflict of interest guidelines.

### **Andrew and Jakobek**

207. Andrew and Jakobek exchanged phone calls 222 times in 25 months or an average of 9 times per month. Almost none of these telephone calls exceeded a minute in duration and often there were three or four phone calls in a row over five or ten minutes indicating that the calls were not completed.
208. Mr. Andrew explained the nature of his relationship with Councillor Jakobek and how it developed over time. Mr. Andrew viewed it as one of the duties of his position to ensure that IT professionals at the City did not lose their jobs. This was no easy task thanks to Councillors like Mr. Jakobek who put no value in IT. Mr. Andrew chose to educate Mr. Jakobek and to work with him in developing a sensitivity for IT and its potential. In that, he was successful and should not be criticized. Andrew brought IT to Councillor Jakobek and helped Councillor Jakobek obtain IT equipment for his children. He helped Mr. Jakobek's children with the use of their equipment (CD burner). There was nothing inappropriate with this. Generally its called relationship building and is a standard aspect of client development which lawyers must participate in. Mr. Andrew did not feel awkward helping Jakobek with these issues or with taking him to Dynalync. That "allowed them to work together". A win-win situation.

209. With respect to the hockey game on April 24, 1999 and the golf game of September 2, 1999 to which Councillor Jakobek invited Mr. Andrew, there was nothing inappropriate about either of these activities. The City, at paragraph 56 of its Closing Submissions, has proposed that such contact with a Councillor and a supplier was inappropriate. The Councillor invited Mr. Andrew to the hockey game and in the Platinum Club they ran into Mr. Domi whom Mr. Jakobek apparently knew. Councillor Jakobek invited Mr. Andrew, Ms. Liczyk and Mr. Domi to play golf. The City is wrong in its attempt to characterize such innocent contact (at least from Mr. Andrew's perspective) as inappropriate. There are no guidelines or protocols at the City then or now that remotely relate to such situations. Mr. Andrew and Mr. Jakobek developed a friendly, open acquaintanceship. It developed as far as a 9 hole game of golf together, helping with computers and kids' needs on computers, a hockey game and a gift of clothing (July 17, 2000) to Mr. Andrew's first grandchild. Such a relationship should be viewed as reasonable in the circumstances.
210. Mr. Andrew e-mailed comments to Mr. Jakobek at TEGH regarding a consultant's report on IT issues. Again, the City in their Closing Submissions has cried "wolf" (i.e., unprofessional). It is Mr. Andrew's submission that the City is incorrect and "protesteth too much"!
211. At paragraph 85 of the City's Closing Submissions the City concludes on the basis of frequency of contact with Mr. Domi that therefore Mr. Andrew abandoned the principles of good judgment and let MFP and Mr. Domi take



advantage of him. There is absolutely no evidence to support that fact. Rather, there are numerous examples to support Mr. Andrew's contention that he exercised personal integrity and good judgment at all times with Mr. Domi.

Examples include:

- (a) asking Messrs. Domi and Kassam to leave his office on April 29, 1999;
- (b) returning the Cartier pen immediately;
- (c) informing Ms. Payne at MFP of Mr. Domi's blackout period breaches;
- (d) warning Mr. Domi about possible repercussions for breaching the blackout period protocols, etc..

### **The Mole in the City**

212. Mr. Andrew was not the mole in the City referred to in Mr. Lyons' memos to file of April 1, 1999 or June 10, 1999.

213. Mr. Lyons had no recollection as to who he obtained the information in those memoranda from. Mr. Andrew is certain it was not from him. The telephone call from Mr. Lyons to Mr. Andrew referred to by the City at paragraph 95 of their Closing Submissions was one minute in duration. With the greatest respect to the City, the six bidders including MFP and DFS would have known that if the bid vehicle was an RFQ, therefore the evaluation would be entirely based on price. That information was well known from the face of the RFQ and did not constitute confidential information. Much of what Lyons stated in his memoranda was

either common knowledge, from a variety of sources including MFP and either garbled or inaccurate. For example, the information at the City's paragraph 97 is inaccurate while at paragraph 98, it is garbled and inaccurate.

214. Again, it is grossly unfair for the City to conclude as it does at paragraph 102 of its Closing Submissions that Mr. Andrew more likely than not provided this information to Mr. Lyons or that whatever information was provided to Mr. Lyons by anyone was "confidential" to the City and its transmission inappropriate.

#### **Phone Calls Between Domi and Andrew During Blackout**

215. At paragraph 108, the City has inaccurately construed the facts. On June 10, 1999, Mr. Domi phoned Mr. Andrew at 2:12 p.m. (27 seconds) and Mr. Andrew returned the call at 4:05 p.m. (1:27). On June 11, 1999, Mr. Domi called Mr. Andrew at 8:45 a.m. (2:28) to announce that MFP would be submitting its bid. On June 18, 1999, Mr. Domi phoned Mr. Andrew twice, at 2:07 p.m. (43 seconds) and 2:16 p.m. (2:28). Mr. Andrew was the convenor of a baseball tournament that evening.
216. Mr. Andrew was clear that he and Mr. Domi generally spoke about sports or activities during the blackout, that he warned Domi on at least one occasion about the blackout practice and that generally Mr. Domi stuck to safe topics. There is no evidence whatever that Mr. Andrew breached the blackout protocol or that Mr. Andrew was in any way pulled offside by an aggressive Mr. Domi. There is no evidence whatever that Mr. Andrew failed to exercise good judgment

with respect to the blackout protocols and the City has absolutely no grounds on which to conclude that the contact between Mr. Andrew and Mr. Domi was unacceptable. It is merely a conclusion not substantiated by a single fact.

### **StorageTek**

217. At paragraph 122 of its Closing Submissions, the City has misconstrued the facts of this vendor's function attendance. Mr. Andrew admitted attending a StorageTek Convention (Friday to Sunday) in Atlanta without authorization by the City. Mr. Andrew did not disclose this trip. StorageTek had a raffle for half-day passes to the Masters (Friday, Saturday and Sunday). Mr. Andrew won and attended the raffle on one of the half days. Mr. Andrew did not have authorization to attend the function and should not have gone. That said, he learned a lot about StorageTek and its products and met clients of StorageTek from several US cities.

### **Metastorm**

218. Mr. Andrew was taking a week's vacation. He planned to fly to Scotland, stay with his friends and attend a soccer match. Metastorm wished to become a supplier to the City and invited Mr. Andrew to London to monitor the operation of the Metastorm software. Mr. Andrew flew to London at Metastorm's expense, monitored the Metastorm operation and then flew on to Scotland. Mr. Andrew paid Metastorm for the value of the charter flight he otherwise would have taken.

He gave up one day of his one-week vacation to Scotland. He benefited from Metastorm who paid for one night's accommodation.

219. Mr. Andrew did not disclose this trip to the Commissioner of Corporate Services who it was known at that time (certainly by Mr. Andrew) would be leaving the City.
220. Mr. Andrew should have sought authority from the Commissioner.
221. Mr. Andrew has apologized to the City for these transgressions and admits that they both demonstrated poor judgment on his part.
222. With respect to the City's conclusions at paragraphs 138 and 139 of their Closing Submissions, the fact is that Mr. Andrew DID NOT LET DOWN HIS GUARD WITH MFP. Mr. Andrew did not fail to protect the interests of the City and Mr. Andrew did not lower his guard. There is no evidence that Mr. Andrew abrogated his responsibility with respect to the RFQ, its drafting or analysis, the report, etc.. Mr. Andrew agreed that MFP was not perhaps "at arms length" however he did not agree that his actions had been inappropriate with respect to MFP. He did agree that the frequency and the nature of the socializing were in retrospect excessive. They were. That said, Mr. Andrew did not vary his approach as the City's Chief Information Officer.
223. Many of the issues in the City's Closing Submissions between paragraphs 148 and 230 have been responded to already.

224. Mr. Andrew concludes his comments on those various points and issues as follows:
225. 146 – 147 - The City has misconstrued Mr. Andrew's vision.
226. 151 153 - The cap was a department/division budgetary cap. Whatever equipment or software the decentralized City divisions and departments wished to acquire, so long as it was within their budgets (and that fact was confirmed in the ITLA form requesting the acquisition) then the acquisition could be perfected. The City model was decentralized and so therefore was the IT acquisition program. This was a Year 2000 Project acquisition and for that program time was of the essence. The City Year 2000 Project did not have the luxury of business plans, etc.
227. 154 – 156 - Mr. Andrew was well aware of the importance of end of term costs. Mr. Andrew would reasonably expect that Finance (Mr. Brittain), Mr. Power and Purchasing would as well understand this concept which was a Finance/PMMD issue principally. Finance and PMMD failed utterly to engage regarding these issues, something they should have understood had they bothered to conceptualize IT's plan or proposal.
228. 157 – 162 - No matter what Mr. Andrew said to the question posed at paragraph 158, the fact is that the City was not locked into a program with MFP having an indefinite duration, amount of equipment or cost. That is simply an exaggeration and Mr. Andrew has explained this repeatedly.

229. Mr. Andrew's proposal was not inconsistent with the guidelines, policies or practices of PMMD or Finance. The fact is that this was not the evidence of Mr. Brittain or Mr. Pagano. A further fact is that Purchasing had virtually no policies, procedures or practices regarding leasing. The City has made a bold statement but has failed to demonstrate the existence of the alleged inconsistency between the Purchasing By Laws and Mr. Andrew's vision or plan. The other conclusions reached by the City are incorrect. The City's IT refresh program would have a budget set by senior City program managers based on need and budgets. Decentralized budgetary and program planning was consistent with the City's existing organizational structure and decentralized management model.

230. 166 - Mr. Andrew stated that one vendor of record was completely different from a sole supplier. Mr. Andrew has discussed this previously.

231. 169 - It is only too simple to accept Commissioner Anderton's self-serving 2001 memorandum on attending a hockey game with other Commissioners in early 2000 on her arrival at the City and as well to accept her equally self-serving plea that Mr. Andrew had tried to hide the facts and in so doing had misled her on the IT leasing program. With the greatest respect, Ms. Anderton should not be believed on either of the points above (after all, despite her concerns about attending hockey games as a guest of City suppliers, she neglected to refer the issue to Mr. Garrett or to speak with her direct report, Mr. Andrew, about her concerns). Both would have been appropriate in the

circumstances. Neither was done. Ms. Anderton is not credible and should not be believed.

232. 172 – 174 - The City criticises Mr. Andrew for his friendship with Mr. Power. Mr. Andrew did not interview Mr. Power because he had known Mr. Power for decades, they were friends and Mr. Power had substantial experience in the leasing RFP/Q area acquired during his tenure at the Province. If Mr. Power thought for a moment he was ill-equipped to perform the IT role in the RFQ drafting process, he would have so informed Mr. Andrew. Mr. Power expressed no such concern to Mr. Andrew. Both Mr. Andrew and Mr. Power were of the opinion and belief that Mr. Power could handle the activity. On no occasion did Mr. Power approach Mr. Andrew to seek advice or guidance and thus there was no good reason for Mr. Andrew, the Executive Director of IT and with many other critical and pressing issues on his plate to be concerned about or approach Mr. Power for a status report. Mr. Power was a knowledgeable IT professional with considerable leasing experience. He also understood how government (the City) worked.

233. 176 - Again, the City is confusing the role of the Executive Director, IT and the role of more junior officers in the IT division. Mr. Andrew does not himself act as a project sponsor with PMMD. Mr. Power played that role. It was not the role of Mr. Andrew to select the project lead. Input was required from Finance (Mr. Brittain), PMMD (Mr. Pagano) and IT. Each designated their project lead. Unfortunately, PMMD's lead had no clue what his

role was, had no understanding of acquisition by leasing and did nothing more than check for buzz words and add boilerplate.

234. 178 – 181 - When a senior manager leaves on vacation as Mr. Andrew did on May 25, 1999, returning on June 2, 1999, he or she appoints an acting replacement. That person acts to perform the duties of their own position as well as those of the senior manager should they be required. In this circumstance, Mr. Power did not report issues, problems or concerns with the RFQ activity and thus neither Ms. Viinamae nor if he had been there, Mr. Andrew, was called upon to provide advice or guidance in the RFQ drafting process. Thus, there was no gap in Mr. Power's "supervision". The City's conclusion at paragraph 178 and at 181 is incorrect. Ms. Viinamae is incorrect in her interpretation of one's role in an "acting position" as well. There was no leadership gap during this final few days of the RFQ being drafted.

235. 185 - Probably the most critical defence that Mr. Andrew has is that the City's leasing expert, Mr. Kerr confirmed that the deal that MFP offered in its response to the RFQ was an excellent deal for the City. This was the deal contemplated by Mr. Andrew. It was a good deal and it made good financial sense. Mr. Andrew is accountable for that good deal, not for what occurred thereafter as a result of the actions of others in Finance or elsewhere.

236. It is not within the parameters of the job of the Executive Director of IT to read the RFQ or to participate in the financial analysis of the responses to the RFQ. Neither is it within the job of the Executive Director of IT to participate in the



drafting of various iterations of the Report to the P & F Committee. Ms. Liczyk was far more involved in such matters however it is clear that Ms. Liczyk's management style is to micro-manage. Mr. Andrew's management style though criticized when it is juxtaposed beside Ms. Liczyk's (and Ms. Viinamae's) management style was more "hands off". This is a classical management style that is generally accepted and approved of in bureaucratic government organizations ("let the manager manage").

237. 188 - Mr. Andrew did not withdraw from the bid analysis process or the drafting of the P & F Report. There is substantial evidence of the role Mr. Andrew played as a source of information and on July 9, 1999, when he, Ms. Liczyk and Mr. Rabadi worked together putting together the final report. What the City has forgotten once again is that the role of the Executive Director vis-à-vis Mr. Power and Ms. Viinamae is to provide advice and guidance to them upon request. Mr. Andrew did so and at all times was ready, willing and available to do so.

238. 195 - On July 9, 1999, Liczyk was not sick. She was tired and had a golf game at about noon that she wished to get to in good time. Mr. Andrew viewed the report as a joint submission of IT and Finance and further viewed that the report had IT-related portions and portions that were exclusively within the jurisdiction of Finance. These he let Ms. Liczyk focus on. the IT function included the role of the PMO to centrally manage the acquisition process and the nature of the program itself. Financial reporting obligations, though a joint

responsibility on paper, were the responsibility of Ms. Liczyk with program-related input from IT.

239. At paragraph 196 of its Closing Submissions, the City is incorrect in demanding a higher level of communication between Ms. Liczyk and Mr. Andrew. The communication is at an entirely lower level, i.e., Brittain, Altman and Rabadi with Viinamae and Power. The degree or level of communication between Ms. Liczyk and Mr. Andrew was appropriate. Both had other priorities.
240. 197 – 199 - Mr. Andrew's attendance at the PFC meeting of July 20, 1999 would have added nothing to the outcome of the Jakobek amendment. Mr. Andrew learned from Ms. Liczyk the next day of Mr. Jakobek's amendment. If senior program managers are to attend such meetings, perhaps the City should consider drafting attendance guidelines, policies or protocols. If the City had developed such clear written guidelines, there would be no such problems or concerns regarding senior manager attendances.
241. 204 - Once again the City has failed to approach the issue appropriately. On August 10, 1999, Mr. Power e-mailed Mr. Andrew seeking advice, information and guidance. This is absolutely appropriate. Mr. Andrew responded to that e-mail. That was not the extent of Mr. Andrew's oversight of the negotiation process. Rather, that is the only e-mail exchange between Mr. Power and Mr. Andrew . There may have been further advice or information sought by Mr. Power of Mr. Andrew in face-to-face meetings (formal or informal). It is incumbent on the senior officer or more junior manager to seek advice,

information or guidance from the senior manager where problems, issues or concerns arise. It is not incumbent on Mr. Andrew to micro-manage Mr. Power's activities. Rather, it is incumbent on Mr. Power to seek Mr. Andrew or Ms. Viinamae out as need requires.

### **The Decision re 3 Years to 5 Years**

242. The bureaucratic organization structure functions on top down management. Where a decision is made by a senior manager, that decision is not questioned. Questioning is a step well along the path to insubordination.
243. Mr. Andrew was well-aware of IT's needs, the rationale behind the Jakobek amendment, the City's financial plight and the reasonable life expectancy of the equipment and software. As well, he knew that Finance had been looking at lease extensions. Mr. Andrew was well aware that MFP had been discussing 5 year leases with Ms. Liczyk and Mr. Brittain on September 21, 1999 and further knew that this had been discussed on September 22, 1999 in the meeting with Ms. Viinamae, Mr. Brittain and Mr. Willischuk.
244. When, on October 2, 1999, Mr. Andrew learned of the decision to lease for 5 years, he was of the opinion that the decision was a Financial one reviewed and approved by Ms. Liczyk. Mr. Andrew rightfully in those circumstances concluded that there was nothing further that could be done and that questioning the decision was a non-productive, unhelpful activity.

245. At paragraph 216 of its Closing Submissions, the City is incorrect in concluding that no one at the City supported extending all leases to 5 years. The move from 3 to 5 years did not solely benefit MFP. There were as well financial benefits that the City reaped. The City's conclusion at paragraph 217 of its Closing Submissions is unfair and inappropriate. The due diligence on the financial benefits of 5 vs 3 years was a financial issue (see Rabadi e-mails). Ms. Liczyk stated that she asked Mr. Brittain to investigate this. The meetings of September 21 and 22, 1999 both dealt with the issues of lease extensions and their financial benefits. It is wrong to say that the senior program manager did not exercise due diligence because Finance, for financial reasons, could not choose the "best" option for the program.
246. Mr. Andrew did not display "disinterest in detail". The role of the Executive Director is to paint broad brush strokes and to have confidence in the capability of his managers and staff whose task it is to fill in the detail. The conclusions at paragraph 220 are both unfortunate and ill-conceived.
247. Mr. Andrew did the best he could in all the circumstances. He delegated duties and responsibilities to the people available to him. They ran with the ball. Some were, in hindsight, too independent and failed to seek advice and guidance when they should have. Others simply demonstrated that the end was more important than the means and policies, procedures, guidelines and protocols were kicked aside in the race up to January 1, 2000. Mr. Andrew did his best and his best was generally of a very high quality.

248. Mr. Andrew while Executive Director of IT for the City never exceeded a budget. He was conscientious and relentless in moving the City of Toronto and its low tech Councillors into an IT society. He should be applauded for his efforts, not criticised.

**All of which is respectfully submitted.**

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