

**REPLY**  
**SUBMISSIONS ON BEHALF OF THOMAS R. JAKOBK**

**The “Andrew e-mail”**

It is passing strange to claim that an event is “odd” and “unique” (even in response to leading questions) when one cannot even remember the event! If it was so odd and so unique, surely one would recall it. Even if one admittedly did nothing at the time (such as write a memo or make mention to anyone else of the alleged “odd, unique” event), surely one would be expected to remember the “odd” “unique” event. Yet Mr. Andrew offers this logically inconsistent evidence about the e-mail with the RFQ allegedly attached.

The fact is that Mr. Andrew admits that he has no recollection of that e-mail and the events and circumstances surrounding it. Yet pushed by counsel for the City, he is only too happy to conjecture and speculate in a manner that is most unfair to Mr. Jakobek. Mr. Andrew assumes in a very self-serving and unfair way that Mr. Jakobek “must have asked him for it” and “he would not have sent it otherwise”. How can he claim this e-mail is “odd, unique” and yet he not only did nothing and said nothing at the time, he has to admit he continues to have absolutely no recollection about this e-mail. At the same time he is only too happy to in effect blame Mr. Jakobek. Mr. Jakobek would obviously never have asked for an e-mail transmission, since he did not use e-mails. Then why would Andrew send it by e-mail, knowing that fact. Mr. Andrew’s claim about Mr. Jakobek must surely be viewed as totally lacking any credibility.

Objectively viewed, all the evidence really amounts to is that the City has come up with this e-mail from an electronic archive of some sort that no one else has seen and no one else has independently examined, and with absolutely no surrounding information to assess the significance of its presence there. No evidence was introduced regarding the

general traffic to that particular e-mail address claimed to be actively associated with Mr. Jakobek, or other messages to or from that same e-mail address showing how and by whom it was used, if in fact it was used at all. No evidence was adduced showing that any e-mail to that address was ever opened or acknowledged or that a single e-mail from that address was ever sent. Finally, it is not insignificant that computer expert Mr. Andrew - until “corrected” by the City’s counsel – erroneously testified under oath that the e-mail address involved was in fact Mr. Jakobek’s home e-mail address.

The City’s counsel builds upon their finding of this e-mail to a little-known, perhaps inactive e-mail address, a complete speculative edifice that Mr. Jakobek did ask for and received this document, happy to attach a sinister implication, even though there is absolutely no evidence anything was ever done with the attachment. It is nothing but assumption that this e-mail was ever sent, much less received by anyone. In fact the only actual evidence on the issue is clear that it was never received or viewed in Mr. Jakobek’s office. Not just Mr. Jakobek but his staff that provided evidence made it clear they never saw that document. They testified in no uncertain terms that document was never seen by them in Mr. Jakobek’s office. Whatever the actual truth is about that e-mail, the evidence simply does allow any rational inference to be drawn as against Mr. Jakobek. Further, the ultimate irony is that all of this fuss about this e-mail is a fuss about the absolutely inconsequential!

The evidence clearly establishes the complete insignificance of that e-mail. The evidence could not be clearer that Mr. Jakobek had nothing to do with the bidding or selection process and nowhere in the subsequent evidence is there anything evidencing the slightest connection with the draft RFQ. The City even admits in its submissions that “[t]he form and content of the City’s RFQ did not materially contribute to the City’s improvident transactions with MFP”. Truly much ado about nothing.

### **The “Jakobek” amendment, aka flexibility clause**

The City’s counsel continues to berate Mr. Jakobek regarding this unsurprising motion as if it were some single-handed act of corruption that instantaneously brought about the loss or theft of millions of dollars from the City. Mr. Jakobek was simply the mover of the clause and it was an action that from all perspectives – his previous public statements and recorded approach to and sentiments regarding such issues and the circumstances under which it took place – was perfectly normal, understandable, sensible, and absolutely unimpeachable. It was seconded and passed unanimously, so it was not just Mr. Jakobek’s act; it was the responsibility of every councilor present and every city staff present. If there were difficulties with the wording, that was the responsibility of every single person who was present and every single person who thereafter dealt with the matter, resulting in the financial commitments in issue. Mr. Jakobek had absolutely nothing to do with all of that.

Ms. Viinamae, Mr. Power, Mr. Andrew, Mr. Altman, Mr. Brittain, Ms. Liczyk, and all the others involved after Council (not Mr. Jakobek single-handedly) passed the amendment, they were all were free to consider Council’s amendment as they saw fit, and interpret it as they saw fit, and seek such assistance regarding interpretation as they saw fit. Mr. Jakobek’s motion did not contain some secret ingredient that clouded the minds of all who read it and forced them to sign improvident leases or perform all the acts that were done in relation to the financial arrangements in issue. Mr. Jakobek’s motion was simply an initial part of the history of this matter, and with regard to the subsequent financial dealings and actual events, a distinctly insignificant part of the history. Mr. Jakobek had absolutely nothing to do with the real relevant events surrounding the five-year leases and the lease changes and the pricing thereof.

For example, Mr. Altman did not raise with Mr. Brittain the fact that the financial analysis should have been revisited because it was based on a three-year rather than a five-year term. Mr. Altman agreed that in retrospect this should have been done by himself or someone else. Mr. Brittain did nothing to clarify the meaning of Council’s

amendment even though he claimed he did not understand it. It was events like these and all the other missteps and omissions of the other people involved that should be the real concern of the Inquiry. And with those blameworthy and reproachable acts, omissions and events Mr. Jakobek had absolutely nothing to do.

It takes a mind consumed with blaming Mr. Jakobek and focused on interpreting every single event in the history of this matter in a manner consistent with Mr. Jakobek's blameworthiness, no matter how unfair such accusations are, to attach responsibility to Mr. Jakobek and his uncontentious, universally approved motion for whatever financial debacle ensued. In fact Mr. Jakobek's sentiments against the financially irresponsible automatic replacement of still useful computer equipment was subsequently echoed and duplicated in express terms regarding five-year leases in the Chow motion! This motion expressly referenced extending the leases to five years at a time when staff had already signed five year leases. It is inexplicable that upon the presentation of such a motion competent and honest staff would not have announced that there were already five year leases. But they did not. No inference is possible other than that those responsible were trying to hide from the politicians what they had done. The City's counsel should be most interested in this motion and these events. But of course Mr. Jakobek is not involved in these events and there is nothing for which he can be blamed in that part of the story. So it is ignored by the City's counsel. That is explainable only by an agenda preoccupied with attacking Mr. Jakobek.

### **Mr. Lyons' comments to Messrs. Marentette and Simone**

It is impossible to understand how City's counsel can attach significance to this issue as against Mr. Jakobek. This obvious conclusion is not just because of the gross unfairness involved in the hearsay issue as far as Mr. Jakobek is concerned. It is also because there is simply no credible evidence of any remark worth considering. The evidence is outlined in Mr. Lyon's submissions. When two witnesses deny any relevant remark and the third witness agrees he might have misheard or subsequently "reconstructed" a single name

from all the gossip and innuendo swirling about, then how in good conscience can counsel for the City make submissions as if the comment (and its significance) were supported by substantial, credible evidence. A preoccupation with attaching blame to Mr. Jakobek would seem the only reasonable explanation.

It should also be noted that it was Mr. Jakobek who alerted Mr. Marentette and thence Mr. Simone that Mr. Lyons was acting on behalf of MFP. This is hardly consistent with Mr. Jakobek and Mr. Lyons having some pre-conceived nefarious plan together.

### **Other MFP matters**

The MFP memorandum describing ““a very strong relationship” between MFP and Mr. Andrew, Ms. Liczyk and Mr. Tom Jakobek” is clearly an exaggeration as far as Mr. Jakobek is concerned and unworthy of any credence. It is a bald vacuous opinion based upon the writer’s misunderstanding that ‘some meetings were held’. The author was clearly without any real information or understanding of the matter.

It remains absolutely beyond issue that Mr. Jakobek did nothing to influence or affect any of the decision makers at the City regarding the computer leasing contracts and their dealings with MFP.

### **The City’s submissions**

The City’s submissions are so unfair and so divergent from any rational view of the evidence as to be explicable only by a vendetta against Mr. Jakobek. Whether this is or is not politically motivated (Mr. Jakobek is a well-known conservative, a political species neither frequently visible nor welcomed at City Hall these days) or whether it is an attempt by the City bureaucracy to avoid looking in the mirror and admitting their responsibility is irrelevant. It is unjustifiable for any reason. The submissions border on

the preposterous. The accusations made against Mr. Jakobek are unfair and beyond the pale of reason and justice.

To write that “Andrew was asked or offered to do personal favours for Jakobek” in respect of trivial computer assistance at home (showing children how to burn CD’s) or referring Mr. Jakobek to a computer store (Dyna Lync) is but one example, especially when City’s counsel includes computer assistance given at City Hall which was in fact within Andrew’s permissible duties.

The City’s analysis of an improper relationship between Mr. Andrew and Mr. Jakobek is simply fiction. It mischaracterizes events and ignores matters that do not support the City’s theory because they belie any real relationship between the two persons.

The City’s submissions in relation to Mr. Domi and Mr. Jakobek are completely unfair in their characterization. For example, to claim that “Domi chartered a private jet to fly Jakobek to a playoff hockey game in Philadelphia less than one month before the RFQ was issued” is to state their preconceived agenda to attack Mr. Jakobek, not evidence or facts. The City writes: “On May 2, 1999, Domi flew Jakobek, Nigro and three others (Harold Peerenboom, his son Greg Peerenboom, and Jim Ginou) to Philadelphia for Game 6 of the playoff series between the Leafs and the Flyers. The flight alone cost MFP over \$6000. It was money well spent. This event marked a turning point in Domi’s relationship with Jakobek. Domi proved to Jakobek that he was prepared to spend serious money building relationships with key City decision-makers.”

This is fiction. Mr. Jakobek went to Philadelphia with people he knew and had relationships with: Messrs. Peerenboom, his son Greg, Ginou and Nigro. Domi was there too. Mr. Jakobek has known Harold Peerenboom for almost 20 years, as well as his son. Jim Ginou he has known about 15 years, and he has known Mr. Ginou’s father-in-law for over 25 years. Mr. Nigro from the Mayor’s office he knew for over 20 years. Mr. Jakobek had flown on other trips with Harold Peerenboom. The Domi’s were friends of Mr. Peerenboom. All of this highly relevant context to Mr. Jakobek’s presence is ignored by

the City's counsel. Mr. Domi's responsibility for the flight was not known to Mr. Jakobek. Mr. Domi did not charter the plane for Mr. Jakobek or to fly Mr. Jakobek specifically anywhere. The flight would have left and events unfolded precisely the same even absent Mr. Jakobek. Why does the City ignore the other attendees? Or ignore the fact that Mr. Domi and Mr. Jakobek did not even sit together. Mr. Jakobek sat with his friend and perceived sponsor of the trip. Why would Domi not insist on sitting with Mr. Jakobek and why would Mr. Jakobek not want to do so if they were in some kind of sinister relationship? The City simply ignores these strikingly inconvenient facts. That is intolerable from the perspectives of fairness and justice.

The City's description of the September 2<sup>nd</sup> 1999 golf game carefully omits that Mr. Jakobek let Mr. Domi ride alone during the game (hardly the hallmark of either a close relationship or a significant occasion as far as this Inquiry is concerned) Furthermore, while much has been made about the inappropriate nature of people being wined and dined at MFP's expense, not only did Mr. Jakobek refuse numerous invitations of that nature, he only arranged this golf game with other City staff present and most importantly, he paid for this golf game. This golf game of which the City makes so much was not a case of Mr. Jakobek being "wined and dined by MFP or Domi. It was in fact the exact opposite! Mr. Jakobek paid for it. Tunnel vision is the only label to be applied to the City's counsel's use of this event as sinister evidence when it is in fact the exact opposite of the events under discussion: MFP (and Domi) "wining and dining" City staff and officials.

The City writes in its submissions: "Jakobek's receptiveness to Domi's overtures stands in marked contrast to his perfunctory and awkward meeting with Lyons and Marentette from DFS. Despite Lyons' advice that Jakobek was the only Councillor worth meeting, on May 25, 1999, the DFS meeting with him lasted for no more than 20 minutes." In fact, there is simply a paucity of evidence of any receptiveness to Mr. Domi. In fact, there is no evidence Mr. Jakobek ever spent more than 20 minutes alone with Mr. Domi. At the golf game Mr. Domi was made to ride alone in his own cart. At Mr. Jakobek's backyard afterwards Mr. Andrew and Ms. Liczyk were present. At the Philadelphia hockey game

Mr. Jakobek did not sit with Mr. Domi. They have never had a single dinner together. The breakfast and lunch meetings involved other persons and were perfunctory as far as Mr. Jakobek's attendance was concerned. Where is the evidence Mr. Jakobek ever spent more than 20 minutes alone with Mr. Domi ever.

The City writes: "During the blackout period, Domi and Jakobek had 14 cellular telephone conversations." This is characteristic of their exaggeration and disregard for the actual evidence. Domi may have called Mr. Jakobek fourteen times, as he did hundreds of other times. They did not, on the evidence, have the conversations as claimed. Further, the issue of "blackout" seems far from clear as far as Mr. Jakobek is concerned. As he testified, his only recollection of being told of a "blackout" period was in relation to a waste disposal matter. There certainly is absolutely no evidence Mr. Jakobek received any document or message relating to him the fact of any blackout period. Again, the fact that he had nothing whatsoever to do with the actual process is highly indicative of the irrelevance to him and the other councilors of any blackout period and the irrelevance and inconsequential nature of any attempts by Domi to communicate with him.

The City writes: "Domi and Jakobek went to extraordinary lengths to deny or minimize the extent of their relationship." From the summer of 2002 the Ontario media has been replete with negative and unfavourable articles about MFP as a company in general in its dealings with various Ontario municipalities and the City of Toronto in particular, also regarding Mr. Domi and his dealings with Toronto City Hall. Mr. Jakobek was hopeful of being given an opportunity to serve the citizens of Toronto as their mayor by winning the then-upcoming election. Is it at all surprising that Mr. Jakobek wished to avoid being unfairly linked in the public mind with Mr. Domi?

As the MFP submissions well put it: "... Mr. Jakobek well knew that anything associating him with MPF would not exactly enhance his impending mayoralty aspirations. While Mr. Jakobek's untruths should not be condoned, he would not be the only or the first witness who sought to distance themselves from MFP." Is it any wonder that Mr. Jakobek wished to avoid inconsequential matters of little significance, such as



Mr. Domi's telephone stalking habits, a golf game arranged to make up for a history of rejected invitations and avoidance, and a hockey flight that turned out to be sponsored by MFP rather than the others on the flight that Mr. Jakobek knew, being unfairly made too much of? If anything, the City's virtually histrionic submissions about the criminal conspiracy that it sees in these events more than justifies Mr. Jakobek's concerns that bias and prejudice would prevent any reasonable, rational, objective assessment of the events.

As far as Mr. Jakobek is concerned, the City's submission that "Domi made an improper financial payment to Jakobek of approximately \$25,000" is despicable. Using high levels of verbal generality to create "similarities" that are nothing more than a reflection of the generic language the City uses by way of description of the disparate events, the City creates out of whole cloth its imaginary tale of joint concoction and municipal corruption. The allegations are absolutely false and unsubstantiated by any reasonable assessment of the actual evidence, but the City's accusations will tarnish Mr. Jakobek's reputation because he is not able to defend himself against the accusation and secure a judicial verdict of innocence. The City does not allow facts or evidence to interfere with their preconceived histrionic tale of horrendous civic corruption. Sheltered by the privilege accorded counsel in making submissions, this privilege is abused by libels for which no one can be held accountable.

The phenomenon of "tunnel vision" – whereby a predetermined theory controls the interpretation of evidence and evidence is interpreted in a manner consistent with the preconceived theory and other possible explanations are ignored – has come to be well recognized and strongly condemned in the investigatory context. The City's submissions stand as a classic example of the phenomenon. In fact, the City's submissions demonstrate veritable world-class Chunnel vision! Those submissions most unfairly and unjustly victimize Mr. Jakobek. As in our original submissions, this Inquiry is respectfully urged in the strongest terms to restore to Mr. Jakobek his reputation for being a dedicated public servant by doing what fairness and justice require: thoroughly rejecting and deprecating the City's ill-conceived, prejudiced and unfounded allegations.

All of which is respectfully submitted,

January 24<sup>th</sup>, 2005

Alan D. Gold

Counsel on behalf of Mr. Jakobek