

APPENDIX B
(MFP Reply Submissions)

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March 31, 2004

Toronto Computer Leasing Inquiry
East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

Attention: Ronald D. Manes
Commission Counsel

Dear Mr. Manes:

Re: Toronto Computer Leasing Inquiry (the "Inquiry")

1. Further to our lengthy telephone conversation yesterday afternoon, and my exchange of calls with Ms. Groskaufmanis since last week, I am writing this letter to set out MFP's position and request to Commission Counsel regarding the recall of additional witnesses, beyond those listed in Ms. Groskaufmanis' letter dated March 12, 2004 (the "March 12 Letter").
2. I appreciate that I had requested, and expected, to be in a position to deliver this letter last Wednesday, following my return from a one week holiday. As indicated briefly yesterday in our informal conversation with yesterday (which I will not recite in detail), upon considering the issues further upon my return it became apparent that there are a number of matters, primarily arising out of the witnesses listed in the aforementioned March 12 Letter, which I wished to discuss with you, and which has delayed this process. In addition, I have been following up in connection with certain requests set out in related

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correspondence from Commission Counsel, a subject which I will deal with under separate cover.

3. I apologize for this delay, and request that the position articulated in this letter be given consideration by Commission Counsel.
4. It is convenient to divide this letter into 2 segments: (a) issues relating to additional witnesses potentially relevant to the matters alluded to in the March 12 Letter, and (b) other witness requests.
 - (a) **Issues/Potential Witnesses arising out of the matters alluded to in the March 12 Letter**
5. Judging by the date of the first Jakobek affidavit (early October) and the demands you were making last August for information regarding the precise timing of certain payments to Mr. Domi's account, it appears that the matters alluded to in the Jakobek and Domi affidavits have been under investigation by Commission Counsel for at least 6 – 7 months. MFP is not privy to this investigation, and does not have copies of any correspondence which you may have sent to the individuals involved and any third parties. Hence I am not aware of what requests for information and documents exist, or the details of any responses thereto, beyond what is disclosed in the affidavits enclosed in the March 12 Letter. I would ask that this be disclosed.
6. As indicated informally yesterday afternoon, MFP faces a dilemma in dealing with the issues of additional witnesses in these circumstances. On the one hand, the witnesses who are on the recall list, and who are directly affected, Messrs. Jakobek, Lyons, and Domi, are all separately represented, and can, if so advised, assert their own position regarding the recall/calling of any additional witnesses and any related procedural issues. On the other had, my impression, based upon our informal discussion (which I will not detail), is that Commission Counsel is of the view that there are gaps and ambiguities in the information provided to date. Without commenting upon whether this is or is not a valid conclusion, MFP does not want to be adversely affected by any perceived failure on the part of the individuals involved to answer any and all questions/issues which may have been raised by Commission Counsel. Accordingly, MFP would expect, and request, that all reasonable steps be taken by Commission Counsel to investigate, and call, such evidence as may be reasonably necessary to place these issues in context¹ and fill any perceived gaps.

¹ This request, is, of course, without prejudice to the primary position, outlined previously, that MFP does not consider it appropriate for the "evidence" to be adduced at all.

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7. I will cite a few examples of what I mean. I understand that Mr. Jakobek's father-in-law may have some health difficulties. I am not aware of the details. But this should be investigated, and subject to whatever valid privacy or related issues might exist, if there is evidence that would provide an explanation for Mr. Jakobek's father-in-law's inability to recall and/or corroborate Mr. Jakobek's version of events, this evidence should be adduced. The AMEX records are another case in point. I do not know what AMEX has produced. Presumably, it would be possible to subpoena all of the potentially relevant records, with a return date prior to any viva voce evidence, so that these records could be distributed and reviewed by the interested parties in advance. If this has not happened, it should. A third example, which I wanted to discuss with you informally prior to sending this letter, relates to the speculative innuendo that I fear may be suggested, by, inter alia, the press, that not only was there some illicit payment from Mr. Domi to Mr. Jakobek, but also that there was a quid pro quo from Mr. Jakobek which assisted MFP in some way. Leaving aside the issues relating to the so-called "Jakobek amendment" (see paragraphs 10-11 below), in my respectful submission it would be appropriate, in the interests of thoroughness and fairness, for Commission Counsel to investigate and adduce evidence, if it exists, to counter any such unwarranted inference.
8. We discussed this briefly and I have thought further about this issue overnight. I understand the concern about the scope of this and the cost issues. But surely it would not be difficult, with the City's cooperation, to ask the following specific questions of the material City employees/former employees who were involved in the RFQ, the reports to City Council, and the subsequent dealings with MFP:
- (1) Did Tom Jakobek ever did anything to intervene in or influence the RFQ process and/or the recommendation to select MFP?
 - (2) Subsequent to the July 27 - 29, 1999 council meeting, did Tom Jakobek ever do anything, by way of pressure, influence, or otherwise, to assist or favour MFP in relation to the computer leasing contracts?
9. The foregoing would be a very specific, direct inquiry, and in my respectful submission, could and should be directed to the following individuals²:

Mel Lastman
Wanda Liczyk
Lana Viinamae

² I am completing a search of the transcripts to ascertain which witnesses on this list have already been asked these questions, which would obviate the need for any further inquiry. I expect to have the results tomorrow.

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Jim Andrew
Brendan Power
Nadir Rabadi
Ralph Freebold
Len Brittain
Lou Pagano
Dave Beattie
Don Altman
Michael Franey
Glenn Vollebregt
Martin Willschick
Ken Colley
Al Shultz
Joan Anderton
Kathryn Bulko

If, as I suspect, the answer to this very focused inquiry was "no", it would be simple and efficient to prepare one paragraph affidavits indicating this, which could then be filed on the public record. I doubt very much that this would generate any cross-examination. If, on the other hand, there was any suggestion of any such attempted influence by Mr. Jakobek, the witness(es) might need to be called.

10. With respect to the "Jakobek amendment", Mr. Jakobek's evidence on this point makes it clear, if accepted, that the amendment in question was not something that he insisted upon or aggressively pressed in any way – rather, according to Mr. Jakobek, the amendment reflected the concerns and consensus of the Councillors who discussed the issues at the in camera session of the Policy & Finance Committee meeting on July 20, 1999.
11. As of the date when Mr. Jakobek testified, none of these other Councillors had been interviewed by the Commission. In light of the intended recall evidence, I respectfully request that these Councillors be interviewed and that they asked about their recall of this portion of the meeting, assisted/reminded by reference to the relevant portions of Mr. Jakobek's transcript, and the relatively limited documentation germane to the meeting. As part of this inquiry, it is respectfully submitted that any informal notes that any Councillor may have retained about what happened at this portion of the meeting should also be requested and produced.
12. Finally, I would ask that the details of any further investigative steps initiated by and information obtained by the Commission in relation to these issues be disclosed, including but not limited to the details of the evidence expected to be

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adduced from the individuals listed in the March 12 Letter, particularly AMEX, OBN and J.W. Hope.

13. In the interest of expediting this process I am sending you this letter as is, with the remainder (Category (b)) to follow tomorrow. There will not be any surprises as these individuals have been the subject of prior correspondence and/or communications last year.

Yours very truly,

BELLMORE & MOORE

David C. Moore

Per: David C. Moore
DCM/km



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April 1, 2004

Toronto Computer Leasing Inquiry
East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

**Attention: Ronald D. Manes
Commission Counsel**

Dear Mr. Manes:

Re: Toronto Computer Leasing Inquiry (the "Inquiry")

1. This letter will complete the balance of the witness requests alluded to in my letter dated March 31, 2004.
2. Over the course of the last year, MFP has identified numerous documents and witnesses which it believes should be produced and called/recalled. These matters have been the subject of several letters, discussions, and meetings. Hence, the requests set out in this letter are largely repetitive of matters raised previously.
3. The following is a list of the witnesses/documents in question, which has been narrowed down from the earlier requests/discussions:

- (1) City Councillors and Witness/documents arising from the City Council's internal subcommittees:

I have previously raised the fact that the documentation produced by the City has not included documents from individual Councillors and I have requested that specific requests be made of Councillors to search for and produce any records they may have kept (including emails). My August 13, 2003 email and paragraph 1 of my email dated September 5, 2003 to Mr. Capern are examples. Related to this, it is submitted that inquiries

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should be made and evidence adduced from, at least, a representative sample of Councillors who were members of the relevant subcommittees that dealt with, or received information germane to the computer leases, quantum of assets on leases, length of leases, etc. The relevant subcommittees are the Strategic Policies and Priorities Committee, its successor, the Policy & Finance Committee, the Budget Committee, the Budget Advisory Committee, the Administration Committee, and the Audit Committee. I will deliver, under separate cover, a three ring binder containing examples of the relevant extracts/references from the minutes of these subcommittees. The relevance of these extracts and materials is self evident – they relate to the knowledge and understanding of members of Council about the status of the leasing program, the quantum of assets on leases, the annual savings associated with the decision to implement 5 year leases, the existence of an ongoing leasing program, the view that MFP was the de facto vendor of record, the budget process and budget variances, and other related topics which bear directly on the issues which are before the Inquiry.

I have written about and discussed these matters on numerous occasions and I would be immediately available at your convenience to walk through the extracts from the Committees in question, in furtherance of my submission that this material is relevant and material, if that would be helpful to you. If, in principle, you are in agreement that some evidence in respect of these matters may be appropriate, I would also be available immediately to discuss the appropriate Councillors to be called, bearing in mind the timing and cost issues.

- (2) While it may be subsumed within the foregoing paragraph, I wish to reiterate the request, previously raised in my correspondence and in meetings of counsel, that all of the relevant documentation and back up relating to the preparation and delivery of budget submissions and budget variance reports be produced. In addition, the individuals responsible for preparing these reports should be requested to produce their files/notes/records, the relevant documentation should be reviewed with said individuals and they should be called as witnesses, to explain the process, describe what happened and provide evidence as to their knowledge and belief as to the state of knowledge of the recipients of the budget documents about the status of the computer leases, the quantum of assets on lease, and the costs of the leases. The primary individuals in question are: Ruby Sawh (see, e.g. Begdocs 30579, 5246, 13801, 12229 and 15529, documents which are illustrative of her involvement) and Val Sequeira (see, e.g. Begdocs 64048, 13801, 12229, and 15529). This request relates to those persons, although there were others who appear to have been involved.

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- (3) The current director of IT for the City of Toronto should be called to clarify/explain the current policy of the City regarding the refresh of its computers, address/explain the reason for the state of the City's IT administration (as detailed in the second Assetlinx report), and explain why the City has not previously acted upon various external and internal reports documenting, over the past 3 years, the urgent need for the City to address its refresh policy and implement organizational changes to effectively manage its computer/technology assets.
- (4) In addition to the production of budget submissions and variance reports and related documents, it is submitted that the documents referred to in my email to Mr. Capern dated September 5, 2003 (paragraphs 4 and 5), which were also the subject of, inter alia, my letters dated September 26, October 8 and 30, 2003, should be subpoenaed. It is respectfully submitted that the appropriate person to be named in such a subpoena would be Shirley Hoy.
- (5) Martin Willschick, and Glenn Vollebregt - These individuals were the subject of prior correspondence with Ms. Groskaufmanis. My understanding is that the interviews with these individuals were conducted by telephone, that they were very brief, and that the individuals were not provided with any of the documents which reflect their involvement in the 3 v. 5 year issue or any of the other matters reflected in the documents. Apart from the documents referring to his attendance at meetings relating to the 3 v. 5 year issue, Mr. Willschick also attended various meetings where the topic of leasing was discussed and was involved in the report to City Council (see, e.g. Begdocs 13706, 64000, 12261, and 31879). In the case of Mr. Vollebregt, he appears to have been involved in the budget process at any early stage (see, e.g. Begdoc 13801). It is respectfully submitted that these individuals should be reinterviewed and their evidence about these matters adduced after their memories have been refreshed with reference to the relevant documents. If, in principle, you are receptive to this request, I can provide you with a full list of the relevant documents in chronological order.
- (6) Frank Spizarsky - During the course of Mr. Pagano's evidence, I inquired as to whether Mr. Spizarsky had been interviewed. I was told he had not been interviewed; because of a belief that he did not appear to have been involved in any material way. There are numerous documents in the data base, some of which had only been produced on the eve of Mr. Pagano's evidence, which document Mr. Spizarsky's extensive involvement in the establishment of the contract management office, the applicable leasing procedures and rules, etc. (see, e.g. Begdocs 3864, 4219, and 64042 and pages 407-410, 420, 431A, and 432-434 from the Brittain document book which I submitted during Mr. Brittain's cross-examination). Subsequently, there was passing reference to the fact that Mr. Spizarsky had left the City

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and that there were potential medical issues which might affect his recollection/utility as a witness, despite his documented, material involvement. I am not privy to his medical status or as to any inquiries you have made about these matters, so I simply raise this as a matter for your consideration. If appropriate inquiries have been made and if, as a result Commission Counsel is in possession of evidence demonstrating that Mr. Spizarsky is unavailable or that his evidence (after appropriate steps were taken to refresh his memory with the relevant documents) would be useless, I would ask that this be disclosed, in summary form. Otherwise, I would have thought that Mr. Spizarsky should be called.

4. Finally I should add that there have been instances in the record where assertions have been made, but where the relevant witness(es) have not been called. MFP's witness request does not include all of these instances/witnesses. MFP will take the position, in its final submissions, that when factual assertions have been made or issues raised that affect MFP, without the appropriate witness(es) having been called, or in circumstances where full documentary production has not been made, it would be unfair and inappropriate for the Commissioner to make any findings in respect of such matters.
5. I apologize for the delay in the completion of this letter which in part, has been a function of my focus on the other issues raised in my letter of March 31, and my underestimation of the time needed to fully review those matters and deal with the remaining witness issues, in light of recent developments. I invite you to contact me to discuss the contents of this letter. As indicated, I am available to meet on short notice (tomorrow, this weekend, or on Monday) to review same with you or answer any questions you may have.
6. Thank you for your consideration of the foregoing.

Yours very truly,

BELLMORE & MOORE

David C. Moore

Per: David C. Moore
DCM/km



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April 2, 2004

Toronto Computer Leasing Inquiry
East York Civic Centre
850 Coxwell Avenue
Toronto, Ontario
M4C 5R1

**Attention: Ronald D. Manes
Commission Counsel**

Dear Mr. Manes:

Re: Toronto Computer Leasing Inquiry (the "Inquiry")

We have now completed the review of the transcripts (where applicable) of the witnesses listed in paragraph 9 of my letter dated March 31, 2004.

Having regard to the evidence of Mr. Andrew at pages 152 – 153 on October 8, 2003, and to the evidence of Ms. Viinamae at page 148 line 23 to page 149 line 3 on October 15, 2003, it appears unnecessary to put the questions which I have suggested to these witnesses.

In the case of Ms. Liczyk, there are aspects of her evidence from which one would reasonably infer that the answer to the questions I have suggested is "no" (e.g. paragraph 177 of Ms. Liczyk's affidavit, and her testimony at page 116 line 24 to page 117 line 16 on November 12, 2003), but to avoid any possible uncertainty I would ask that the questions be described to her. Based on the foregoing review, I would confirm



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that the request continues to apply to the balance of the witnesses listed in paragraph 9 of my March 31, 2004 letter.

Thank you for your consideration of the foregoing.

Yours very truly,

BELLMORE & MOORE

David C. Moore

Per: David C. Moore
DCM/km

APR-06-2004 10:34 AM TCLI

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TORONTO COMPUTER LEASING INQUIRY

The Honourable Madam Justice Bellamy
Commissioner

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PRIVATE & CONFIDENTIAL

April 6, 2004

Mr. David C. Moore
Bellmore & Moore
Barristers and Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

Dear Mr. Moore:

I am writing in reply to your letters of March 31, April 1, and April 2, 2004 to Mr. Manes regarding MFP's request to call or recall witnesses.

The Commissioner and Commission Counsel have reviewed your letters carefully. We have taken several days to reply because we wanted to ensure that we reviewed each of your requests individually and, where appropriate, also reviewed transcripts and documents.

After careful consideration, we have decided not to call or recall the witnesses or evidence as set out in your correspondence. We want to assure you that the Commissioner has given very careful consideration to each of your requests for calling or recalling witnesses. In so doing, the Commissioner has considered whether a compelling case has been made to call any witness. The Commissioner has also considered the fairness to any affected person, the helpfulness of the evidence to her, and the economy and efficiency of calling the evidence.

Yours very truly,



pm Ronald D. Manes
Commission Counsel