

TORONTO COMPUTER LEASING INQUIRY

Reply Submissions on Behalf of Lana Viinamae

Counsel for Lana Viinamae:

WEIRFOULDS LLP
Barristers & Solicitors
The Exchange Tower, Suite 1600
P.O. Box 480
130 King Street West
Toronto, ON M5X 1J5

Tel: (416) 365-1110

Fax: (416) 365-1876

Raj Anand
Bay Ryley

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I. REPLY TO SUBMISSIONS OF THE CITY OF TORONTO

In these submissions, Ms. Viinamae is only replying to the most glaring errors contained in the City of Toronto's submissions, and only to the extent that her original submissions do not entirely address these errors.

(a) Credibility of the City's Submissions

1. At least from the standpoint of its approach and attack on Ms. Viinamae, the credibility of the City's submissions was irretrievably lost in a single "sound bite" or "headline" to which the City descended: "Oracle, a Deliberate Campaign of Obfuscation".

2. On receipt of the City's submissions, the shocking and reprehensible nature of this accusation led the reader immediately to scour the lengthy argument for even one reference to "deliberate" misfeasance or "obfuscation". Of course, there was none, since there never was any evidence of the sort. Nor was such a suggestion ever made during the hearings. With respect, it is inexcusable that the City would have made such an obviously false, unfounded and unfair allegation in its written argument.

3. If indeed the City believed that Ms. Viinamae led a "deliberate campaign of obfuscation", it had a duty to put this accusation to her during her cross-examination.

4. It is respectfully submitted that this point should be important to the Commission, because it relates to a wider issue that must be addressed in evaluating the objectivity and impartiality of the party that created this Inquiry.

5. Put bluntly, the City was hardly objective, neutral and dispassionate in its approach to the evidence and in its submissions, and so it is left to the Commission alone to

assume this role. The City was no different from any "private" party with standing at the Inquiry, and the Commission should not treat its positions as if it were so.

6. Counsel for the City obviously represented the interests of their client, and their client was comprised of current employees and representatives of the City, not by former employees such as Ms. Viinamae. The City's position was characterized by an understandable, but not reliable, persuasive, or helpful pattern: to refuse to challenge the testimony or conduct of its ongoing employees and to blame everything on its former employees, from whom it did not take instruction.

(b) Chapter 13 – The Oracle Acquisition

7. The City's criticism of Ms. Viinamae is contradictory in several places. For example, the City on the one hand criticizes Ms. Viinamae for relying on Oracle's user data, while at the same time suggests that Ms. Viinamae should have made use of Oracle's consulting services.¹ The City did not begin compiling its own usage statistics until February 2002. As Ms. Viinamae has submitted, Brendan Power worked with Larry Griffith to determine the City's usage of Oracle's seats and to calculate the credit for existing licences. Therefore, in the absence of City records, the City was able to validate Oracle's numbers to see that they were reasonable.²

8. The City submits that the Y2K Project was run on the basis of business cases "and they were treated as mandatory."³ As the evidence has shown, written business cases were not mandatory: City Auditor Jeff Griffiths himself stated in a February 2002 e-mail that he thought

¹ Closing Submissions of the City of Toronto, chapter 13, paragraph 16.

² Closing Submissions of Lana Viinamae, paragraph 453.

³ Closing Submissions of the City of Toronto, chapter 13, paragraph 19.

the Oracle report issued the same month should recommend that business cases be mandatory (it did not).⁴

9. Since a business case was neither required nor requested,⁵ there is no basis at all for the City's submission that "[Ms. Viinamae's] insistence that no written business case was necessary in the circumstances should be soundly rejected."

10. Ms. Liczyk's and Mr. Andrew's testimony that they expected Ms. Viinamae would develop a business case for the Oracle acquisition must be regarded with scepticism. For one, they signed the Oracle contract and other associated documents in spite of the fact that they had never seen a business case. Further, neither Mr. Andrew nor Ms. Liczyk ever requested one of Ms. Viinamae.⁶

11. The same is obviously true of project charters: no one on the Y2K Steering Committee, and no one who signed the relevant documents, ever requested a project charter. The City submitted that Ms. Viinamae should have developed a project charter for the acquisition. From the guidelines given to staff, it does not appear that project charters were intended to be used for acquisitions,⁷ and as the City submission itself states, project charters were not mandatory.⁸ The City apparently agrees with Ms. Viinamae's testimony in its submission that "project charters were not used extensively until after 2000".⁹ Clearly, there is no basis for faulting Ms. Viinamae for not making use of a procedure that was "used on occasion", and was never requested by her superiors.

⁴ Closing Submissions of Lana Viinamae, paragraphs 517-518; Begdoc 72581.

⁵ Closing Submissions of the City of Toronto, chapter 13, paragraph 77.

⁶ Closing Submissions of the City of Toronto, chapter 13, paragraph 22.

⁷ Begdoc 56340.

⁸ Closing Submissions of the City of Toronto, chapter 13, paragraph 29.

⁹ Closing Submissions of the City of Toronto, chapter 13, paragraph 31.

12. Ms. Viinamae is referred to in the City's submissions as "the driving force" and the "champion" of the Oracle acquisition.¹⁰ In fact, it was a decision made by the Y2K Steering Committee, with sufficient justification and documentation to satisfy the senior administrators on that Committee. Indeed the City submits that Ms. Viinamae's evidence that the transaction was approved by the Y2K Steering Committee "must be accepted," and, contrary to the testimony of Mr. Andrew and Ms. Liczyk, the approval was "clearly documented" in the January 6, 2000 minutes of the Steering Committee.¹¹

13. The evidence clearly contradicts the following statement in the City's submissions:

"The decision to place the Oracle acquisition on lease appears to have been made exclusively by Viinamae, in the absence of advice or information from any other person. The other members of the Steering Committee were not aware and did not have input into the decision to lease the software and maintenance. The Executive Director, I & T did not have input into the decision. The CFO and Treasurer was not part of the decision making process."¹²

Yet the City submits that the January 6, 2000 reference in the minutes to approval of the Oracle acquisition should be accepted,¹³ and these minutes refer specifically to the acquisition being leased: "the Steering Committee approved the leasing of the Oracle Enterprise Licences for 5 years at a cost of \$11,000,000." This is consistent with Ms. Viinamae's evidence that she was following Ms. Liczyk's direction to put all software on lease. Further, Ms. Liczyk signed Equipment Schedule 838-2, which placed the Oracle acquisition on lease. And, beginning in late 1999, Ms. Liczyk, Mr. Andrew, and Mr. Brittain, among others, received a spreadsheet prepared

¹⁰ Closing Submissions of the City of Toronto, chapter 13, paragraphs 2, 39.

¹¹ Closing Submissions of the City of Toronto, chapter 13, paragraph 5.

¹² Closing Submissions of the City of Toronto, chapter 13, paragraph 136.

¹³ Closing Submissions of the City of Toronto, chapter 13, paragraph 5.

by Ms. Viinamae and updated by Mr. Brittain that indicated the Oracle software was placed on lease.

14. The City's submission that the 2,000 individual licences may have been a valid year 2000 acquisition for "business-as-usual" on January 1, 2000, "but that the shift to the ELA made the acquisition a non-year 2000 issue," is not only illogical, but also supports Ms. Viinamae's evidence. Since the City concedes that the 2,000 licences may have been required for Y2K, it essentially confirms Ms. Viinamae's calculation that the ELA was more cost-effective than purchasing 2,000 run-time licences.¹⁴ Indeed, Ms. Viinamae's calculation was never challenged by any party with standing or by Commission counsel.

15. The City's gives contradictory accounts of Mr. Power's view of Oracle as a Y2K expenditure.¹⁵

16. The City submits that Ms. Viinamae "hypothesized" that there would have been no maintenance contract in place on December 31, 1999, if there was a problem. This was more than hypothesis; the fact is that the City's bronze support contract did not cover holidays including January 1, 2000. The fact that this statement is not contained in the Y2K Steering Committee minutes does not impugn its accuracy.¹⁶

17. The City relies on the evidence of Stephen Wong and Larry Griffith to assert that Oracle acquisition was not a Y2K issue. However, from the cross-examination of Mr. Wong, it became very clear that his "investigation" was wholly insufficient. There were also limits to Mr. Griffith's knowledge, since he was a representative of an arms-length corporation. Mr. Griffith

¹⁴ Closing Submissions of the City of Toronto, chapter 13, paragraph 48.

¹⁵ Closing Submissions of the City of Toronto, chapter 13, paragraphs 49 and 120.

agreed that as a result, he would not have had all of the information about licence non-compliance, for example.¹⁷

18. The City suggests in its submissions that Ms. Viinamae intentionally characterized the acquisition as a Y2K expense in order to avoid any competitive process. It submits that the evidence at the Inquiry "can convincingly establish" that the acquisition was not required for Y2K, and that Ms. Viinamae's characterization "was either inept or a stretch." Elsewhere, the City acknowledges that the 2,000 licences "may" have been necessary for Y2K; it cannot have it both ways. The City is in effect faulting Ms. Viinamae for not having recommended the spending of \$2,000,000 more than was already spent on the acquisition.¹⁸ The submissions of Ms. Viinamae establish the basis for the Oracle acquisition being a Y2K acquisition, and one necessary for Y2K.¹⁹

19. According to the City's submissions, a sole source policy was not formally in place until purchasing by-law no. 151-2000 came into effect on March 2, 2000.²⁰

20. As the City itself submits, Ms. Viinamae's job description as Director of the Y2K project indicated that she was responsible for solving the Y2K problem as it related to the continuity of systems, services, equipment, contractual obligations, and relations with external organizations and the public. She was responsible for identifying and mitigating any liabilities on the part of the City that might result from disruptions or failures of systems and services.²¹ By identifying the need for Oracle Enterprise licenses for Y2K preparation and entering into an

¹⁶ Closing Submissions of the City of Toronto, chapter 13, paragraph 42.

¹⁷ Closing Submissions of Lana Viinamae, paragraph 445.

¹⁸ Closing Submissions of the City of Toronto, chapter 13, paragraph 3.

¹⁹ Closing Submissions of Lana Viinamae, pages 131 – 136.

²⁰ Closing Submissions of the City of Toronto, chapter 2, paragraph 217.

²¹ Closing Submissions of the City of Toronto, chapter 2, paragraph 134

agreement with that company, Ms. Viinamae carried out the responsibility set out in her job description.

21. The City submits that Ms. Viinamae "did not obtain any approval in principle for the acquisition of the Oracle licences from the Year 2000 Committee at its October 7, 1999 meeting."²² The City errs and misrepresents Ms. Viinamae's evidence if it is now asserting that she claimed approval "in principle" was given on October 7, 1999. In fact, Ms. Viinamae was directed at that meeting to begin looking at an Oracle enterprise agreement (as the City correctly sets out in chapter 13, paragraph 59 of its submissions). The City then argues that Ms. Viinamae's evidence about the approval process for Oracle was "self serving and improbable" because there was no "viva voce" or documentary evidence to support Ms. Viinamae's "contention" that approval in principle was given in October. Indeed, it was not. Approval was given at the December 9th meeting. In the end, the City accepts the evidence that the minutes of the Y2K Steering Committee document the approval of the acquisition,²³ so it is not clear why it expends such effort to impugn her testimony (and contradict itself) on this point.

22. The City offers a "catchy" subtitle in "Viinamae Misled CAO as to Nature of Oracle Acquisition." This suggests that Ms. Viinamae intentionally misled Mr. Garrett, which she did not. Ms. Viinamae acknowledged that the delegated approval form did not describe the entire acquisition, but as she has submitted, the City obtained much more than what is described in the delegated approval form.

²² Closing Submissions of the City of Toronto, chapter 22, paragraph 30.

²³ Closing Submissions of the City of Toronto, chapter 13, paragraph 5,79.

23. The City submits that the November 12, 1999 proposal from Oracle to the City was for \$11,336,651. This is incorrect: the November 1999 offer was for \$13.5 million, which was only reduced through Ms. Viinamae's negotiation.²⁴

24. The City noted that Ms. Viinamae testified that the ELA for \$11.3 million was more cost effective than purchasing 2,000 licences for over \$13 million: "Accordingly, it was the only option she considered. She did not explore any alternatives."²⁵ The City does not propose any alternatives in its submissions. Since the ultimate agreement was the most cost-effective, and since that Oracle was the defacto standard of the City, the City's suggestion that Ms. Viinamae should have "explored" other "alternatives" is both unfair and illogical.

25. Brian Loreto testified that he did not receive a reply from Mr. Power, to whom he asked in an e-mail: "Brendan, if this is an enterprise agreement and is not part of the Council approved Y2K budget then is there a separate Council approval for it?" Mr. Loreto testified that he assumed from the lack of reply that the Oracle acquisition was covered by the Year 2000 authority, and the City apparently accepts this extraordinary assumption uncritically.²⁶ It is submitted that this is an example of the City making favourable conclusions about its own employees, where a similar generosity is rarely afforded to witnesses ex-employees of the City. There is no reasonable basis to assume that a lack of reply to this message indicated that the acquisition was covered by the Y2K authority. The question required a yes / no answer.

26. Although the City paid the entire amount of the Oracle acquisition to MFP up-front, MFP made annual payments to Oracle. However, Ms. Viinamae was not aware of these

²⁴ Closing Submissions of the City of Toronto, chapter 13, paragraph 97.

²⁵ Closing Submissions of the City of Toronto, chapter 13, paragraph 107.

²⁶ Closing Submissions of the City of Toronto, chapter 13, paragraphs 119 –21.

facts until the start of this Inquiry. The City suggests that her "rudimentary understanding" was the cause of the payment terms between MFP and Oracle,²⁷ but as Rob Wilkinson testified, these payment terms were not clear in either the letter from MFP to Oracle, or in the purchase order. There is no way that Ms. Viinamae could have known this. In fact, Mr. Griffith informed her that maintenance was to be paid up front rather than annually.²⁸

27. The City submits that the evidence "overwhelmingly established" the "financial hazards" of putting the entire Oracle contract on lease,²⁹ yet it cites no such evidence. It also submitted that MFP "knowingly exploited Viinamae's lack of knowledge and sophistication about leasing costs and leasing contracts." There is no evidence that Ms. Viinamae was taken advantage of by MFP. Ms. Liczyk, who has considerable knowledge and sophistication about leasing costs and leasing contracts, was the person who signed the Equipment Schedule for Oracle. She, Mr. Andrew, Mr. Brittain and many others knew that the Oracle acquisition was being leased and never raised any concerns about it.

(e) Communication Skills

28. The City of Toronto submits that Ms. Viinamae's communication skills were not at the level they should have been for a senior manager. Yet Ms. Viinamae was an employee of the City of Toronto for 13 years. She was consistently promoted and given positive performance evaluations. She was asked by her superiors to apply for the Y2K Director position, and was effectively hand-picked for the job. During the time she was Y2K Director, Ms. Viinamae made a number of public and media appearances on behalf of the City of Toronto to communicate with

²⁷ Closing Submissions of the City of Toronto, chapter 13, paragraph 144.

²⁸ Begdoc 21059

²⁹ Closing Submissions of the City of Toronto, chapter 13, paragraph 8.

the residents about Y2K preparedness. There was never any suggestion made at the time that Ms. Viinamae did not communicate these important messages effectively.

29. The City criticized Ms. Viinamae for sending e-mail messages "indiscriminately to many people in different departments," which, it is alleged, deflected responsibility, obfuscated responsibility, and "encourage[ed] passivity in recipients."³⁰ On the contrary, Ms. Viinamae seems to have been virtually the only City employee who made efforts to clarify her own responsibilities, and those of other staff she worked with. There are numerous examples of Ms. Viinamae confirming the direction she was given, the action she had taken, and any issues that needed to be identified for others (e.g. signing authority, CMO, leasing questions for Finance.) The City cites Ms. Viinamae's e-mail announcing the signing of a five-year equipment schedule and suggests that the e-mail refers "ambiguously" to the direction being "as requested by Finance." There was, and is, nothing ambiguous about this statement. In particular, if senior Finance department members who received the e-mail, such as Ms. Liczyk and Mr. Brittain, felt that Ms. Viinamae's e-mail was inaccurate or ambiguous, they had every opportunity to request clarification.

30. The City submits that Ms. Viinamae failed to "articulate clearly who was responsible for actions that were taken or were to be taken," yet the only example it cites (which it does three times in the same footnote) is Ms. Viinamae's e-mail about the five-year lease term.³¹ Again, Ms. Viinamae should be commended, rather than condemned, for documenting and notifying others of the actions she was taking. The fact that many recipients failed to

³⁰ Closing Submissions of the City of Toronto, chapter 22, paragraph 11.

³¹ Closing Submissions of the City of Toronto, chapter 22, paragraph 11.

respond, and frankly chose to ignore information that concerned them, is not the fault of Ms. Viinamae.

31. The City submits that some of Ms. Viinamae's answers in her testimony were "unclear." Speaking of "communication skills," many of the questions put to Ms. Viinamae by counsel for the City were unclear. An example is the excerpt from the transcript which the City has reproduced at paragraph 25 of chapter 22. Each question posed to Ms. Viinamae contains three or four questions in one. It is impossible to ascertain which question Ms. Viinamae was supposed to answer.

32. The allegation that Ms. Viinamae failed to review drafts of the RFQ sent to her specifically for her review is inconsistent with the criticism that Ms. Viinamae sent e-mails "indiscriminately to many people." The second criticism, but not the first, suggests that it is acceptable for city employees to fail to respond to emails.³²

33. The City also criticized Ms. Viinamae for having "jargon" in her answers. Ms. Viinamae is an IT professional, and was cross-examined on many technical issues. It only makes sense that she would use the language of IT professionals, which may be somewhat foreign to non-IT professionals. It can only be expected that complicated issues give rise to complex answers from witnesses.

34. The City's rhetoric at paragraph 17 of chapter 22 suggests that Ms. Viinamae was "indifferent" to a number of issues. There is no evidence whatsoever that Ms. Viinamae was indifferent to any of the issues listed; she certainly was not indifferent to the protection of the City's best interests.

35. For all of Ms. Viinamae's omissions that are alleged by the City, nowhere does it acknowledge the fact that Ms. Viinamae worked 12 – 15 hours a day on a regular basis. It is not clear which part of her responsibilities the City believes she should have discarded.

(f) Knowledge of Leasing, IT lead, and Brendan Power

36. Ms. Viinamae was criticized by counsel for the City and by Mr. Andrew for not taking steps to "educate herself" about leasing. It was Mr. Power who was the IT lead for leasing, and he was put in that position by Mr. Andrew. Both men knew of Ms. Viinamae's lack of experience in computer leasing. Ms. Viinamae's superiors were aware of her level of knowledge about leasing, and if they had deemed it appropriate, they could have directed further education. However, Mr. Andrew, Mr. Power and members of the Finance department had significant roles to play and had leasing experience. Time was short, and Ms. Viinamae was pressed to assume the Y2K role by a longstanding manager who knew her background very well.

37. Ms. Viinamae was also faulted for relying on Mr. Power as a leasing expert "where through adequate supervision she would have learned of his limitations."³³ It was Mr. Andrew who supervised Mr. Power. Mr. Power was known to be a leasing expert because of his substantial experience with the provincial government. Because of Ms. Viinamae's comparative lack of knowledge, she would not have been in a position to identify the limitations of someone who had had many years' experience.

³² Closing Submissions of the City of Toronto, chapter 22, paragraphs 11, 19.

³³ Closing Submissions of the City of Toronto, chapter 22, paragraph 21.

38. The City holds Mr. Andrew primarily responsible for assigning Mr. Power the task of drafting the RFQ when, in its view, he was not qualified. It makes no sense for the City to then fault Ms. Viinamae for failing to determine that he was not qualified for the job.³⁴

39. As a further contradiction, the City refers to Ms. Viinamae as having been the IT lead, and in another place notes that Mr. Andrew "failed to designate a lead at the beginning of the largest tender process in the history of I & T", and "even though Mr. Andrew considered Mr. Power to be the defacto lead".³⁵

40. According to the City's submissions, it was acceptable for those other than Ms. Viinamae to have relied on Brendan Power for leasing expertise. For example: "PMMD was entitled to rely on the expertise within I & T, particularly since it was widely understood that Power had leasing expertise. Unfortunately Power did not."³⁶

41. The City has criticized Ms. Viinamae because she relied on the opinion of Mr. Power to state that there was sufficient authority for the five-year lease term. Elsewhere in the City's submissions, the failure of Len Brittain to respond to Ms. Viinamae's October 1, 1999 e-mail about the five year leases is explained by Mr. Brittain having "felt secure" and "particularly confident" because of Mr. Power providing "sufficient leasing expertise" to the IT department.³⁷ This is yet another instance of a conveniently variable standard, dependent on whether the witness is a current City employee.

³⁴ Closing Submissions of the City of Toronto, chapter 6, paras. 37-38.

³⁵ Closing Submissions of the City of Toronto, chapter, para. 37.

³⁶ Closing Submissions of the City of Toronto, chapter 6, para. 19.

³⁷ Closing Submissions of the City of Toronto, chapter 10, paragraph 208

42. The allegations contained in paragraph 23 (b) and (c) of chapter 22 of the City's submissions are addressed in Ms. Viinamae's submissions.³⁸

43. The City submits that as the IT lead for the computer leasing transaction, Ms. Viinamae assumed this responsibility without familiarizing herself with the RFQ, the council report, or the MFP contractual documents, and therefore could not discharge her responsibilities. This points to the alternative explanation: she was not the IT lead. The fact that she did not take these steps is understandable; they were not her responsibilities.

(i) Jeff Lyons

44. The City submits that Jim Andrew understood that Ms. Viinamae wanted Mr. Lyons to assist her in obtaining the acting Executive Director of IT position.³⁹ This is an inaccurate statement of the evidence, because on cross-examination, Mr. Andrew admitted that Ms. Viinamae never told him she had asked Mr. Lyons to make calls on her behalf.⁴⁰

45. Contrary to the City's submission, there is no evidence that Ms. Viinamae knew Mr. Lyons supported her application or that she "knew his tactics."⁴¹ Ms. Viinamae testified that she never asked Mr. Lyons to help her obtain the position, and testified that if she had known Mr. Lyons was going to make a phone call on her behalf, she would have asked him not to. Mr. Lyons also testified that Ms. Viinamae never asked him to do any favours for her and that she probably did not even know he had made calls.⁴²

³⁸ See Closing Submissions of Lana Viinamae, paragraphs 181 – 83.

³⁹ Closing Submissions of the City of Toronto, chapter 22, paragraph 42.

⁴⁰ Closing Submissions of Lana Viinamae, paragraph 582.

⁴¹ Closing Submissions of the City of Toronto, chapter 22, paragraph 44.

⁴² Closing Submissions of Lana Viinamae, paragraph 578 – 579.

(j) \$43 Million Dollar Cap

46. The City submits that Ms. Viinamae envisioned a leasing program of "almost unlimited proportions" with "no predefined limit on the amount of equipment to be leased." This is an inaccurate portrayal of Ms. Viinamae's evidence, as she considered the amount of equipment leased to be based on the approval in the capital and operating budgets of each department.⁴³

47. She understood that there was reporting back on these expenditures through the budget process on the non-program budget increases. The February 22, 2000 and the March 15, 2001 reports are examples of reporting back.⁴⁴ Mr. Andrew also did not consider IT to have an unlimited budget, but rather that the limitation was departmental operating budgets.⁴⁵ The MFP contract was not a "free for all" as suggested by the City; rather, the City's budgetary approval process, in which budgets were approved by Council, authorized the expenditures under the Council reports.

48. The City pointed out that Kathryn Bulko did not agree with Ms. Liczyk's interpretation of the January 17th, 2001 meeting, yet it fails to mention that Ms. Bulko testified that it was never her interpretation of the Council report that there was a limit of \$43 million worth of assets being put on lease. Ms. Bulko was the Manager of the CMO. The City ignores the evidence of its current employees where it does not suit its purposes to accept it.⁴⁶

⁴³ Closing Submissions of the City of Toronto, chapter 22, paragraphs 15 – 16.

⁴⁴ Closing Submissions of Lana Viinamae, paragraph 311.

⁴⁵ Testimony of Jim Andrew, September 29, 2003, p. 70, line 21, p. 72, line 4; October 2, 2003, p. 110, lines 8-17.

⁴⁶ Testimony of Kathryn Bulko, August 11, 2003, p. 96, line 18, p. 101, line 1.

(h) Lease Rate Factors

49. The City has criticized Ms. Viinamae for failing to ensure that lease rate factors and/or monthly rent had been analyzed by anyone in Finance. This is another example of how former City employees (in contrast to current ones) are blamed for not carrying out the duties that were clearly those of current employees, particularly those of members of the Finance department. The fact is that no one in the Finance department took any initiative to carry out responsibilities that were within their jurisdiction and expertise. Because only former employees are blamed by the City, it does not present a complete or accurate picture of events. It is impossible that no current employees are responsible for any issues related to the leasing contract with MFP, but that is the conclusion that is reached by reading the City's voluminous submission.

(k) Responsibility of the Finance Department

50. Ms. Viinamae can in no way be blamed for the wilful neglect of the computer leasing program by various members of the Finance department's. Under the July 1999 council report, Finance had a joint responsibility to report back to the Policy and Finance committee on new leasing proposals and financial reports "for the balance of the equipment and software."

51. The City has characterized the contract with MFP as being the exclusive responsibility of IT. Consequently, it appeared to blame members of IT, and particularly Ms. Viinamae, for Finance's neglect of the computer leasing program, in spite of the Council report, and in spite of her many pleas for assistance. The evidence is clear that members of the Finance department (including Mr. Brittain, Ms. Liczyk, Mr. Altman, Mr. Rabadi, Mr. Pagano and Mr. Colley) knew that the amount of assets on lease was over \$43 million, and knew that MFP was regarded as a vendor of record. If any of those people failed to "appreciate" that fact, it is

because they were not paying attention. There is absolutely no basis for suggesting that Finance played "only an intermittent supportive role". They clearly shirked their responsibility. It was the role of Finance not to "police" IT, but rather to take a leadership role in ensuring that, among other things, expenditures were monitored, purchasing practices were followed, and accounting and financial analysis of lease rates was carried out. These were the financial aspects of the computer leasing transaction that IT did not have the experience or the responsibility to deal with. Rather than sitting back and waiting to be asked (and they were asked on many occasions), Finance should have taken some initiative and assumed the appropriate leadership role on financial issues.

52. The City submits that IT was looking to the Finance Department "to provide more assistance than I & T ever appears to have received." The City blames this on a "disconnect" within the Finance Department. Indeed, Finance did not live up to the reasonable expectation of IT. The "disconnect" within Finance is blamed in part on the fact that Mr. Brittain was apparently "looking to dissociate Treasury generally and himself in particular, from the ongoing leasing program." Mr. Brittain never notified anyone in IT that he was choosing to "dissociate" himself from his responsibilities, and it was hardly acceptable for him to have unilaterally made that decision.⁴⁷

53. The City concedes that Ken Colley knew that more than \$43 million had been spent, but claims that "his knowledge is irrelevant" because he was not aware that only \$43 million was approved by Council. It claims he had "no reason to independently verify this assertion" (presumably, by looking at a publicly-available Council resolution). Mr. Colley was advised in a December 31st, 2000 e-mail that the total amount of assets on lease was \$73 million.

The City submits that "Colley was not alive to the issue of the \$43 million limit of Council approval."⁴⁸ Once again, witnesses who are current employees of the City are excused for conduct that former employees are not.⁴⁹

54. Again, when members of the Finance Department testified that they did not "appreciate" the information Ms. Viinamae gave them (such as Mr. Colley being informed that \$77 million of assets was on lease, or Mr. Brittain reviewing, updating and discussing the spreadsheet prepared by Ms. Viinamae that set out \$24 million of assets as "items not included in original lease estimate") this is shrugged off by the City as being acceptable.

55. The preponderance of evidence indicates that Ms. Liczyk's version of the January 17, 2001 meeting differs from that of the other participants who testified at the Inquiry. None of them recalls Ms. Liczyk directing that no further items should be put on the MFP lease. This version of the evidence is consistent with Ms. Liczyk not being surprised or alarmed that there was more than \$43 million of assets on lease. The City accepts Ms. Liczyk's evidence that she did not view \$43 million as a cap (since this would otherwise jeopardize the argument that others in Finance did not), yet rejects her evidence about the meeting. Clearly, the City only accepts the evidence of former employees when it conveniently supports that of current employees.

⁴⁷ Closing submissions of the City of Toronto, chapter 14, paragraph 7.

(c) Five-Year Leases

56. The City's submission that Ms. Viinamae failed to raise IT's opposition to five-year lease terms with Ms. Liczyk before signing the first equipment schedule is incorrect. Ms. Viinamae did so around the end of September.⁵⁰

57. That submission is also contradictory, because the City seems to have accepted Ms. Viinamae's evidence that she met with Ms. Liczyk in the lobby of City Hall in late September 1999 where Ms. Viinamae "communicated her dissatisfaction with the decision."

58. The City submits that Ms. Viinamae "failed to work collaboratively as a team with other I & T Directors and with other senior employees in the City, which led directly to the extension of the lease terms from 3 to 5 years and to the acquisition of the Oracle ELA."⁵¹ There is not an iota of evidence that any "failure to work collaboratively" (which Ms. Viinamae denies) led to the extension of the lease term or the acquisition of Oracle. It should be noted that the testimony cited by the City indicates nothing of the sort.

(d) Signing Authority

59. The City submits that Ms. Viinamae testified that she derived her signing authority from the clause in the Council report authorizing the appropriate City officials to carry out the recommendations, and that she did not seek further confirmation of her authority. These

⁴⁸ Closing submissions of the City of Toronto, chapter 14, paragraph 41.

⁴⁹ Closing submissions of the City of Toronto, chapter 14, paragraph 11.

⁵⁰ Closing Submissions of Lana Viinamae, paragraph 176.

⁵¹ Closing Submissions of the City of Toronto, chapter 22, paragraph 11

issues are addressed in Ms. Viinamae's submissions -- the Council report was not the only authority she relied on.⁵²

II. REPLY TO SUBMISSIONS OF JIM ANDREW

60. Mr. Andrew submits that "the leasing transaction was a Year 2000 program initiative and...Ms. Viinamae headed up that program..." This is inaccurate: the entirety of the acquisitions were not for Y2K preparation, particularly given that a significant proportion of the assets were leased after January 1, 2000.

61. In his submissions, Mr. Andrew again raises the issue of Ms. Viinamae's dual reporting relationship for Y2K to Margaret Rodrigues and Mr. Andrew. The issue was clearly disposed of after the testimony of Ms. Rodrigues, who supported Ms. Viinamae's, rather than Mr. Andrew's, evidence. The testimony of Ms. Rodrigues cited in Mr. Andrew's submissions consists of incomplete portions and inaccurate quotations that are highly misleading.

62. Regarding the responsibility of Mr. Andrew and Ms. Liczyk (as is set out in the July 1999 report), Mr. Andrew submits: "Mr. Andrew had every reason to believe that that information had been provided to Finance by Year 2000 project staff and he had no reason to doubt that timely submissions had been made. In that, he relied on representations from Mr. Lizcyk, and, to a lesser degree, Ms. Viinamae."⁵³ There is absolutely no evidence that Ms. Viinamae made any representation of the sort, and no evidence that Mr. Andrew ever asked her to carry out this duty on his behalf.

⁵² Closing Submissions of Lana Viinamae, paragraphs 288 - 298

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⁵³ Closing Submissions of Jim Andrew, page 80.