

IN THE MATTER OF THE TORONTO COMPUTER LEASING INQUIRY

**WRITTEN SUBMISSIONS ON BEHALF
OF PAULA LEGGIERI**

TO: THE HONOURABLE MADAM JUSTICE DENISE BELLAMY, COMMISSIONER

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A. INTRODUCTION

1. This portion of the inquiry was to have dealt with the discrete issue of whether Paula Leggieri's employment with the City of Toronto was adversely effected as a result of her co-operation with KPMG or Commission counsel.

2. This particular segment of the inquiry arose from testimony given by Ms. Leggieri on April 9th and 10th, 2003. Prior to that testimony, Ms. Leggieri had co-operated both with KPMG and Commission counsel by voluntarily submitting to interviews. Her April testimony was required by subpoena. Ms. Leggieri had no choice but to testify.

3. The essence of Ms. Leggieri's testimony which led to this particular segment of the inquiry can be summarized as follows:

- a) Ms. Leggieri believed that she had done a good job in the position of Supervisor of Computer Leasing;
- b) In the fall of 2002 Ms. Leggieri became very concerned about losing her job as a result of discussions with her superior, Kathryn Bulko. Ms. Leggieri complained that she was unable to obtain a clear answer about the status of her employment for a number of months despite written requests;
- c) Ms. Leggieri eventually came to the conclusion that the problems with her employment and her inability to obtain a clear explanation from the City were connected both to her co-operation with Commission counsel and prior co-operation with KPMG;
- d) This belief stemmed, in part, from the fact that after interviews both with KPMG and Commission counsel she was aggressively "debriefed" by Ms. Bulko and that she had been threatened by Ms. Bulko prior to the interviews with negative consequences if she told the interviewers about Ms. Bulko's involvement in the leasing program prior to 2000;

- e) Ms. Leggieri also testified that she encountered difficulty in her dealings with MFP and that Kathryn Bulko was not helpful in resolving issues that arose such as the discrepancies Ms. Leggieri discovered in the sale and lease-back schedules; and
- f) Ms. Leggieri believed that Ms. Bulko's close relationship with Dash Domi of MFP was an obstacle to having issues such as this dealt with in a business-like fashion.

4. Following Ms. Leggieri's testimony, the City conducted an investigation of its own conduct and, more particularly, whether it had acted improperly towards Ms. Leggieri as a result of her co-operation with either KPMG or the Commission. Not surprisingly, after a costly and lengthy investigation the City came to the conclusion that it had done nothing wrong. This is often the conclusion of governments that engage in this type of self-analysis.

5. What was somewhat surprising, but probably should not have been, given the demonstrated tendency of governments to attack employees who do not ascribe to the institutional view of the "truth", was that the City devoted most of the taxpayers' money not to investigating or understanding the allegations but to launching a collateral attack on Ms. Leggieri.

6. The City filed a large volume of documentary and affidavit "evidence" that had little or no probative value in the context of the issue being examined by the Commission. For example, the City took advantage of the documentary production rules established by the Commission to dump into the public domain a series of Ms. Leggieri's personal and private e-mails.

7. It was said by the City's counsel that a number of these e-mails had "sexual content" or were "sexually explicit". A prime example of this was said to be the email sent from City employee, Pam Josen to Paula Leggieri. The e-mail contained pictures of cowboys in sleeveless shirts, with shirts open or, in one particularly shocking example, without any shirt at all. Ms. Josen testified that this was the kind of e-mail was passed among employees from time to time.

Ms. Josen did not regard the pictures as sexually explicit. Her opinion would probably be shared by most people residing in North America outside of the State of Utah.

Appendix 1: Transcript of the testimony of Pam Josen, June 19, 2003, pp 42-46

Appendix 2: "Cowboy Email" Documents No. COTO62524 to COTO62528

8. The reasons the City put this material in the public domain were to:
- a) embarrass Ms. Leggieri and punish her for her testimony;
 - b) distract the public from the fact that the City has an unsustainable position on the evidence; and
 - c) send a clear message to City employees about the fate awaiting any other individual with the courage to speak out on issues concerning the inquiry.
9. In addition, the City filed approximately a dozen affidavits. Apparently, a prime reason for filing these affidavits was to have a number of City employees attempt to contradict Ms. Leggieri's evidence given in April, that Mr. Domi was a frequent visitor to the I.T. floor at Metro Hall and was there approximately once a week. These individual deponents were surprisingly uniform in their recollection and indicated Mr. Domi was not on the floor more than two to three times per year. Their evidence would have been daunting had it not been revealed during cross-examination that a number of the deponents did not have offices on the floor during the relevant timeframe and that none of them had any reason to deal with Mr. Domi when he was on the floor.
10. More critically, the architects of this campaign against Ms. Leggieri apparently forgot about Dash Domi's testimony given on January 23, 2003. At pages 190 and 191 of the transcript Mr. Domi admitted that he was a frequent visitor to the I.T. floor.

"Q: He introduced you to other people in his department?"

A: Yes, he did.

Q: Katherine Bulko?

A: Yes.

Q: Lana Viinamae?

A: Correct

Q: Paula Leggieri

A: Yes.

Q: Line Marks?

A: I – I don't know if – how I got introduced to – or if Mr. Andrew was the individual who introduced me to everybody, but it's one (1) floor and they're all there.

Q: You were on that floor a number of times?

A: Yes.

Q: All right. What do you say to those who may – might say that you were on that floor all the time? Frequently would probably be a better way to put it.

A: I – I – I try to be in front of my client as much as possible, I guess.

Q: All right. The answer was you're on the floor –

A: Yeah.

Q: -- the IT floor frequently?

A: I – I tended to be.

Q: All right.”

11. The decision of the City to attack the messenger rather than conduct a meaningful investigation is consistent with the City's approach from the time they were first told by Ms. Leggieri, through her lawyer, on February 12, 2003 of her belief that the problems with her job status were connected with her co-operation with the Commission. The letter to a City lawyer concluded by stating “it would be appreciated if you would look into what is happening and have the City provide an explanation at your earliest convenience”.

Appendix 3: Letter dated February 12, 2003, Document No. COTO61964

12. The Commissioner herself made it clear that she viewed this type of allegation as very serious and that she expected that this would be “dealt with at the most senior levels of the bureaucracy and not at the junior level”.

Appendix 4: Transcripts of the Proceeding of June 18, 2003, page 124

13. Mr. James Ridge, the senior bureaucrat in charge of the I.T. department, made it equally clear in his testimony that the City conducted **no** investigation into this allegation from the date they received the letter on February 12, 2003 until the time of Ms. Leggieri’s testimony in April of 2003.

Appendix 5: Transcript of the Evidence of James Ridge, June 19, 2003, pages 312-314

14. It seems that the City has circled the wagons with respect to this inquiry. They have terminated a number of individuals, including Ms. Lana Viinamae and are intent on maintaining they are now clean, having rid themselves of everyone responsible for the leasing problems.

15. The threat posed by Ms. Leggieri’s testimony was that she made it clear that, at least in the case of Ms. Bulko, that individuals remain at the City in positions of authority who were in part responsible for the MFP fiasco. It is this aspect of her testimony that put her in the cross-hairs of the City.

16. It is our intention in these written submissions to take a radically different approach from that taken by the City. We intend to examine the matter in the context of actual evidence. The evidence clearly demonstrates:

- a) that the evidence of Ms. Leggieri given in April was true and accurate;
- b) that the conclusion drawn by Ms. Leggieri that her employment was adversely effected by her co-operation with KPMG and/or the Commission is reasonable; and
- c) that the most senior City bureaucrats who testified before the Commission during this segment, and who presumably are the individuals that directed the smear

campaign against Ms. Leggieri, were not truthful and forthright in their testimony before the Commission.

17. The fact that senior City employees testifying in this phase of inquiry felt comfortable attempting to mislead the Commission about a number of matters, and in particular, the nature and extent of Ms. Bulko's relationship with Dash Domi, is extremely troubling. An adverse inference should be drawn against the City and in any circumstance where the testimony of Ms. Bulko and Mr. Ridge conflict with the testimony of Ms. Leggieri, the testimony of Ms. Leggieri should be preferred.

B. EVIDENCE OF MS. LEGGIERI THAT THE CITY DOES NOT APPEAR TO TAKE SERIOUS ISSUE WITH

18. There are a number of aspects of Ms. Leggieri's testimony that the City did not bother to rebut or on which they offered only a token denial without any documentary support.

(I) MS. LEGGIERI DID A GOOD JOB IN HER POSITION OF SUPERVISOR OF LEASING

19. It was Ms. Leggieri's evidence in April that she did not understand why she was the only person in the Contract Management Office who lost their job when the leasing program ended, given her exemplary job performance.

20. Despite the collateral attacks regarding e-mails, Ms. Leggieri's direct supervisors, Ms. Bulko and Mr. Ridge, both testified that she did a good job. They had little choice as they had signed "Performance Planners" documenting the effectiveness of her performance.

21. An example of this is Performance Planner No. 2 dated December 19, 2001 and which is signed by both Ms. Bulko and Mr. Ridge. Among the achievements that Ms. Leggieri's superiors explicitly recognize in this document are that she "**discovered a discrepancy in the rates and terms used in the sale/lease-back transaction and brought to the attention of immediate report**".

Appendix 6: Performance Planner 2, Document COTO62276

22. Ms. Leggieri testified about the discovery of these discrepancies in April of 2003. Her testimony was to the effect that she reviewed these schedules despite being directed by Ms. Bulko not to do so. In the course of her review she discovered that the particulars inserted into the schedules by MFP were financially disadvantageous to the City and did not accord with contract requirements. Despite this Ms. Bulko advised her to do nothing and Ms. Leggieri had to go over her head to Ms. Viinamae to obtain any results.

23. Performance Planner No. 2 also contains the following entry **“Identified that the G.S.T. and P.S.T. had not been remitted on the sale lease-back reimbursement from MFP to the City. Brought to the attention of immediate report and contact City tax specialist to assist in recovering the taxes. Successfully recovered \$1.6 million in G.S.T.”**.

Appendix 6: Performance Planner 2, Document COTO62276

24. In his cross-examination Mr. Ridge, the Director of I.T. who signed this report, indicated that this was a large saving for the taxpayer and it was commendable for Ms. Leggieri to have saved the City this money although he cannot remember if he ever congratulated Ms. Leggieri on this accomplishment.

Appendix 7: Transcript of the Evidence of James Ridge, June 19, 2003, pages 310 – 312

25. It was Ms. Leggieri’s testimony that she identified this problem on her own initiative even though she had no background in commodities tax and taxation issues were generally thought to be the province of the finance department. She pursued this matter through to the end resulting in the recover of the \$1.6 million by the City from MFP.

26. During the relevant time period Ms. Leggieri had an employee working directly for her, Mr. Felix DiBrina. The City prepared an affidavit for him to swear which did not make any reference to his evaluation of Ms. Leggieri as a supervisor. However, on cross-examination, he described her as a fair and hard working boss.

Appendix 8: Transcript of the Evidence of Felix DiBrina, June 19, 2003, page 208

27. In summary, Ms. Leggieri was viewed by both her superiors and her subordinate as a good employee. She had achieved an extraordinary saving for the City by showing initiative outside the scope of her job description. On balance, it would be fair to say that this is the type of employee any rational organization would try to keep around.

(II) MS. LEGGIERI COULD NOT OBTAIN A STRAIGHT ANSWER ON HER EMPLOYMENT STATUS DESPITE INQUIRIES

28. The City should have simply conceded that it had been inept in its communications with Ms. Leggieri. While it did not directly concede this point, the evidence which it led only supported Ms. Leggieri's contention on this point.

29. The chronology is fairly straightforward and can be traced through the documents as follows:

- a) After Ms. Leggieri left on sick leave, on December 16, 2002 she sent an e-mail to Ms. Bulko stating "...I am requesting a immediate clarification of my job status in writing.". The e-mail also addressed rumours that had been circulating about her job status within the City.

Appendix 9: E-mail from Paula Leggieri to Kathryn Bulko dated December 16, 2002, Document COTO62142

- b) In her cross-examination Ms. Bulko conceded that there was nothing threatening or complicated about Ms. Leggieri's request.

Appendix 10: Transcript of the Evidence of Kathryn Bulko, June 18, 2003, page 121

- c) Despite the simplicity of the request, a team of people became involved, to various degrees, in providing a response. The team included the Director of the human resources department, Mr. Deans, the Director of the I.T. department, Mr.

Ridge, a City solicitor, Michael Martosh, a manager in the human resources department, Guy Alain, and Kathryn Bulko a manager in the I.T. department.

- d) A response to Ms. Leggieri's simple request is then agonized over. The e-mail chain confirms that at least Michael Martosh, City solicitor, Guy Alain the manager in I.T. and James Ridge, the Director of the I.T. department had a direct hand in authoring the response which eventually came from Ms. Bulko.

Appendix 11: E-mail from Guy Alain to Kathryn Bulko dated December 20, 2002, Document No. COTO62189

Appendix 12: E-mail from James Ridge to Kathryn Bulko dated December 21, 2002, Document No. COTO62170

- e) All of this led to a letter being sent by Kathryn Bulko to Ms. Leggieri which did not specifically say that her job was over but indicated that there was approximately two months of work left and that she should look for other jobs.

Appendix 13: Letter dated December 24, 2002 from Kathryn Bulko to Ms. Leggieri, Document No. COTO62295

- f) The obvious questions that arose from this letter are: what happens to my job after two months?; what job will I transition to?; and how much money will I make? These questions were asked by Paula Leggieri in her email dated January 17, 2003 to Kathryn Bulko.

Appendix 14: E-mail from Paula Leggieri to Kathryn Bulko dated January 17, 2003, Document No. ??

- g) There was no response to this email which answered these basic questions despite the involvement of this "team". By letter dated February 12, 2003 which has previously been put forward as Appendix 3, Ms. Leggieri's lawyer then wrote to the City.
- h) A response eventually came back from Michael Martosh on March 21, 2003. In that letter, among other things, the City offered Ms. Leggieri a severance package based on years of service which did not include Ms. Leggieri's ten years of service with the Conservation Authority despite the testimony of Councillor

Fillion that there was an agreement between he and Ms. Leggieri that such service would be recognized and protected.

Appendix 15: Letter of March 21, 2003 from Michael Martosh to James C. Orr

30. This chronology demonstrates that Ms. Leggieri was unable to obtain a coherent response from the City on fundamental questions from the time of her e-mail in December, 2002 until the response from the City's solicitor in March, 2003. This is indefensible.

31. One of the individuals involved on the "team" from human resources was Guy Alain. He was involved from at least December 20, 2003. He conceded during cross-examination that one reason that the human resource department gets involved is to provide clear information to people in the situation of Ms. Leggieri. He conceded that despite this, he never got to the point of directly contacting Ms. Leggieri between December 2002 and March 2003.

Appendix 16: Transcript of the Evidence of Guy Alain, June 19, 2003, pages 247, 248

32. Confusion continued to reign right through to the conclusion of the testimony at this Commission in June, 2003. During the testimony two managers from the City, Ms. Bulko and Michael Frainey, testified that Ms. Leggieri should have been told she was guaranteed a position for two years with full pay at her previous supervisory level.

Appendix 17: Transcript of the Evidence of Kathryn Bulko, June 18, 2003, page 88

Appendix 18: Transcript of the Evidence of Michael Frainey, June 18, 2003, page 218

33. Mr. Alain testified a day later that there was no such policy in place, that Ms. Leggieri could expect no two year guarantee and that these City managers who had testified only a day earlier were mistaken. It is difficult to fault Ms. Leggieri for not understanding her job status, when the senior managers from the City put forward to testify on the subject could not agree on her entitlement as the testimony was being given.

34. The communication from the City to Ms. Leggieri was abysmal. There was some excuse offered that part of this was due to the fact that Ms. Leggieri was on sick leave. However, Mr.

Alain clearly testified that there was no prohibition preventing anybody, including him, from directly contacting her to answer the questions she was asking.

35. The City did not lead any evidence that would indicate that it is usual to communicate with an employee in this fashion. In fact, Mr. Alain's testimony, viewed fairly, seems to indicate that in normal circumstances Ms. Leggieri could have expected a much more direct and forthright discussion from the City's human resources personnel.

(III) MS. LEGGIERI COULD NOT SECURE THE ASSISTANCE OF MS. BULKO IN DEALING WITH THE IRREGULARITIES SHE DISCOVERED IN THE SALE AND LEASE-BACK SCHEDULES

36. This is a very serious allegation made in Ms. Leggieri's April testimony, which the City did not address in any detail. Ms. Leggieri stated that she was given sale and lease-back schedules and was told by Ms. Bulko not to review them but to simply file them away.

37. It was Ms. Leggieri's testimony that instead of doing this, she reviewed the schedules and discovered serious discrepancies that were financial disadvantageous to the City. The fact that she discovered the discrepancies and brought them to the attention of Ms. Bulko cannot be challenged as that fact is documented in her Performance Planner No. 2, attached as Appendix 6, which was signed by both Ms. Bulko and Mr. Ridge.

38. Ms. Leggieri went on to testify that Ms. Bulko refused to do anything about the discrepancies even after they were brought to her attention but, instead, told her it was a matter to be dealt with by the finance department. Ms. Leggieri stated that she did not accept that and that she then took the matter above Ms. Bulko's head to Lana Viinamae. This resulted in Ms. Leggieri drafting two letters to Mr. Domi about the issue which were signed by Lana Vinnamae.

*Appendix 19: Letter dated July 12, 2001 from Lana Viinamae to Dash Domi,
Document No. COTO03575*

*Appendix 20: Letter dated July 18, 2001 from Lana Viinamae to Dash Domi,
Document No. COTO02771*

39. In her testimony Ms. Bulko denies refusing to take any steps once the matter was drawn to her attention by Ms. Leggieri. However, neither she nor the City produced a single document indicating that she did anything at all about this serious issue.

40. It is submitted that the testimony of Ms. Bulko should be largely disregarded given her untruthfulness in certain areas which will be dealt with later. Quite apart from this, on this serious and central issue of whether Ms. Bulko was doing her job to protect the financial interests of the City, in all of the hundreds of documents and personal e-mails placed into the public record by the City, there is no document that supporting Ms. Bulko's contention that she took any steps after having the matter drawn to her attention by Ms. Leggieri.

41. If the City was seriously contesting Ms. Leggieri's version of events, it would certainly have been open to them to call Ms. Viinamae to clarify matters. They did not do this. Quite to the contrary, they took active steps to ensure that Ms. Viinamae was not involved in this portion of the inquiry.

42. Ms. Viinamae's lawyer, Raj Anand, was told by the City that he would not be funded to attend this portion of the inquiry. This position was taken by the City despite the fact that Ms. Viinamae clearly had relevant evidence with respect to this issue as well as the issue of Ms. Bulko's relationship with Dash Domi, as Ms. Viinamae was said to be the other individual at the City present during the "close dancing" episode.

43. The fact that the City did not call Ms. Viinamae and, in fact, took steps to prevent her participation is another reason that an adverse inference should be drawn against the City on every issue on which Ms. Viinamae's testimony would have been helpful to the Commission.

C. THE EVIDENCE AS TO WHETHER MS. LEGGIERI'S EMPLOYMENT STATUS WAS ADVERSELY EFFECTED BY HER CO-OPERATION WITH KPMG AND/OR THE COMMISSION

44. While the City put forward a great number of witnesses, only three directly dealt with this central issue. These were Mr. Ridge, the Director of I.T., Ms. Bulko and Mr. Alain from Human Resources.

45. Their testimony, collectively summarized, was as follows:

- a) there was a re-organization in the Contract Management Office as a result of the MFP fiasco;

- b) as a result of this re-organization Ms. Leggieri's position was to be "deleted";
- c) this was unfortunately a normal occurrence at the City and happened all the time;
- d) in situations such as this Ms. Leggieri would either find another position or be offered a termination package; and
- e) there was absolutely no connection between her employment situation and her cooperation with either the Commission or KPMG.

46. It is submitted that this testimony is not consistent with a number of facts. It is certainly not consistent with the inexplicable absence of clear and direct communication with Ms. Leggieri from December, 2002 through to March, 2003 despite her written requests for clarification.

47. If the deletion of Ms. Leggieri's job was routine, there should have been no difficulty in communicating with her in a forthright fashion. People from human resources were involved from the outset. Their job was to ensure Ms. Leggieri received accurate information. They never directly spoke to her about the fundamental concerns raised in her e-mails.

48. The City's position is also inconsistent with assembling a "team" to deal with Ms. Leggieri's situation in December of 2002. As previously discussed this team included the Director of I.T., a manager in I.T., the Director of human resources, a manager in human resources, and a City solicitor.

49. If this were a routine job deletion unconnected to MFP or the inquiry, there would have been no need to involve this number of people. It would be staggeringly inefficient to have five people of such seniority tending to an ordinary job redundancy.

50. In his cross-examination, Mr. Ridge, the Director of I.T., asserted that the deletion of the job was routine. When asked why there would be two Directors, two Managers and a City lawyer involved in a routine job redundancy, he answered as follows:

“A: This one was quite different, Mr. Orr. I – when we received Ms. Leggieri’s e-mail with the list of questions, were asking for specific responses in writing, I asked that Human Resources become involved. I had a subsequent discussion with Alan Deans who was quite concerned that – in fact he felt strongly that there was formal legal advice being provided to Ms. Leggieri, as that e-mail had been prepared and that we were seeing the preparation for litigation and Wallis claims and wanted to involve the lawyers immediately.”

Appendix 21: Transcript of the Evidence of James Ridge, June 19, 2003, page 300

51. In summary, Mr. Ridge was conceding that it was not usual to have all these people involved but that this situation was different because of the specific and lengthy e-mail that was sent by Ms. Leggieri. The problem is that the e-mail Mr. Ridge is referring to was not sent until January 17, 2003 and the involvement of the lawyer and the other human resource people occurred in December 2002, at a point where there had been nothing but a “benign” and simple e-mail sent inquiring as to job status.

52. It is submitted that Mr. Ridge’s answer confirms that it would not be normal to involve this number of people in December 2002, if this were viewed as a routine matter. It follows, therefore, that in December 2002 the City did not view this as a routine job redundancy, although that is what they are now contending before the Commission.

53. In an attempt to maintain the City’s position that this was a routine job redundancy it was necessary for Mr. Ridge, Ms. Bulko and Mr. Alain to testify that they had never even heard of the notion that Ms. Leggieri’s job problems might be connected MFP or with her co-operation with KPMG or the Commission until this was raised in Ms. Leggieri’s lawyer’s letter dated February 12, 2003 (see Appendix 3).

54. The problem with this evidence is that it contradicts the plain wording of an e-mail sent by Mr. Ridge on February 17, 2003 which indicates that prior to the receipt of my letter, the City had an understanding that Ms. Leggieri’s job status was related to MFP issues.

55. The e-mail sent by Mr. Ridge on February 17, 2003 to his superior, Joan Anderten, states as follows: **“I have received a copy of a letter this morning sent to Diana Dimmer re: Paula from her lawyer (Kelly Affleck Greene). It makes the same allegations that Paula has been**

making in her e-mails; she was fired without proper termination process, this is a punitive step and linked to MFP, etc. It might be valuable for Guy or Alan to talk to Diana. James”

Appendix 22: E-mail from James Ridge to Joan Anderten, Document No. COTO61892

56. The plain wording of this e-mail confirms that the City understood that Ms. Leggieri's employment status was related to MFP before that allegation was ever made by Ms. Leggieri or her counsel. This is evidence of a consciousness of guilt.

57. Even more problematic for the City are the attempts by Mr. Ridge, under oath, to attempt resile from the plain meaning of the words he wrote. His testimony in that regard is attached. It is not credible. It was painful to watch and it is painful to read. It is disturbing that a senior City official would have so little regard for this process.

Appendix 23: Transcript of the Evidence of James Ridge, June 19, 2003, pages 282-292

58. The fact that the City did not bother to conduct any investigation into the allegation contained in the February 12, 2003 letter is now understandable. The City was aware prior to receiving that letter that Ms. Leggieri's problematic job status was related to MFP. There was therefore, no need to conduct the kind inquiry that most certainly would have taken place had this allegation caught the City by surprise.

59. A further indicator that Ms. Leggieri's job redundancy was not the routine event the City would now have us believe can be seen from the fact that she was excluded from even competing for the newly created job position of Supervisor of Licencing in the I.T. department.

60. Mr. Ridge conceded that this new position was created with the very budget savings that resulted from deleting Ms. Leggieri's position. Mr. Ridge testified that he did not inquire into Ms. Leggieri's qualifications for the position and that at no point did he even consider allowing her to compete for this position that replaced her old job.

Appendix 24: Transcript of the Evidence of James Ridge, June 19, 2003, pages 275-280

61. It is Mr. Ridge's evidence that he exercised his discretion to simply hand the job to another person without any competition. Mr. Alain of Human Resources testified that it is unusual for there to be no competition for such a job.

Appendix 25: Transcript of the Evidence of Guy Alain, June 19, 2003, page 257

62. If Ms. Leggieri's job deletion is to be viewed as routine, it is inexplicable that she was not allowed to even compete for the new position. The fact that Mr. Ridge may have ultimately decided to hire somebody else is irrelevant. The fact that she was never notified of the position or given a chance to apply, in the context of her excellent employment reviews and her recent actions which saved the City \$1.6 million dollars does not make sense.

63. It is evident from the fact that Ms. Leggieri was not allowed to compete for the job that Mr. Ridge and Mr. Bulko did not want her anywhere near the I.T. department. This cannot be explained by reference to her job performance. It can also not be explained by saying that she lacked the requisite technical skills as it was admitted by Line Marks, a City supervisor that this new position was primarily administrative and that the skill set required was more knowledge how to set up a system to monitor equipment rather than knowledge of how the equipment actually functioned.

Appendix 26: Transcript of the Evidence of Line Marks, June 18, 2003, page 289

64. Ms. Bulko and Mr. Ridge did not want somebody with Ms. Leggieri's knowledge of the MFP issues around. As Mr. DiBrina said in his testimony, Paula Leggieri was the "bible" on MFP in that she knew the leasing issues inside out. It seems that Mr. Ridge and Ms. Bulko made a decision that they did not want anybody with that level of knowledge of MFP around. The reason for this is clear when we examine the evidence relating to the threats made by Ms. Bulko against Ms. Leggieri.

Appendix 27: Transcript of the Evidence of Felix DiBrinna, June 19, 2003, pages 184 and 185

D. THE ALLEGATION BY MS. LEGGIERI THAT SHE WAS THREATENED BY MS. BULKO

65. It was Ms. Leggieri's testimony that Ms. Bulko, before both her meeting with KPMG and Commission counsel, threatened her with adverse consequences if she mentioned to any of the investigators that Ms. Bulko had involvement with the leasing program prior to 2000.

66. Ms. Leggieri frankly stated that she had no idea what particular issue Ms. Bulko was concerned about. Ms. Leggieri was attacked for her candour; the proposition put to her being that there was absolutely no reason for Ms. Bulko to be worried about disclosing her involvement prior to 2000 as Ms. Bulko herself had made full disclosure to KPMG as evidenced by her KPMG witness statement.

67. It became evident during the cross-examinations of Ms. Bulko and Line Marks that the KPMG witness statement confirmed that Ms. Bulko had not in fact advised KPMG of a critical aspect of her involvement with leasing prior to 2000. These cross-examinations established the following:

- a) When the MFP problem came to the fore, one of the main issue identified was the fact that on the sale and lease-back schedules there was a great deal of equipment that should never have been leased by the City;
- b) This included items like toner, cabling and software upgrades which, because of their inclusion in the sale lease-back schedules were costing the City a great deal of money;
- c) The lease-back schedules were compiled by Ms. Marks;
- d) When compiling those schedules she spoke to two people to decide what items to include in the schedules;
- e) Those two people were Lana Viinamae, who was fired, and Ms. Bulko who was not;
- f) Ms. Bulko concedes both that she knew that this was an important issue and that the notes of KPMG do not indicate that she disclosed her involvement in the compiling of these schedules.

Appendix 28: Transcript of the Evidence of Lynn Marks, June 18, 2003, pages 289-292

Appendix 29: Transcript of the Evidence of Kathryn Bulko, June 18, 2003, pages 101-110

68. The evidence of Ms. Bulko and Ms. Marks, two current employees of the City, establishes that there is a major issue as to what was put on the schedules and that Ms. Bulko was one of two people who advising as to what was to be included. Ms. Viinamae, the other person involved was fired by the City.

69. It is submitted that while Ms. Leggieri may not have realized that this was the involvement that Ms. Bulko was concerned about, this testimony establishes that Ms. Bulko had a level of involvement which would logically cause her concern, particularly in the context of Ms. Viinamae's firing.

70. This is the information that Ms. Bulko did not want Ms. Leggieri to talk about. This confirms the credibility of Ms. Leggieri's testimony concerning the threats. As will be seen from an examination of Ms. Bulko's testimony in the following section, in a contest of credibility, Ms. Leggieri's evidence should be preferred.

E. MS. BULKO'S RELATIONSHIP WITH DASH DOMI

71. In her testimony Ms. Leggieri stated that she believed that the close relationship between Ms. Bulko and Mr. Domi was getting in the way of having issues properly resolved with MFP. She also indicated that on occasion she heard Ms. Bulko refer to Mr. Domi as her "boyfriend".

72. Ms. Leggieri was repeatedly invited by Commission Council to speculate on whether the use of this term by Ms. Bulko meant that she had an intimate relationship with Mr. Domi. Ms. Leggieri refused all of these invitations and instead flatly stated that she did not care or view it as any of her business.

73. Despite this, Ms. Leggieri was vilified by her former colleagues at the City for stating that Ms. Bulko called Mr. Domi "boyfriend". They vigorously jumped to Ms. Bulko's defence, espousing her professionalism.

74. A remarkable thing then happened. Ms. Bulko in her testimony admitted that Ms. Leggieri was correct, that she had called Mr. Domi “boyfriend”.

75. In an attempt to demonstrate that this did not mean that there was a close relationship with Mr. Domi, as alleged by Mr. Leggieri, Ms. Bulko went on to say that this meant very little as she frequently called a number of people her “boyfriend”.

76. Her testimony is not credible. Anyone observing Ms. Bulko, would have come to the conclusion that it is improbable in the extreme that she would casually toss a phrase like this around, particularly in the context of business relationships with vendors.

77. Her testimony is directly contradicted by the sworn evidence of most of the current employees with the City who work with her. On cross-examination these individuals had the following to say about Ms. Bulko’s assertion that she frequently called people her “boyfriend”:

CHRIS HULL

Q: Ok. Now I just want to take you to paragraph 11 of your Affidavit. I’m not going to read it, but basically what it says is in your job you meet with a lot of vendors; right?

A: I do, yes.

Q: And you are also saying that Ms. Bulko is also at a lot of these meetings?

A: She is.

Q: And you indicate that you have never seen Ms. Bulko demonstrate any “buddy/buddy relationship” with other vendors? By other vendors do you mean other than Mr. Domi? Are you indicating that there was a buddy/buddy relationship?

A: No, she wasn’t a buddy/buddy – she wasn’t in a buddy/buddy relationship with any vendors that I saw.

Q: Ok.

A: She was always the professional, businesslike attitude that she had towards any vendors that – that we did meet with.

Q: Yes. Including Mr. Domi.

A: Including Mr. Domi.

Q: And she seems like a very businesslike person to me, from the short time that I’ve seen her?

A: She is.

Q: OK. And but you indicate that in the course of all of these meetings you have never heard her use the word boyfriend to describe Mr. Domi or any of these other vendors?

A: That is correct.

Q: And how frequent would these meetings be?

A: In the last – since I have been in the CMO, I would say we've probably had a good twenty, maybe thirty meetings with vendors over the course of my time there.

Q: I don't understand the workings of the office but would you be a person who would be more likely to meet with her with vendors than a number of the other people in the office because of the nature of your job?

A: I would say so, yes.

Q: Ok. So if there is anybody here qualified to talk as to how Ms. Bulko interacts with vendors, it would be you?

A: I'll say yes.

Transcript of the Evidence of Chris Hull, June 18, 2003 pages 250-252

ANNIE LEUNG

Q: OK. And do you see her interact with vendors and other people in the office?

A: Yes.

Q: OK. And I take it you've never heard her use the word "boyfriend" in reference to Mr. Domi or anybody else?

A: No I didn't.

Q: OK. You've never heard that?

A: No.

Q: And would you agree with me that that would be out of character for Ms. Bulko to use that kind of term within a business setting?

A: Could you repeat the question?

Q: Yeah, sure. Is she the kind of person, from your experience, who would use that kind of term in a business setting?

A: No I don't think so.

Transcript of the Evidence of Annie Leung, June 18, 2003 pages 270-271

LINE MARKS

Q: Now I take it from your Affidavit you agree with me – or you would agree – you would take the view, you don't have to agree with me on anything, that Ms. Bulko is a professional manager, with a professional demeanour?

A: Yes.

Q: And how closely do you work with her as a Supervisor?

A: I work very closely with her.

Q: Ok. Do you see her interact with a lot of people?

A: In the office.

Q: Yes. You know, including people who work there and – and outside vendors?

A: In – on occasions, yes.

Q: And I take it that you've never heard her use the word "boyfriend" to describe anyone?

A: Personally, no.

Q: Ok, so you personally, in all of those – all that contact, have never used – heard her use that word to describe either a vendor, an employee, or anybody else?

A: Not to my recollection.

Transcript of the Evidence of Line Mark June 18, 2003 pages 292-293

ANDY LOK

Q: Now, the reason this stuck out – stuck out in your mind is that Ms. Bulko is normally very professional in the way she deals with people; correct?

A: Yes.

Q: And all that time sitting there, you've never heard her call Mr. Domi "boyfriend"?

A: Never you know her – like you know heard you know, to – you know tell people that you know, well Domi is like her boyfriend, no.

Q: Yeah, ok. Did you hear her call anybody else her boyfriend?

A: No.

Transcript of the Evidence of Andy Lock June 19, 2003 page 66

STEPHEN WONG

Q: OK. And I take it that in those three years of relatively close proximity to Ms. Bulko's office, you've never heard her refer to anyone as her – their boyfriend?

A: No, not to my knowledge.

Q: And given that experience, I think you'd agree with me that if anybody came in here and suggested she used the term on a frequent basis, in your view that wouldn't be in keeping with your experience?

A: In keeping with my dealing with Katherine, that is not how she behaves in my presence.

Transcript of the Evidence of Stephen Wong June 19, 2003 page 76

CATHY STAGLIANO

Q: And one of the things, I take it that bothered you about Ms. Leggieri's testimony, was her statement that she had heard Ms. Bulko call Mr. Domi, boyfriend?

A: I wouldn't say I was bothered, I was caught off guard.

Q: OK. So that didn't ring true to you?

A: I never saw it.

Q: OK. So, in all the times you sat in proximity to during the time you sat in proximity to Ms. Bulko, you never heard her call Dash Domi boyfriend?

A: No.

Q: And, in fact, you never heard her call anybody boyfriend.

A: No.

Transcript of the Evidence of Cathy Stagliano June 19, 2003 page 106

FELIX DIBRINA

Q: Ok.

A: Whatever, you know, that kind of stuff, but no, I've never heard Ms. Bulko speak to anyone – refer to anybody as boyfriend –

Q: Ok.

A: - girlfriend.

Q: So if I told you that she came here and told people that she was used both those terms very frequently, that wouldn't accord with your experience?

A: I wouldn't believe her because I – I don't believe her. She can say that she used that word frequently. I do not believe Katherine would use that word frequently if she did. I don't – I don't believe her – I ever heard her say that word.

Transcript of the Evidence of Felix DiBrina June 19, 2003 page 195

78. All of these City employees, who work closely with Ms. Bulko, directly contradict her assertion that she frequently called other people boyfriend. The only individuals who indicated they had heard her use that word were Mr. Ridge and other management level employees who may be more attuned with the City's playbook in this matter than the lower level people who work with Ms. Bulko on a day to day basis.

79. Her assertion that she called everybody boyfriend was not the only area of her testimony involving Mr. Domi in which Ms. Bulko was untruthful. The second area involves the gift given to Mr. Domi by Ms. Bulko.

80. Ms. Leggieri testified that she was approached by Katherine Bulko to ask Michael Thompson to assist in having Mr. Thompson deliver a birthday gift which Ms. Bulko wished to give to Mr. Domi.

81. It was Ms. Leggieri's evidence that Ms. Bulko was aware that Mr. Thompson lived in the same building as Dash Domi's brother, Tie Domi. She wanted Mr. Thompson to take the gift to the building with a note to have Tie Domi deliver it to his brother.

82. Ms. Leggieri said that she followed through on this request, contacted Mr. Thompson and that Mr. Thompson, did in fact deliver the present from Ms. Bulko in the manner described.

83. Mr. Thompson was called as a witness. He was not called as a witness at the initiative of Commission counsel or lawyers for the City. He was called as a witness at the initiative of Ms. Leggieri.

84. Mr. Thompson verified Ms. Leggieri's testimony. He stated that he met with Ms. Bulko and understood that he was delivering a gift from her to Mr. Dash Domi. He took the package to his building mail room and put it in the box for Dash Domi's brother Tie with a note. He later

heard from Mr. Dash Domi that he had received the package. He also received a telephone call from Ms. Bulko thanking him for delivering the gift.

85. Mr. Thompson was a credible witness. He has no stake in this matter. He has no particular connection to any of the participants. His testimony in its entirety is attached:

Appendix 30: Testimony of the Evidence of Michael Thompson, June 19, 2003, pages 3-33

86. Ms. Bulko testified before Mr. Thompson took the stand. She claimed that she had never delivered a birthday gift to Mr. Domi in the circuitous route described by Ms. Leggieri and Mr. Thompson. She had to maintain this denial to be consistent in her claim that her relationship with Mr. Domi was the same as her relationship with all of the other vendors.

87. Ms. Bulko's testimony is as follows:

Q: And the suggestion was that you gave the gift to this gentleman, who in turn gave it to the doorman at Tie Domi's condo, who in turn was to give it to Dash Domi. Did you understand that was the alleged chain of events?

A: Yes.

Q: And you were saying definitely that never happened.

A: I have no recollection of that, at all.

Q: Well, it's certainly unusual enough that if it happened you'd probably recall it, would you agree?

A: Correct.

Appendix 31: Transcript of the Evidence of Kathryn Bulko, June 18, 2003 pages 137-138

88. Ms. Bulko did not say the gift was from someone else, or that it was an innocent gesture. She said it did not happen.

89. Ms. Bulko was not being truthful. Her testimony is contradicted not just by Ms. Leggieri but by an independent witness with no stake in the matter, whose credibility was not impeached.

90. This testimony is important for two reasons. The first reason is that it indicates that Ms. Bulko's relationship with Dash Domi was not as businesslike as she indicated in her testimony. It certainly seems that the relationship is more of the friendly or buddy/buddy nature as described by Ms. Leggieri.

91. Secondly, and far more importantly, the testimony indicates that Ms. Bulko was quite prepared to step into the witness box at the inquiry and attempt to mislead the Commission. It is expected that she will be supported in this endeavour by the written submissions put forward by the City who will rely heavily on her credibility in support of their contention that Ms. Leggieri was dealt with in a normal and routine fashion.

92. If the matter was straightforward as the City would try to pretend, there would be no need for its senior bureaucrats to mount a campaign to discredit Ms. Leggieri, or come before the Commission and make statements under oath that were less than truthful. Even Mr. Jacobek who was roundly condemned for statements that he made to the press, drew the line at repeating them under oath before the Commission.

F. CONCLUSION

93. The evidence demonstrates the following:

- a) Ms. Leggieri was a good employee whose initiatives saved the taxpayers of the City \$1.6 million dollars, which would otherwise have remained in the coffers of MFP;
- b) Ms. Leggieri cooperated with both KPMG and Commission counsel and was compelled to testify at this inquiry;

- c) Ms. Leggieri lost her job and was not given the opportunity to compete for the position that replaced hers;
- d) Ms. Leggieri's testimony that she had heard Ms. Bulko call Mr. Domi "boyfriend", was accurate;
- e) Ms. Leggieri's could not enlist Ms. Bulko's assistance in dealing with discrepancies in the sale lease back schedules and it was necessary for her to go over Ms. Bulko's head to get the matter dealt with;
- f) Ms. Leggieri's testimony that Ms. Bulko had a friendly or buddy/buddy relationship with Dash Domi was accurate; and
- g) Ms. Leggieri's testimony that she was threatened by Ms. Bulko is validated now that it has been demonstrated that Ms. Bulko was not forthright with KPMG about her involvement in the leasing program prior to 2000.

94. The evidence also demonstrates that the City's contention that Ms. Leggieri's employment difficulties resulted from a routine redundancy are not sustainable. If the matter was a routine as the City contends:

- a) There would have been no need to put a team that included lawyer and human resource specialists on the matter from the outset;
- b) There would have been no impediment to communicating with Ms. Leggieri in a plain and straightforward manner, in response to her written inquiries;
- c) Mr. Ridge would not have had it in his mind that Ms. Leggieri had made allegations, prior to receiving the February 12, 2003 letter from her lawyer, to the effect that her employment problems were connected with MFP;
- d) Upon receiving the February 12, 2003 letter the City would have conducted an investigation, which in this particular case was not necessary as they were well aware of the connection with MFP long before it was raised by Ms. Leggieri; and

- e) Ms. Leggieri, who had recently saved the City \$1.6 million would have at least been allowed to apply for the position that replaced her own.

95. Ms. Leggieri cooperated fully with KPMG and Commission counsel. She came before the Commission and testified in a forthright fashion in very difficult circumstances. It should be remembered that she did not have access to many of the documents which were ultimately put to her on cross-examination at the time she testified in chief.

96. In addition, in an unprecedented move, her testimony was adjourned for several months to permit the City to conduct an investigation to assist in their cross-examination. The City spared no expense. Despite this, the evidence demonstrated that Ms. Leggieri is the party telling the truth while the senior City Officials who testified were not.

97. Ms. Leggieri's behaviour should be contrasted with that of the City. The City has never conducted a real investigation. Instead it has mounted an attack.

98. The attack on Ms. Leggieri was conducted by way of collateral and improper means such as the dumping of personal emails into the public domain. This behaviour is not consistent with the behaviour of a party who believes that it has done nothing wrong. Instead it is consistent with the behaviour of someone who realizes they can not legitimately attack the message therefore they have to discredit the messenger by any means possible.

99. The City, which convened this inquiry, allowed its senior bureaucrats to come forward and attempt to mislead the Commissioner. The evidence of Ms. Bulko regarding her use of the term "boyfriend" and the incident of the gift to Mr. Domi are the prime examples of this.

100. Ms. Bulko testified with the smug certainty of a true believer. She appeared to believe that she would be protected from criticism; that this portion of the inquiry was a small side show that would not be allowed to derail a main message which the City is trying to sell, i.e. that it has left behind all of the problems and the people who created the problems. If Ms. Leggieri and the truth were victims in the noble cause, so be it.

101. It is certain that this is but a very small part of a much larger inquiry. That does not mean it is unimportant. That does not mean that the City should be permitted come forward and attempt to vilify former employees or that they should be allowed to be less than truthful.

102. The City's solicitors, who are the parties who put forward the many Affidavits dealing with Ms. Bulko's relationship with Mr. Domi and who introduced volumes of emails are now converts to the view that this matter should be looked at very narrowly. Unfortunately this is not realistic or possible in view of the scope of the evidence which was dealt with in this portion of the inquiry.

103. The behaviour and credibility of the City and its senior officials are central to any determination and must be dealt with. It is submitted that it is not reasonable to believe, in the context of the evidence that was heard, that Ms. Leggieri's dismissal or the circumstances that surrounded it were routine.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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