

**Toronto Computer Leasing Inquiry
Toronto External Contracts Inquiry**

**REPORT
Volume 1: Facts and Findings**

The Honourable Madam Justice
Denise E. Bellamy, Commissioner

2005

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TORONTO COMPUTER LEASING INQUIRY

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September 12, 2005

His Worship Mayor David Miller and Members of City Council
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Mr. Mayor and Councillors:

With this letter I transmit my report on the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry.

Yours very truly,



Denise E. Bellamy
Commissioner

Encl.

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ACKNOWLEDGMENTS

THE FINDINGS AND RECOMMENDATIONS of any judicial inquiry are always those of the presiding judge, and these inquiries are no exception. But that is far from asserting that I did or could have conducted these inquiries alone. The complexity of the job outlined in my terms of reference called for a team with a wide range of abilities. I was extremely fortunate to have a team that met every need with skill and a very necessary touch of good humour.

Behind the scenes, a judicial inquiry is packed with stress. Expectations are high, the spotlight of public scrutiny is trained on the proceedings, and the commissioner must be conscious of the mounting cost to the taxpayers. At various times and for various reasons, there are people who hope or expect that the inquiry will fail in its objectives. Under those pressures, the inquiry team walks a tightrope between compassion for those incidentally swept up in the proceedings and hard-nosed persistence toward those trying to evade exposure. Maintaining balance is essential, but difficult because absolutely everyone must be treated fairly and heard with an open mind.

An inquiry team is a bit like a submarine crew, thrown together to work under difficult conditions while weeks stretch into months and then years, submerged in the tightly sealed vessel of confidentiality. It takes a special group of people just to function in that environment, much less excel. Yet my team made excellence seem easy. I owe them an immense debt of gratitude.

Ron Manes was my lead counsel for the first of the two inquiries I conducted, the Toronto Computer Leasing Inquiry. I was fortunate to have

him. Open-minded and wise, he brought a level of integrity and persistence to the special role of commission counsel that set an exemplary standard for the entire legal team. His good humour and tightly honed insight brought us safely through every dark cloud we encountered on his watch.

David Butt was my lead counsel for the second inquiry, the Toronto External Contracts Inquiry. He plunged into his task with skill, enthusiasm, and determination, yet all the while exemplified the unbiased and thoughtful approach so essential to the role of commission counsel. David's tirelessness and probity were constant, from the first day to the last.

Patrick Moore was a balanced, objective, and evenhanded senior addition to my team of counsel. He cheerfully rolled up his sleeves and mastered all the intricate technicalities of leasing we needed to know. His contribution was vital.

Daina Groskaufmanis was an astonishingly versatile part of my legal team. Attentive, keen, highly organized, indefatigable, scrupulously fair, and relentlessly optimistic, she did many things so very well. Daina became so interested in public inquiries generally that she has now headed off to Harvard, on a scholarship, to study them further.

Judicial inquiries must get to the bottom of the problems described in their terms of reference. Trained investigators can help enormously. Bill Blake co-ordinated an investigative team second to none. An accomplished detective for decades, Bill displayed in abundance his persistence, sharp intuition, and uncanny talent for sniffing out red herrings and lies. He was ably assisted by Brian Clark, another experienced, no-nonsense former detective who always got the job done.

In the *Inquiry Process* volume, I have emphasized the key role played by junior counsel, at the outset of an inquiry in particular, in assembling the vast quantities of documentation and interview notes into a manageable stream of information for the public hearing room. For all of their diligent service throughout the inquiries—beginning, middle, and end—I would like to thank Zachary Abella, Barrie Attzs, Julie Dabrusin, Leanne Notenboom, and Christopher Thiesenhausen. The amount of material to be assessed and organized at every stage of these inquiries was daunting, but they collectively rose to the challenge with enthusiasm and seemingly endless energy. Motherhood took Julie away from us early, and we lost Barrie and Chris early to the lure of private practice. Leanne and Zach were indis-

pensable to the very end, displaying all the dedication and perseverance necessary to finish a very long and difficult journey with style.

The multi-layered process of writing this report began almost at the very beginning of the inquiries themselves. Ronda Bessner, assisted by Julia Milosh and Jodie Graham, worked steadily from the outset, receiving transcripts from the hearing room and carefully organizing and distilling the evidence, issue by issue and witness by witness. Ronda had fulfilled this role at the Walkerton Inquiry and went on to do the same for the Ipperwash Inquiry, which is still ongoing as I write this report. Ronda and her team displayed great diligence, reliability, and meticulous attention to detail.

It is impossible to run a full judicial inquiry inexpensively. The Honourable Patrick LeSage, then Chief Justice of the Superior Court of Justice, advised the City of this inevitable reality when the City first approached him about the task. He was proven right. However, whether the cost is great or small, the public has a right to expect that the money spent on a public inquiry will be spent wisely and cautiously. The weight of this important public expectation fell first and foremost on my shoulders and I delegated it to my Chief Administrative Officer, David Henderson. He was more than up to the task and carried the load extremely well. Dave came to me fresh from discharging the same role successfully at the Walkerton Inquiry, so he brought the rare and valuable commodity of prior inquiry experience. He held my entire team accountable for what they spent, insisting that every penny be justified. He stood up to a group of bright and motivated lawyers hot on the investigative trail and insisted on appropriate fiscal restraint. He did this with finesse and resolve. The public was well served by Dave and so was I.

Another team member who came to me with invaluable prior experience at the Walkerton Inquiry was Peter Rehak, our communications officer. Peter was a critical fulcrum in the machinery of these inquiries. I have often emphasized the importance of ensuring that a public inquiry is accessible to the public in the broadest sense. Peter helped me greatly with this essential task. From maintaining the website, to meeting the needs of all members of the media, to helping commission counsel and me with our public communications, Peter at all times provided the experience and know-how I came to depend on. Peter was capably assisted in maintaining the website by Djordje Sredojevic and Ljiljan Vuletic. In an era of instantaneous computer

communications, public expectation about website accuracy and currency is extremely high, and these high expectations were consistently met.

The late Pierre Berton once wrote that a good editor is a gift from heaven. If this is true, my editor, Agnes Vanya, must have wings. By e-mail or in person, she was at my side constantly, through draft after draft of the report. She brought an inspiring combination of passion for her job, clear-headed objectivity, and an eagle eye for editorial detail. She did everything an editor can possibly do to improve a writer's prose. Deficiencies that remain are my responsibility alone. Agnes had the invaluable help of book designer Jean Lightfoot Peters.

The glue that holds all of these disparate team functions together is of course support staff. At the centre, Clita Saldanha was cheerful, fiercely loyal, and conscientious. Ann Dancy managed to be both easygoing and hard-working. And my executive assistant and document co-ordinator, Heather Hogan, was everything I could hope for: energetic, attentive, perceptive, discreet, and pragmatic. She radiated competence.

The hearing room is where the most visible part of a public inquiry unfolds. If the inquiry is to have an efficient public face, the hearing room must operate with seamless precision. My hearing room team made sure that always happened. For a long smooth run, I am indebted to: court reporter Carol Geehan; registrars Joyce Ihamaki, Dorothy Button, and Janet Smith (whom I took to calling "Radar" because she always seemed to know in advance what I was going to need); soundmen Bernie Sandor, Kevin Best, and Cam Wheeler; and my deputy, Robert Gray.

There is always a private face to a public inquiry. The many colleagues who helped me throughout this endeavour are acknowledged in the *Inquiry Process* volume. Beyond that, I owe my gratitude to the families and close friends of my commission counsel and staff, who supported them unselfishly when the inquiries' demands, and mine, were most pressing. I made my counsel and staff drive themselves unremittingly to get the job done effectively, fairly, and on budget. Someone had to lovingly replenish their energy at the end of the very long working days.

On a personal note, I want to acknowledge the one who so lovingly replenished my own spirit at the end of those very long working days: my husband, Ian Cummings. For a judge, a public inquiry is a commitment of time and energy significantly more than that of even a very long trial, but

that commitment also tests the forbearance of the judge's spouse. I am blessed to have a husband whose unwavering love, encouragement, and support sustained me as the months stretched into years. He believed in the importance of my task, and his enthusiasm kept me inspired.

Finally, to my caring family, friends, and colleagues: I am grateful for your kindness, your encouragement, and your patience.

ABBREVIATIONS

AMS	American Management Systems
CAO	Chief Administrative Officer
CFO	Chief Financial Officer
CFLA	Canadian Finance & Leasing Association
CMO	Contract Management Office
DFS	Dell Financial Services Canada
GE	GE Capital
GST	Goods and Services Tax
IT	Information Technology; Information & Technology Division
ITLA	Information and Technology Leasing Approvals
KPMG	KPMG Investigation and Security Inc.
MFP	MFP Financial Services Ltd.
MLA	Master Lease Agreement
NGIP	National Institute of Governmental Purchasing
PST	Provincial Sales Tax
OPP	Ontario Provincial Police
P&F	Policy and Finance Committee
PMAC	Purchasing Management Association of Canada
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Quotation
TMACS	Tax Management and Collection System
TXM	Tax Manager 2000

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VAR	Value-added reseller
VOR	Vendor of record
WMACS	Water Management and Collection System
Y2K	Year 2000

PREFACE

WITH THIS REPORT, I pass a torch to the Mayor and Toronto City Council. The job they gave me to do is done. The physical product of the work, my report, now belongs to them and, through them, to the people of Toronto.

Some of the events I examined in these two public inquiries were sensational, and some became more sensational as the inquiries progressed. As the inquiries investigated and sifted through evidence of past events and probed matters of good municipal governance, time did not stand still for Toronto. During my mandate, the people elected a new Mayor and Council, and debate began on important, fundamental questions about the future governance of the City. City government took action on many of the systemic weaknesses that, one way or another, had led to the inquiries. For all of those reasons, this report has been awaited with great interest in some quarters.

The stories told in this volume unfolded against the backdrop of the approaching millennium and the uncharted territory of a municipal reorganization on a scale unprecedented in Canadian history. Several major computer acquisitions and contractual transactions went awry in those difficult times. It was my job to unravel what happened, find out what went wrong, and most important, I think, make recommendations that might prevent the same or similar mistakes in the future. In so doing, I guided myself by five principles: fairness, thoroughness, efficiency, accessibility, and cost-effectiveness, each of which is discussed in more detail in Volume 3, *Inquiry Process*.

This report covers two inquiries: the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry. How I came to be conducting both of them is also told in Volume 3. The subjects of the two inquiries were intertwined, with some of the same people playing a role in both. When I was appointed to the second inquiry, I made it clear that I would write only one report on all of the matters in both sets of my terms of reference. For the reader's convenience, in the chapters that follow in this volume, I have referred simply to "the inquiry."

It was my task to scrutinize some specific transactions. The first three were in my terms of reference for the Toronto Computer Leasing Inquiry, and the second three were in my terms of reference for the Toronto External Contracts Inquiry:

1. In late 1997, new computers were leased for the members of the amalgamated City's first City Council, who would take up their duties on January 1, 1998.
2. From 1999 to 2001, the City leased several tens of millions of dollars' worth of computer equipment through MFP Financial Services Ltd.
3. In 1999, the City leased 10,000 licences for Oracle software, used to run the City's financial planning and human resources software.
4. An integrated tax billing system, known as TMACS, was developed for the City as amalgamation approached.
5. As the year 2000 drew near, the City acquired computer hardware from Dell Computer Corporation to meet its Y2K-compliance needs.
6. From 1998 through 2002, the City made extensive use of the IT consulting services of Ball Hsu and Associates Ltd.

Serious questions arose about all of these transactions, and investigating them thoroughly, calling all the witnesses, and writing this report took the better part of three and a half years.

As the stories in this volume will make very clear, people made mistakes. Some people disgraced themselves, failed in their duty to their City, lied, put self-interest first, or simply did not do their jobs. Many City processes and procedures were simply not yet up to the high standards the people of

Toronto had a right to expect. City staff had inappropriate relationships with vendors. Some people were not showing the leadership expected of them. Lines of responsibility and accountability were unclear or nonexistent. There was poor communication between people who should have been talking to one another and excessive communication between people who should have stayed at arm's length. I have clearly identified those people, what they did, and what I thought of them.

At the same time, the enormous challenges faced at the time of those events, and the difficult transition Toronto accomplished with success, make the whole picture anything but simple. Human failings and systemic flaws were revealed in six major transactions, yes, but it was a time of cataclysmic structural change, and the entire story cannot be considered simply in terms of the few who failed the challenge.

As a judge conducting an investigation, I necessarily had to devote attention to the possibility of wrongdoing. There is no need for an investigation if everything is fine. The unfortunate side effect of any investigation, though, is that many of the good things people have done are often pushed to one side in the effort to uncover any wrongdoing. At the same time, the news stories focus on wrongdoing, and scandal captures the public imagination. Often, those working close to the wrongdoers in such stories, though entirely innocent themselves, are tainted by mere proximity to them. This is profoundly unfair. By their actions, these few may taint public perception of public service generally.

I am more convinced than ever of the nobility of public service as a vocation. Throughout the inquiries, I was deeply impressed by evidence of the quiet dedication of the vast majority of those who serve the people of Toronto. I met several such individuals when they stepped into the witness box. Where possible in the context of reporting on the inquiries, I have drawn attention to the rule, rather than the exception. The City can be justifiably proud of its staff.

Judicial inquiries have no power to put people in jail, find them guilty of crimes, fine them, or find them liable to pay damages. They have no power to order change. I have emphasized these limits on my task, publicly and often, in the past three years, but it bears repeating now. With the release of a final report, everyone must understand that a judicial inquiry cannot punish the guilty or force into being a new order of things. An

inquiry is simply an investigation, and the commissioner's report is simply findings of fact and statements of opinion. These should not be perceived as findings of criminal or civil liability. This is important. The power of a judicial inquiry flows partly from its public nature and the public airing of the issues, and partly from the necessarily impartial voice speaking of the events examined.

Witnesses in a public inquiry testify under oath. Examination and cross-examination of the witnesses draws out the facts in order to get at the truth. That was the job of commission counsel and the lawyers representing witnesses and parties with standing. Finding where the truth lay was my job.

When different people, all of whom promised to tell the truth, tell different versions of the same event, how is it possible to arrive at a single, authoritative account? There is no universally applicable formula, human affairs being what they are, but there are some general principles that judges impart to juries:

- How well was the witness able to observe the events?
- How good is the witness's memory?
- How well can the witness describe what he or she saw?
- Is the witness's evidence internally consistent?
- Is the witness's account consistent with other reliable information?
- Does the witness's story change at all under cross-examination?
- Is the witness evasive or hostile?
- Has the witness earlier said something different from his or her testimony?
- Is the witness's evidence consistent with common sense?
- Does the witness have a reason to lie?

In the 214 hearing days of these inquiries, I had just about every kind of witness. Some were insightful and even painfully honest. Some guessed. Some exaggerated. Some wiggled and wriggled and tried to bluff their way out of tight corners. And some had so much explaining to do that their tasks were virtually impossible from the outset. Some lied outright, and some skated around the truth. But at the end of the long evaluation and deliberation process, I was able to reach conclusions about every witness before me. Which brings me to the liars.

A small number of witnesses engaged in an audacious pattern of what they seem to have considered strategically appropriate lying. It served nobody's interests, including their own.

The liars failed. They did not fool me, and they probably did not fool anyone else. The liars robbed themselves of any natural sympathy available to someone who does wrong but bravely owns up to it. Instead, they presented themselves as hardened, self-interested cynics, without regard for anything other than saving their own skins. The liars also forced the inquiries to spend hundreds of hours and countless taxpayers' dollars to expose the lies. I am deeply concerned about the broader corrosive social effects of such flagrant, strategic lying. It only encourages an already cynical public to distrust anyone moving in or around political circles. This is unfortunate, because the democratic process depends in large measure on a presumption that governments and the people who deal with them can be trusted.

At all times while evaluating the evidence of the many witnesses who appeared before me, I tried to do so through a lens of understanding. I understood how difficult it was for people to step so far out of their everyday lives and to relive difficult moments in the harsh glare and foreign atmosphere of a public inquiry hearing room. Sometimes their distress was obvious, and I made allowances for that when considering their testimony. Most witnesses bore their discomfort with dignity and good grace, and for that I am thankful.

At the end of every witness's testimony, I asked them if they had anything to add, or whether they had any suggestions that they would like to leave with me on how to improve matters at the City. Many responded with thoughtful suggestions, and some of those have become recommendations. I am grateful to them for their insight.

I afforded every party affected an opportunity to know the evidence gathered and to respond to it. After the hearings, all of the parties were invited to make closing submissions and reply submissions, and I considered all of them carefully.

Lawyers for the witnesses and parties with standing have an important role to play in an inquiry, and counsel who appeared before me in these inquiries can all take justifiable pride in a job well done. Counsel for the City of Toronto had a bigger job than counsel for any other party, in that

their job stretched from the very beginning to the very end. They performed every part of it well, but I particularly want to comment on their written submissions on behalf of the City. They were exhaustive in detail, comprehensive in scope, and very helpful to me. They did a stellar job of setting out the facts.

Naturally, I have not addressed in this report every issue in the same level of detail as I did during the public hearings. These inquiries generated thousands of pages of documents, transcripts, and submissions. My terms of reference required me to look at a great many things that it takes a lot of time to examine but few pages to explain. I could have gone into the same level of detail in this report as I heard in the evidence in the inquiries, but there was no need. The story had been told publicly, the public had heard it, I had heard it, and that was enough. What remained was for me to distill it all into these four volumes.

Those who have read public inquiry reports before will perhaps find mine a little unusual. One difference that will be apparent to the reader in the pages that follow is that I have set out the evidence of the six transactions more like a story than judges, including me, would usually do.

Throughout the inquiries, I was committed to accessibility, among other guiding principles, and I wanted this report to be as accessible to readers as possible. This is a report to City Council and, through it, to the public. I wanted every member of the community who wanted to read it to find it approachable. The events were complex, but the story is an interesting one. It is really about democracy, and it should be of interest to every Toronto resident. I wanted to tell that inherently interesting story in an interesting way, using language more like natural speech than is usual for a report, including using contractions in this volume.

I want to emphasize one point, however. When writing a judgment, it is usual for judges to compare and contrast what one witness said on a subject with what another said about it. I did not do that here. First, this is not a legal judgment; it is a report. Second, I wanted to tell a readable and easily digestible story in a manageable format. For that reason, there are occasions when I refer to something as a fact without indicating that someone else said something differently. This is not because I have forgotten it, ignored it, or did not hear the other version. In those cases, I have written only about the version I accepted.

My views will, I hope, be quite clear to the reader. But judges in court operate under different legal standards and with different rules of evidence than a public inquiry does. Because of those differences, a judge in court might not have reached the same conclusions I have reached in the public inquiry setting. That was another important reason I chose a less formal style for this volume: I would not be making legal findings of guilt or liability, and I did not want my prose to suggest that I was.

Volume 2 of this report, *Good Government*, is aimed at a different audience. It contains my recommendations and commentary on the areas addressed in the inquiries, grouped according to broad governance themes. The appendices contain the valuable research conducted on governance matters for the inquiries. Volume 2 is aimed primarily at those who work in areas related to municipal governance: staff, politicians, and academics. Yet I hope it will be of interest to the public generally. I consider good government matters to be the heart of my report. They are the root of the events examined in the inquiries, and they are the issues that will ultimately affect the residents of the City the most.

Volume 3, *Inquiry Process*, is intended to be of assistance to municipalities or other levels of government considering calling a public inquiry, judges appointed to conduct one, members of the legal profession who might be involved in future public inquiries, and anyone who might be interested in how these inquiries worked behind the scenes. It explains the inquiry process, the procedures I put in place, and practical details like setting up an inquiry and dealing with the documents.

Volume 4 is an executive summary of this volume, along with my recommendations, but without the commentary found in the *Good Government* volume.

All of my report is also available on CD-ROM. I decided to make my report available on CD to make it easier for people to find the information they want. The entire report will be available on the inquiries' website, www.torontoinquiry.ca, for a year after this report is released, and will also be available on the City's website, www.toronto.ca/inquiry.

Public inquiries are, obviously, public. It was my aim from the very beginning, and throughout the inquiries, to keep this one as public as possible. The hearings were open to the public, and the inquiries' website had full transcripts, submissions by the parties, all of our governance

research, and a host of other information. Even the many thousands of documents we collected were available for public inspection unless they were explicitly confidential, although the volume was simply too great to put them all on our website. I made public statements explaining what was going on in the inquiries. I also did my best to accommodate the news media, and they in turn assisted me in the task of disseminating information about the inquiries to the public, with both sustained coverage and insightful commentary.

Public inquiries are called to address a pressing public issue. The inquiry judge is asked not only to find out what went wrong, but to give his or her best advice on how to improve matters. An essential part of my terms of reference was to make recommendations for the good governance of the City. For the last three years, I have had a virtually unparalleled opportunity to look at some of the inner workings of the City's government. I also had the task of examining, in deep detail, the particular governance issues I have addressed, including a study of practices in many other jurisdictions in Canada and elsewhere. I devoted a separate inquiry phase to those issues. My recommendations flow from all of that experience.

I have made 241 recommendations aimed at improving practices in ethics, governance, lobbying, and procurement. These recommendations are the most hopeful part of this report. They are forward-looking and are offered with well-founded optimism that things are getting better and can continue to improve. They are directed to the City of Toronto, of course, but their general principles are equally applicable to other municipalities and other levels of government.

Much can change in three years. The final stage of the inquiry process, before I started writing my report, was to investigate what had changed and how. City staff were enormously helpful in this and I have briefly summarized the results in the concluding chapter of this volume. The City of Toronto is to be commended for a great deal of important reform, some commenced and some completed since the inquiries began. Yet a few disturbing signs remain that even after the sustained and very public experience of these inquiries, some people who should be changing their ways still do not see the need.

There are lessons for some of those individuals in the stories that follow—lessons about the dangers of unchecked arrogance, power,

complacency, and self-interest. The experience of others is a powerful teacher for those willing to learn.

The White Rabbit put on his spectacles. 'Where should I begin, please, your Majesty?' he asked.

'Begin at the beginning,' the King said gravely, 'and go on till you come to the end: then stop'.

Lewis Carroll, *Alice's Adventures in Wonderland*, quoted by London: *The Law in Literature* (Simon & Schuster, 1960), p. 17.

I. A SMALL CRACK REVEALS A BIG PROBLEM

There is a crack in everything / That's how the light gets in.

LEONARD COHEN

IT WAS ONLY A SINGLE PHRASE, buried in the mountain of paper delivered to every Toronto City councillor before the Council meeting—a passing reference in a run-of-the-mill staff report about ho-hum photocopiers. But that single phrase, “current technology lease provider,” would lead to stories about influence, incompetence, ambition, greed, and secrets, and to many, many lies.

The phrase was in a staff report heading for a discussion at City Council. The agenda for the meeting to start on April 23, 2001, was daunting. Most Council meetings go for three days. This one, with protracted debate over the budget, would go on for eight.

Little about photocopiers arouses interest, much less excitement. This routine report promised to be dry reading; a predictable step in buying standard office machines. Surely, in the colossal pile of reports, impossible to get through before the Council meeting, there were many documents with a far more compelling claim on a councillor’s limited preparation time.

Many experienced councillors look at staff reports with a skeptical eye. Councillor Bas Balkissoon later explained it to me this way: “I’ve learned over time that buried in reports are one-line statements that will always

come back to lynch you, and I've always complained about it—that there are always hidden recommendations in reports.” Too skeptical? Maybe. But in April 2001, his skepticism served the City well. That single phrase was noticed.

It was just four words in one innocuous statement: the photocopiers would be leased from the City's “current technology lease provider.” Who was that? Who was the City's current technology lease provider?

If someone had taken a poll of City councillors at the time, probably none of them would have known. Certainly, none of them would have remembered Council's approving a technology lease provider. The report didn't even mention the name of the company. It did say, though, that millions of dollars were to be paid to this unnamed company for 500 photocopiers. And that was the crux of the matter: the unnamed company's entitlement to get that much of the City's business wasn't explained.

So councillors started probing. The more they asked questions, the clearer it became that the small crack was deeper than it appeared on the surface. What did that mean for the way the City was spending the taxpayers' money?

Councillor Bas Balkissoon started asking questions on a Sunday evening in late April 2001. The Council meeting was to begin on Monday morning, and he wanted answers. As chair of City Council's Audit Committee, he had come to know the City Auditor well enough for a weekend call. He called Jeffrey Griffiths at home. Mr. Griffiths couldn't tell him whether Council had actually approved a “technology lease provider,” but he said he'd try to find out.

A. AN ANSWER RAISES MORE QUESTIONS

Nestled between the gently arcing twin towers of City Hall is the flying-saucer-shaped Council Chamber. Inside the Chamber, the photocopier report was no longer just routine business. It started a battle for higher principles of public accountability.

Toronto City Council meetings often look like barely controlled chaos. This meeting in the spring of 2001 would be one of those. It was to be a

gruelling session, scheduled to last almost three times longer than normal.

April 23 was the first day. It was Monday morning, and Jeff Griffiths was as good as his word. The Auditor had talked to the people in the Information & Technology Division (IT). Someone from IT would come to Councillor Balkissoon later and answer his question from the night before.

City Council often approves staff reports, especially routine ones, without debate. If a councillor “holds” a report, it won’t be approved without further inquiry, discussion, or information from staff. To make sure it wouldn’t be approved until he had his answer, Councillor Balkissoon held the photocopier report.

He didn’t have to wait long. Lana Viinamae, then the City’s Director, Computer Operations and Telecommunications, soon approached him. MFP Financial Services Ltd. (MFP) was the mysterious “current technology lease provider,” she explained, and the City’s “vendor of record” for leasing. She thought the two terms meant the same thing. Bas Balkissoon was skeptical. That would mean MFP had all of the City’s IT leasing business—tens of millions of dollars’ worth. He asked her for a copy of the staff report recommending MFP as the vendor of record in the first place, and the Council Resolution approving it. That would settle the matter. That would prove whether MFP was entitled to that enormous amount of the City’s business.

Holding the report had caused a stir in the Council Chamber. Councillors were asking questions. As Lana Viinamae made her way out of the Chamber, she bumped into lobbyist Jeffery Lyons. He wanted to know what was going on down on the Council floor. She told him Councillor Bas Balkissoon was asking lots of questions about leasing.

As the Council meeting continued, another councillor approached Councillor Balkissoon: Did he know MFP’s Dash Domi was Tie Domi’s brother? Tie Domi, the famous hockey player? Mr. Balkissoon said that was irrelevant. Why would it matter if an MFP salesman’s brother played for the Toronto Maple Leafs?

On the second day of the Council meeting, Councillor Balkissoon had a surprise visit. A security guard came into the Chamber to tell him that “Jeff” wanted to see him in the Council lounge. Off he went to the lounge, looking for City Auditor Jeff Griffiths. But it wasn’t Mr. Griffiths who was waiting for him—it was Jeff Lyons.

Jeff Lyons was seen as the most influential lobbyist at City Hall. He had called the Councillor after he had held the report, but Councillor Balkissoon hadn't yet had time to call him back. So Mr. Lyons had asked to see him to make a special point of letting him know that MFP was his client, and they were "very good guys." Was that supposed to mollify the Councillor's concern about how City staff might be spending the taxpayers' money—to his client's great benefit?

That day or the next, Lana Viinamae was back in the Council Chamber. She offered Councillor Balkissoon a briefing note—a short background piece on MFP's dealings with the City, prepared by City staff two years earlier. It was not what he'd asked for. He wanted to see the whole staff report and evidence that Council had approved it. She said she'd try to get it from the City Clerk.

Inexplicably, it took a couple of days. At last, Councillor Balkissoon got the July 27, 1999, Council Resolution from Ms. Viinamae, and parts of it were circulated to the other councillors. The Resolution authorized the City to enter into a leasing contract with MFP "for leasing computer equipment and related software for three years." But what did that have to do with photocopiers? What had Council really authorized?

Councillor Balkissoon asked the City Solicitor for the master lease agreements with MFP. Surely these legal documents, with their sober and exhaustive detail, would have the concrete answers that were so uncomfortably lacking. The real question, after all, was simple: Would the City be spending the taxpayers' money properly by leasing photocopiers through MFP?

H. W. O. (Ossie) Doyle had been City Solicitor and head of the Legal Services Division since amalgamation. He started as a solicitor for the former Metropolitan Toronto in 1970. On this day, he was the bearer of bad news. He said individual councillors couldn't have the master lease agreements. They contained confidential commercial information. If that information fell into the hands of MFP's competitors, it could be used against MFP. Councillors could look at them with the City Auditor present, but they couldn't have copies. Mr. Doyle would answer Councillor Balkissoon's questions about the leases in the Council Chamber. "How can I ask a question on a document I can't read?" Bas Balkissoon would later wonder in the inquiry witness box. "How can I ask the right questions? How can I get to the bottom of information I'm looking for?"

But the City Solicitor's advice prevailed. Questions about the master lease agreement would have to be asked from the Council floor when the photocopier report was debated. That would be on the very last day of the marathon Council meeting. Time for getting answers was running out.

On May 2, Ossie Doyle stood bravely to face a barrage of questions from the councillors. He was given only the lunch hour to find the answers: meet with staff, review the documents, and come back with an opinion. That was almost no time to do what lawyers prefer to do before giving definitive legal advice: read the documents closely, research the law, and form a considered opinion after due deliberation. To make matters worse, the master lease agreement was put in place during the preparations for Y2K. An outside law firm handled all of the Y2K-related IT matters, including the contract with MFP. Neither Mr. Doyle nor anyone in his office had worked on it. He did the best he could in the circumstances. Under pressure to give advice on the fly, he concluded that the 1999 computer leasing agreement with MFP could actually cover new leases ending well into 2008.

With comparative leisure to analyze the documents, other lawyers in Legal Services would later come to different conclusions. Lorraine Searles-Kelly, for example, concluded that Council had only authorized City staff to spend \$43 million with MFP, and on the programs specified in the report. It seemed that Council authority didn't extend beyond three years, or to leases other than the projects listed—which didn't include photocopiers. But that opinion only came two weeks later.

In the Council Chamber, Ossie Doyle rightly told the councillors the City was free to deal with another company on photocopiers. That, of course, raised another serious question in the Chamber: Why was the photocopier deal going to be awarded to MFP without a competitive process?

Lana Viinamae stepped forward to answer that one: The City already had all of its massive IT acquisitions for Y2K on lease with MFP. She was "quite satisfied with the service that we're receiving from MFP today for all of our equipment." A tender just for the photocopiers might mean having to manage another master lease agreement with another company. The photocopier lease had taken a long time to come before Council, putting the City's ability to deal with its existing photocopiers at risk. A new tender would take yet more time.

Councillor Joe Mihevc couldn't sit still. Shopping with the taxpayers' money demanded more than just getting satisfactory service at the end of the day. What about spreading out the business? Getting the best value? Transparency in the process? Had those issues even been considered?

Ultimately, Council approved the photocopier report that day, but with a very important amendment: the photocopier leasing deal would have to go through public tender. Another proposed amendment, possibly prescient, was rejected: investigate all the deals the City made with MFP in 2000 on the strength of the July 1999 Council Resolution.

The small crack had been plastered over, and the supposed "current technology lease provider" wouldn't have the photocopier business just handed to it. It would have to compete for it like everyone else. But unanswered questions remained. For instance, how did photocopiers come to be lumped in with computers at all?

B. THE FLAWS IN THE PHOTOCOPIER REPORT

Some senior staff thought photocopiers were just an extension of IT equipment, so they should be leased through MFP. They were wrong. The July 1999 Council Resolution gave no such authority, and there was no other Council authority for it.

Wanda Liczyk was one of the people who signed the photocopier report to Council. She was the City's Chief Financial Officer and Treasurer yet, curiously, she seemed not to have noticed its glaring inaccuracies. The other person who signed it was relatively new to the City and didn't know as much about the history of leasing at the City as she did.

Ms. Liczyk's decision was in her answer to an e-mail from Lana Viinamae: "I agree that they should be treated as an extension of our pc's and printers and therefore fall under our leasing program as peripherals." Ms. Liczyk downplayed that directive at the inquiry, claiming she was just affirming an understanding already reached by Ms. Viinamae and Purchasing and Materials Management Division (Purchasing). She agreed to it, though, and that led to the controversial photocopier report to Council.

The councillors didn't get satisfactory answers to their questions about that report. The answers from staff only raised more questions: Why were photocopiers "peripherals"? How did MFP become the recommended supplier for leasing photocopiers? Why should the City lease photocopiers from MFP in 2001 just because it leased computers and software from the company in 1999? Had the company won that business fairly or was something else afoot?

The report was flawed. For one thing, treating photocopiers as computer peripherals was a bit of a stretch. More important, though, IT was going to award a contract to MFP without a public tender; that is, with no competition for the business.

Wanda Liczyk had a reputation for being demanding, conscientious, and hard-working. Yet she missed these points when she signed the report, as she conceded at the inquiry. Why did she pay so little attention to what she was signing? She was busy and distracted. The lengthy budget debate was coming, she was about to go on vacation, and she had many things to wrap up before taking on her new job at Toronto Hydro. Had she paid attention, she might not have signed the report.

MFP's entitlement to the photocopier contract was presented as a given in the staff report to Council. Yet the senior staff whose fingerprints were on or near the photocopier deal were not unanimous at the inquiry. Some thought MFP did have exclusive rights. They were wrong. A handful took the opposite view. They were right.

It's not a problem if staff have different views on an issue. It can lead to debate, and that's healthy. The problem here was that only one view found its way into the report to Council, so no debate was possible. If the innocuous phrase "current technology lease provider" had gone unnoticed, the report would have lulled Council into complacency and the deal would have passed without a murmur. As it was, at least the contract would be put out to tender.

C. DISTURBING CALLS

The questions asked inside the Council Chamber soon drew attention from outside. Councillors, doing the job they were elected to do, were asking tough questions from the Council Chamber floor about a multimillion-dollar leasing deal and the press took notice. An article about it by John

Barber appeared in *The Globe and Mail* and mentioned Councillor Balkissoon.

After the article appeared, Jeff Lyons left a voice-mail message for Councillor Balkissoon. The lobbyist was accusing him of seeking media attention the wrong way: If he wanted to move ahead in his political career, this was not the way to do it. Mr. Lyons offered to get him the right kind of coverage if media attention was what he wanted. Mr. Lyons would testify that he was being sarcastic and facetious, but Councillor Balkissoon found the message very disturbing. And why wouldn't he? He was a councillor, doing what he was supposed to do—asking questions about the entitlements of a vendor. Why should he get a sarcastic call from that company's lobbyist?

Councillor Balkissoon also had an overture from Dash Domi. The MFP salesman was upset that Council had questioned the photocopier leasing deal. He called Councillor Balkissoon to assert MFP's right to the business.

The ship of state is well off course when a lobbyist and a salesperson chastise a councillor for asking questions in a Council meeting. But that didn't occur to either Mr. Lyons or Mr. Domi, apparently, and it certainly didn't hold them back. It was no accident that both of them approached the same councillor. Not surprisingly, MFP's sales representative called MFP's lobbyist on the day Council debated the photocopier report, and again the next day. Mr. Domi testified that he "must have" talked to Mr. Lyons about the photocopier deal.

Jeff Lyons and Dash Domi were talking to Councillor Balkissoon across a cultural chasm. What City Council wanted was fair play, transparency, and proper procedures. In the world of Mr. Domi and Mr. Lyons, "good guys" like MFP should be treated well whether those principles were followed or not. Relationships were what mattered.

Cultivating relationships was something Dash Domi knew how to do. When he had set out to get the City's business two years earlier, he went after a relationship with Tom Jakobek, then a City Councillor. They were still in touch when the photocopier report drama played out in Council. Mr. Domi called him the next day. Was the call about that deal? We don't know. But there is more about their relationship in the other stories in this volume.

Mere days after the bland phrase "current technology lease provider" ignited debate in Council, Councillor Balkissoon fended off a powerful lob-

byist and an aggressive salesman. Councillors discovered they were allowed only restricted access to the City's own documents. Council had been given disconcertingly incomplete reports and conflicting assertions by staff. And in the end, nobody had good answers to very important questions about MFP's dealings with the City. Something was not right.

D. WATERLOO AND MFP

Within a couple of weeks of that spring Council meeting, City staff issued a Request for Quotation (RFQ) for the photocopier leasing business. MFP was the lowest bidder. With a recommendation heading to Council, MFP was about to get another profitable contract with the City. But chance intervened. Difficulties over MFP leases at the City of Waterloo suddenly hit the news. Toronto City Council postponed the decision to award the photocopier contract pending a review of its business with MFP under the 1999 contract.

The City's Finance department did the analysis. In early June 2001 came the stunning revelation. The hardware and software leases with MFP, authorized by Council to a maximum of \$43 million over three years in 1999, had ballooned to more than \$80 million. The discovery produced shock waves, and the slow but inevitable march to these judicial inquiries began.

First came an investigation by KPMG Investigation and Security Inc. (KPMG) that yielded more questions than answers. Next came months of political wrangling, as then-Councillor David Miller led the charge for a judicial inquiry that could call witnesses and subpoena documents. Finally, on February 14, 2002, City Council voted unanimously to establish the Toronto Computer Leasing Inquiry.

The inquiry was under way, but yet more questions had surfaced. At its meeting of October 1–3, 2002, eight months after calling the first inquiry, Council voted 26 to 7 to establish the Toronto External Contracts Inquiry. Later, at my request, Council considered that decision again, and affirmed it by a vote of 34 to 4 on May 19, 2004.

How did the City of Toronto arrive at the murky state of affairs first exposed by a simple question about four words buried in a routine report? What were the answers to the questions councillors were asking in the

spring of 2001? Precisely how did the City come to spend tens of millions of dollars of the taxpayers' money on computer leasing with MFP? It took two lengthy public inquiries to answer those and other questions. In the answers lie some very important lessons.

The seeds of these stories were planted over a decade earlier, in a very different city: North York, under Mayor Mel Lastman.

II. THE TIES THAT BIND

A. THE CITY WITH A HEART

“NORTH YORK: THE CITY WITH A HEART,” proclaimed the colourful street signs on every major artery into town. And from a bird’s-eye view, for much of the ’70s, ’80s, and ’90s, that cheery label seemed to fit well.

For 25 years, the biggest booster of the City with a Heart was Mayor Mel Lastman. A flamboyant, successful retailer and consummate showman, he enthusiastically promoted North York and declared it open for business. As Mayor, he was always accessible to his staff, and to anyone who wanted to do business with North York. Even suppliers were not to be held at arm’s length. They were stakeholders, too—part of the family—to the point where Mayor Lastman saw nothing wrong with senior City staff appearing in testimonials for City suppliers. Indeed, he’d done it himself. It was a happy, family-like place to be, and the “special events Mayor,” as some called him, loved big “family” occasions.

Mayor Lastman was the public face of North York, and North York was smiling. He had set a tone for running the city, and it operated much like a large and busy family: caring, relaxed, informal, and focused on getting most of the important things done without worrying too much about how.

There was only one problem. City governments are not families. Families do not collect and spend the taxpayers’ money. Families can shop where they like and favour whomever they like without having to justify their choices. Governments cannot. Governments have duties to discharge.

Government decisions must be made fairly, and must be seen to be made fairly. Families can't be criticized for looking out for their own first. City government officials who put themselves first are failing in their duty to serve the community. The family atmosphere that defined North York as the City with a Heart would be the source of grave problems, years later, when it was transplanted to the newly amalgamated City of Toronto. But in 1985, that was still far off.

In 1985, into the family circle walked the young Wanda Liczyk.

1. THE MAYOR AND THE PROTÉGÉE

Wanda Liczyk was going places. That was easy to see. Enthusiastic, intelligent, and extremely hard-working, she exuded potential for success. She was only 24, a University of Toronto Commerce grad and a freshly minted chartered accountant, when she joined the City of North York as a Budget Analyst. She reported to Al Shultz, a congenial, middle-aged career bureaucrat who minded his own business as he ambled gently along the path of least resistance. Wanda Liczyk became Al Shultz's boss in no time.

Wanda Liczyk certainly had potential. Other qualities soon emerged, both good and bad. She had a tendency to micromanage and was loath to delegate. When she did delegate, she was impatient and demanding. Subordinates soon learned that work passed up to Ms. Liczyk was in for meticulous dissection and would invariably return liberally anointed with incisive comments in red ink.

In the open-door, family atmosphere that was North York City Hall in the mid-1980s, Mayor Lastman soon noticed Wanda Liczyk. Politically savvy and motivated, she set about applying her considerable skills and energy to delivering what the Mayor wanted when he wanted it. If her talent was her ticket to the top, his approval was her passport. Mayor Lastman was famously accomplished in public relations, but he needed someone like Wanda Liczyk, with her solid grounding in finance and her professional acumen, to deliver on the financial matters—central to a city's well-being, but well below the public's radar unless things go very wrong.

She zoomed up the management ladder, from Budget Analyst in 1985, to Project Director in 1987, to Deputy Commissioner of Finance and Deputy Treasurer in 1989. In 1992, she reached the top rung of finance in

North York when she became Commissioner of Finance and Treasurer. She was still only 31 years old. By all accounts, she was the youngest city treasurer in Ontario, and perhaps in Canada, and the first woman to hold such a post. In 1996, she was also appointed City Administrator. She kept the title of Commissioner of Finance and Treasurer, but from then on, the day-to-day management of the Finance department fell to Al Shultz.

Mayor Lastman supported Wanda Liczyk's meteoric rise, and she didn't disappoint him. North York was on budget every year she was Treasurer. He didn't care much about how things got done; he valued outcome, not process. She took to this results-oriented, damn-the-torpedoes governance culture. She was in her element. Mayor Lastman and Treasurer Liczyk were a great match and ultimately, as we will see, a great liability for the taxpayers.

Mayor Lastman and Ms. Liczyk got along very well personally, too. When they came to the newly amalgamated City of Toronto, Michael Garrett, the City's top bureaucrat and Chief Administrative Officer, relied on Wanda Liczyk to interpret the Mayor's behaviour and way of speaking, which was sometimes puzzling to him. The Mayor and Ms. Liczyk were comfortable with each other. They liked and trusted each other. In this atmosphere, Ms. Liczyk could do no wrong.

2. THE TREASURER AND THE AMERICAN CONSULTANT

Wanda Liczyk had an aggressive, hands-on management style, and never more so than when it came to information technology. IT interested her. In the late '80s and '90s, IT was exciting. The financial systems at North York were overdue for a major overhaul. The mainframes that had served dutifully since the 1960s were obsolete and about to be replaced with far more sophisticated network-based technology.

North York first had to set about upgrading its general ledger system. American Management Systems, a company based in Virginia, won the contract to supply a new general ledger system to North York in the late 1980s. As part of the AMS team, Michael Saunders came to town.

Later, when North York needed a new tax collection system and didn't have the necessary in-house IT expertise, Michael Saunders took on the job for AMS. He would remain an IT mainstay at North York, and then at the

amalgamated City of Toronto, for well over a decade. He provided the pivotal tax billing software, and it continues to serve the City well today. But he would leave damage in his wake. His arrival on the scene set in motion events that would lead, inexorably, to this inquiry.

Of course, Wanda Liczyk knew nothing of what was to come when she met Michael Saunders in 1986.

Despite the well-known pitfalls of office romance, the workplace remains fertile ground for cultivating intimate relationships. Indeed, office romances are commonplace, and perhaps inevitable. People spend much of their lives at work. For the most part, they look their best, try their best, and display their best behaviour in the workplace. They are thrown together, and sometimes it doesn't take much to pierce the protective bubble of workplace social protocol.

When she met Michael Saunders, Wanda Liczyk was in her 20s and single. She was spending many late nights at the office, making a name for herself by working hard at her job. He was an older married man, an expert in IT, a field that had captured her interest, and he was in town alone, with time on his hands at the end of the workday.

They got along well at work. Then they became friends. Three years after they met, Wanda Liczyk and Michael Saunders started a sexual relationship.

3. AN INTIMATE RELATIONSHIP, BY ANY OTHER NAME

Ms. Liczyk said her affair with Mr. Saunders lasted two and a half years, from 1989 to 1991, when he entered treatment for alcohol abuse. Did the affair really end when she said it did? It's hard to know. We have only Ms. Liczyk's word for it. Because they kept the affair secret, there is no one else to confirm or deny what she said. Mr. Saunders flatly refused to testify at the inquiry or even to be interviewed by commission counsel. We do know that they were still in touch right up to and during the inquiry. It's hard to believe that they didn't discuss his decision not to co-operate. In any case, without his version, we have only her story. And there are a number of reasons to question it.

First, Ms. Liczyk didn't come across as a credible historian. She was evasive in her testimony and in her sworn affidavit. A master of what some

might call “bureaucratic empty-speak,” she relied heavily on abstract terms, the passive voice, an officious and authoritative delivery, and hollow jargon. No doubt, she was used to intimidating her underlings or intellectual inferiors by talking in this way. It didn’t work in the inquiry hearing room.

Second, she downplayed her sexual relationship with Mr. Saunders in ways that further damaged her credibility. For example, she insisted that the affair was “brief.” A powerful subtext of the word “brief” is “inconsequential.” She used the word tactically, and it backfired. In the context of affairs, few would agree that two and one half years is brief. Ms. Liczyk conceded on the witness stand that, yes, there would be people who wouldn’t perceive it as brief.

Even more damaging to her credibility was her deliberate and calculatedly inaccurate description of their relationship in her sworn affidavit. She said the “friendship became a personal relationship.” It was only in the witness box that she acknowledged that she had had a sexual relationship with Mr. Saunders.

Why did Wanda Liczyk, a notorious stickler for precision, describe their relationship so ambiguously in her affidavit? Did she think a “personal relationship” is sexual by definition? I don’t believe she did. The day after she said that by “personal relationship” she had really meant a sexual one, she was asked if she had had a personal relationship with the City Manager of Mississauga. In an unguarded moment, she clearly interpreted the term the way most people would—that is, she equated a personal relationship simply with a friendly one. In testimony a year earlier, she had made a distinction between a “personal relationship” and a “business relationship” in describing her rapport with a supplier (Dash Domi, about whom we will hear more later). Again, she was clearly not defining “personal relationship” to mean a sexual one. She tried to hide her relationship with Michael Saunders behind the innocent screen of a “personal relationship,” and all she succeeded in doing was to trap herself through her own inconsistent use of the term.

Third, Ms. Liczyk said that after amalgamation she had “much less contact” with Mr. Saunders. However, later cellphone records put them in close and frequent communication. Between 1998 and 2001, Ms. Liczyk called his hotel room, after business hours, 174 times. In comparison, she made after-hours calls to the homes of close work colleagues Al Shultz and

Giuliana Carbone only three and six times respectively. Seventy-five of Ms. Liczyk's evening calls to Mr. Saunders's hotel room lasted more than 10 minutes. One started shortly before midnight and continued for over an hour. A second started around 11:30 p.m. and lasted 50 minutes. A third started around 10:30 pm and lasted 64 minutes. If work obligations called for these unusual late-night calls, there was no evidence to support it. These are only the cellphone records and do not include any landline-to-landline calls.

Fourth, after amalgamation, witnesses saw Mr. Saunders and Ms. Liczyk having dinner alone together several times and in several locations. Significantly, the locations for these dinner rendezvous were often quite out of the way for one or the other, and unrelated to a work site. It was neither convenience nor duty that brought them together. They were just out together, enjoying the evening in each other's company.

In assessing the veracity of Ms. Liczyk's claim that the sexual relationship ended in 1991, these four reasons, cumulatively, give one pause. Ultimately, though, it doesn't matter. Whether or not their sexual relationship continued, Ms. Liczyk and Mr. Saunders certainly remained very close, intimate friends. To narrowly focus on an accurate calendar of their sex life would cloud the real issue.

4. IT'S NOT THE FIRE, IT'S THE SMOKE

It was no task of this inquiry to fathom the human mysteries that lead to sexual intimacy. It was no task of this inquiry to pass judgment on office liaisons in general or the propriety of the relationship between Ms. Liczyk and Mr. Saunders in particular. It was, however, a task of this inquiry to explore whether, and to what extent, municipal government decision making was compromised by any actual or apparent conflict of interest arising from that relationship. In that task, sex was not the issue; intimacy was.

Intimacy, between sexual partners, family members, or close friends, naturally carries with it some measure of emotional attachment. That emotional attachment can, perhaps quite inadvertently, influence a decision-maker's judgment. In the context of municipal government, where public money is being spent, citizens are entitled to expect clearheaded and fair-minded analysis of the public good. The mere possibility that emotional bonds could fetter decision making and predispose the decision-maker to

favouritism is anathema. That is what matters about Ms. Liczyk's intimate relationship with Mr. Saunders. It is not about what they did behind closed doors and when. It is about the possibility of, and the appearance of, the compromised decision making that flows from intimacy.

In the discussion that follows, I will use "close friendship" to describe the relationship between Ms. Liczyk and Mr. Saunders. The phrase is meant to do two things. First, I want to remove the emphasis on the sexual or romantic nature of the relationship because it doesn't matter to the issue at hand. Second, I want to focus on what does matter: the emotional attachment that compromises objectivity. With that in mind, whatever the duration of their sexual relationship, I am certain that throughout the events I have examined in this inquiry, Michael Saunders and Wanda Liczyk had a close friendship. Her emotional attachment compromised her objectivity and her support for Mr. Saunders was inappropriate.

Ms. Liczyk argued forcefully that championing Mr. Saunders as she did was the right thing to do for the City of North York and, later, for the City of Toronto. She sincerely believed that TMACS (Tax Management and Collection System), the tax system software developed by Michael Saunders, was the best option. Whether that is true scarcely matters. Indeed, it might be worse if it is true. Even the right decision is tainted by a compromised decision-maker. Public confidence in the process is corroded, and a good decision could be rejected as a consequence. Thus, the public interest can suffer when the right decision is made in the wrong way.

The standards by which Ms. Liczyk's decisions favouring Mr. Saunders must be measured are not complicated. The Code of Ethics for North York staff stated that an employee "never uses the position to secure advantages or favours for self, family or friends." Ms. Liczyk and Mr. Saunders were close friends throughout his time in North York and Toronto.

Until the newly amalgamated City of Toronto drafted its own conflict of interest policy, North York's Code of Ethics continued to apply to Ms. Liczyk after she took up her post in Toronto. Her employment contract added a further obligation: She had to avoid both actual and apparent conflicts of interest. Significantly, the contract put the onus on her. In other words, she couldn't wait until someone pointed out to her that she had a conflict or the appearance of one. As a senior manager in the organization, she was obliged to actively avoid both.

These obligations would have been no mystery to Ms. Liczyk. Brenda Glover, the former Treasurer of Etobicoke, was Toronto's first Commissioner of Human Resources. In the witness box, Ms. Glover observed that someone at Ms. Liczyk's level would be expected to disclose a close friendship with a contractor and to disqualify himself or herself from any decisions about awarding or managing that person's contracts. Ms. Glover went further: she confirmed that Ms. Liczyk was present at senior management meetings when these very conflict of interest principles were discussed. Unquestionably, Ms. Liczyk would have known what she had to do. Mike Garrett agreed. He testified that, as a seasoned senior public servant, Ms. Liczyk was expected to be able to make sound judgments and to be vigilant in protecting herself and her department from any appearance of favouritism.

In her closing submissions, Ms. Liczyk asserted that focusing on her affair with Mr. Saunders was sexist, and wouldn't have happened were she a man. Whether the public official is a man or a woman is irrelevant. Decisions are compromised where close friendships are involved—period. That is all the more true in the context of decisions affecting public money, where the public has an absolute right to expect transparency and fairness.

Ms. Liczyk's wrongdoing was perfectly clear when measured against the terms of her contract and the code of ethics that governed her. She admitted as much in the witness box, albeit obliquely. It would have been to her credit had she simply accepted that she had made a mistake. Instead, in her written submissions, she reverted to minimizing her misconduct and criticizing this inquiry for exploring it. In so doing, she demonstrated an inability—or worse, an unwillingness—to learn from her mistakes.

B. THE WINDING ROAD TO A NEW TAX SYSTEM

1. HOW THE CONSULTANT GOT HIS FOOT IN THE DOOR, AND KEPT IT THERE

Michael Saunders came to North York, as part of the AMS team of consultants, to work on the general ledger system. He didn't stay with AMS, but he did stay on at North York. From that earliest business relationship, his dealings were secretly mired in a conflict of interest.

In 1990, Michael Saunders left AMS and set up his own company. Over the years, this company changed names a number of times. At the inquiry, it was known as Beacon Software. When he left AMS, Michael Saunders made a proposal to North York to continue to work on the general ledger system North York had purchased from AMS. He offered to do it for 20 per cent less than AMS's rate.

The proposal appeared to make business sense and had to be taken seriously. The key participants in the decision were Robert Davie, then the Commissioner of Finance and City Treasurer, Wanda Liczyk, by then the Deputy Commissioner of Finance and Deputy Treasurer, and Al Shultz, the Director of Finance. Wanda Liczyk was intimate with Michael Saunders at the time. She didn't disclose that to either Robert Davie or Al Shultz. She actively participated in the discussion leading to the decision, advancing Michael Saunders's interests. He was awarded the contract. It may have been the right business decision, but it was tainted with conflict.

In the fall of 1991, Michael Saunders proposed that he and David Maxson, another American IT consultant, develop a customized tax management and collection system for the City of North York. Once again, when Wanda Liczyk met with Robert Davie and Al Shultz to discuss the proposal, she kept silent about her relationship with Mr. Saunders, which, if she is to be believed, had ended only a few months before.

David Maxson worked closely with Michael Saunders for over a decade in North York and Toronto. For most of that time, he worked for Mr. Saunders's companies. In 1999, Mr. Maxson set up his own company, Remarkable Software, and began billing the City of Toronto separately.

Mr. Saunders was the project manager and Mr. Maxson was the systems architect. A systems architect designs software to suit the client's identified needs. Mr. Maxson brought to this role a level of technical expertise that Mr. Saunders didn't possess.

Witnesses said that Mr. Maxson's work over the years was competent and without incident. Beyond that, however, he remained a bit of an enigma. Investigators for the inquiry approached Mr. Maxson repeatedly and tried their best to solicit his co-operation. Unlike Mr. Saunders, who was friendly (albeit unco-operative) toward the investigators, Mr. Maxson was overtly hostile. David Wendell Holmes, one of our American investigators, visited Mr. Maxson at his home in Virginia. He tried to give Mr. Maxson a pack-

age of documents that explained all about the inquiry and formally requested his attendance. It would be their last meeting. Mr. Holmes described it this way:

Mr. Maxson did not respond well to the receipt of the envelope. He appeared confused and declared that he did not want it, wondering what exactly he was supposed to do with the documents. I responded that Mr. Maxson should read over the documents carefully and do the right thing. Mr. Maxson tried to hand the envelope back to me. "Take them back," he said sternly. I declined. Mr. Maxson followed me outside, but only as far as the top step of his front porch, envelope in hand. He flung the document into the light rain, where it settled on to the damp front yard below. A look of disgust visible on his face, Mr. Maxson turned towards his door, and went back inside his house. I did not retrieve the envelope from the Maxsons' yard, and left the premises.

North York did hire Michael Saunders and David Maxson to design the tax management and collection system. It was the beginning of their multimillion-dollar, decade-long business dealings, first with North York, then with the City of Toronto.

Once again, Wanda Liczyk had failed to declare her conflict of interest and remove herself from the decision-making process. Once again, she had violated North York's Code of Ethics. Compounding that mistake, the eventual "contract" awarded to Michael Saunders to develop the tax system was not tendered. In keeping with North York's laid-back way of doing things, a trio of senior managers awarded what would turn out to be a multimillion-dollar service agreement based on an informal private discussion. Worse, two of them didn't know that the third had a special relationship with the lucky supplier.

Regardless of how the decision was made to hire Michael Saunders, once the deal was done, surely one would have expected it to be formalized inside the four corners of a properly executed legal contract. It had to do with tax revenue, the fiscal lifeblood of every town and city. The designer of a system for collecting that revenue is potentially holding the City's viability in two hands. Our investigators conducted a painstaking search for such a contract but found no trace of one. All that existed from that North York period were two informal proposals from Michael Saunders to continue

work that was apparently already in progress. Even these were not negotiated contracts, and they were dated December 1997—several years after Messrs. Saunders and Maxson were first hired, and less than a month before amalgamation was to take effect.

During his years in North York, Michael Saunders is supposed to have submitted many of these informal proposals at various stages in the development and maintenance of Version 1 and Version 2 of his TMACS software. In any event, not one of them was ever approved by North York City Council. Three post-amalgamation proposals from 1998 came to light, but, just as had been the case with his proposals in North York, Toronto's City Council never approved them.

Once Version 1 of TMACS was up and running, Michael Saunders and David Maxson continued to travel to North York to perform maintenance and upgrades on the system, and they did some consulting work for other North York departments as well. In other words, without any competitive process, either initially or subsequently, they seamlessly (and profitably) moved from one consulting assignment to the next, and the next.

Of course, there are sound business reasons for continuing or expanding productive business relationships. But we don't know if North York was reaping any benefits, because nobody conducted an independent needs assessment before awarding more work to Mr. Saunders and Mr. Maxson. All we know for sure is that Mr. Saunders and Ms. Liczyk maintained their close friendship, Ms. Liczyk continued to hold sway as North York's financial wizard, and the lucrative work kept on flowing to Mr. Saunders. Whether it made business sense or not, it certainly looked dubious.

Michael Saunders became as much a fixture in the North York workplace as any salaried employee. There was a difference, however. On top of paying him an hourly rate in U.S. dollars, with no limit on the number of hours he could bill, the people of North York also picked up his tab for accommodation, meals, and airfare to and from his home in the United States.

In the mid-1990s, Version 1 of TMACS gave way to Version 2. Once again, Messrs. Saunders and Maxson scooped up this major project. Once again, there was no independent needs assessment or open competition for this lucrative work. Indeed, the need to upgrade to Version 2 at the time Messrs. Saunders and Maxson got the work remains questionable.

The most reliable evidence on this point came from Edwin Ngan, another IT consultant for the City of North York. He worked on the TMACS program and was there at the time. In 1995 or 1996, Mr. Ngan went with Michael Saunders and David Maxson to a company called Dyad to make a sales pitch for Version 1 of TMACS. Dyad was interested in marketing TMACS to other municipalities, but it became clear during the meeting that it wanted to run TMACS on a newer platform than the one on which Version 1 was designed to run. David Maxson returned to North York and started working on moving TMACS to precisely the platform Dyad wanted.

Given the limited shelf life of software, upgrading TMACS would clearly have been necessary at some point. The question is when. At that precise moment, did the expensive upgrade make technical sense, or did it serve the marketing ambitions of the consultants? The people of North York footed the bill and they deserve an answer to that question. Did the City spend their money wisely? Mr. Ngan's evidence suggests that the timing of the upgrade suited Mr. Saunders's and Mr. Maxson's private commercial interests, and North York had no alternative answer to give its people because no one at the City ever asked the question. Wisely or not, North York paid Mr. Saunders and Mr. Maxson to develop Version 2 of TMACS, and Version 2 was much more marketable for them.

Meanwhile, Mr. Saunders and Ms. Liczyk continued their close friendship, more informal proposals from Mr. Saunders flew in below City Council's radar, and money kept flowing out of North York's coffers to Rhode Island and Virginia.

2. THE CHILL IN THE OFFICE

What was it like to work with Mr. Saunders? How did the American consultant, who was secretly close to the boss, get along with the workers? Were there any problems? Yes, indeed. How did Ms. Liczyk handle those problems? Very badly, it seems. Michael Saunders was rude, arrogant, aggressive, and verbally abusive to staff. The inquiry heard many examples, but a few are all it takes to paint a picture of the chill Michael Saunders brought to office life.

Bob Ripley was a quiet and diligent senior tax expert, first at the City of Scarborough and later at the amalgamated City of Toronto. He said that

Mr. Saunders, an outside consultant, acted as if he were the Director of Revenue. Any discussion or argument always seemed to be resolved his way, even if it had nothing to do with the tax system. It seemed to Mr. Ripley that Giuliana Carbone, the real Director of Revenue, took her orders from Michael Saunders. That was because Mr. Saunders would tell Ms. Carbone that the instructions came from her boss, Wanda Liczyk.

Edwin Ngan considered Michael Saunders his boss when it came to the revenue systems, even though, technically, he reported to Frank Vizzacchero, North York's IT Director.

Giuliana Carbone was a senior manager in North York before becoming the first Director of Revenue for the City of Toronto. Hard-working and talented like Ms. Liczyk, Ms. Carbone was also compassionate, open, and willing to listen. She cared about her staff, and about the residents of the city she served—the epitome of a good public servant. That was evident in her demeanour at the inquiry: a quiet glow of dedication and integrity.

When Ms. Carbone started her new job in Toronto, she didn't know the details of her boss's relationship with Mr. Saunders, but she knew they were close. She knew they talked to each other often, and that Ms. Liczyk had great confidence in Mr. Saunders. She recalled getting a sense from former North York staff that Ms. Liczyk would judge her based on how Michael Saunders perceived her. Ms. Carbone remembered being warned to watch what she said around Mr. Saunders because it would get back to Ms. Liczyk. The warning proved to be apt.

Ms. Carbone noticed that Michael Saunders seemed to know everything that went on in the Revenue Division, and that Wanda Liczyk would know about things going on in the division before Ms. Carbone had an opportunity to brief her. Mr. Saunders knew details about Ms. Carbone's first confidential performance appraisal and even made a disparaging remark to her about it. Ms. Carbone felt humiliated and betrayed. He knew of a comment she made at a meeting where he was not present but Ms. Liczyk was. Ms. Carbone was wary of going to Ms. Liczyk about disputes involving Mr. Saunders because she feared that Ms. Liczyk would side with him. The situation eventually became so intolerable for Ms. Carbone that she started looking for another job. Mr. Saunders, an outside consultant who should have been taking instructions from her, almost forced her out.

At times, Mr. Saunders wouldn't produce what the City wanted. Either he didn't agree with the City's request, or he felt that it was not worth his time. He was the consultant and the City was the client, but Mr. Saunders behaved as if the roles were reversed and he could dictate terms. The City of Toronto is now reprogramming certain aspects of TMACS because Mr. Saunders refused to program it the way the users needed.

Cameron Currie was a North York IT employee who worked with Michael Saunders on the tax system. He testified that managers and staff were reluctant to oppose Mr. Saunders or speak their minds in his presence. It had been widely noticed that he had Ms. Liczyk's backing for whatever he did. Her backing carried a lot of weight. She was the Treasurer.

There was at least one incident when an employee didn't take Mr. Saunders's abuse lying down. Mr. Saunders was so verbally abusive and derogatory that the employee made a formal complaint. Mr. Saunders got a letter of reprimand.

Lack of co-operation, abusive language, aggression, lording it over employees—the inquiry heard many examples of each. How did he get away with it, and keep on getting away with it? The staff knew how, and indeed it is the only feasible explanation: his relationship with Wanda Liczyk.

Wanda Liczyk maintained that she was unaware of much of Mr. Saunders's objectionable conduct with the staff. For example, she never had the sense that Giuliana Carbone was unhappy or frustrated. She said she was disappointed to learn that Ms. Carbone felt unable to talk to her about her difficulties with Mr. Saunders. Ms. Liczyk could have been lying when she said that, or she could have been telling the truth.

If Ms. Liczyk was lying, then she did know about Mr. Saunders's abusive behaviour and its toxic effect but did nothing to stop it. That would be powerful evidence of the extent of the favouritism she showed her close friend, to the detriment of her own staff who were employees of the City. At the very least, that would illustrate the human cost of conflicts of interest.

If Ms. Liczyk was telling the truth, then she really didn't perceive the misery of her staff. That would say something different, but equally important, about the corrosive effect of conflicts of interest. If she really noticed nothing wrong, then her intimacy with Michael Saunders either had chilled

her staff into suffering in silence, or it had profoundly impeded her perception, compassion, and effectiveness as a manager.

Thus, whether she was telling the truth or not, Ms. Liczyk's close friendship with Mr. Saunders created an atmosphere that deeply and harmfully affected the people who had to work with him.

3. AMALGAMATION: HOW SEVEN MUNICIPALITIES BECAME ONE CITY

In the fall of 1996, the Ontario government announced it would amalgamate seven municipalities: the regional government of Metropolitan Toronto and the local municipalities of Toronto, North York, Scarborough, Etobicoke, East York, and York. The result would be a "megacity" of 2.4 million inhabitants, the most populous city in Canada and the fifth most populous in North America. It would also have the fifth-largest municipal government in North America, after Mexico City, New York, Los Angeles, and Chicago. The new City would have the sixth-largest government in Canada, after the federal government and the provincial governments of Ontario, Quebec, British Columbia, and Alberta. It would have a budget of about \$5.5 billion annually, bigger than any other city in Canada and bigger than most provinces. It started with a staff of about 46,000 full-time-equivalent employees, including the City's agencies, boards, and commissions. No other municipal government in Canada had undertaken a reorganization of this scope or magnitude. There was no map for navigating the journey to becoming a megacity.

The proposed amalgamation faced heated and vocal opposition. The most strident of the dissenters was Mayor Lastman of North York, who later melodramatically asserted that he was "in a state of shock," and "determined not to let it happen." Mayors of the municipalities held meetings, press conferences, and a non-binding referendum to foment resistance. But the government of the day held a comfortable majority at Queen's Park. The *City of Toronto Act, 1997* passed into law in the spring of that year. The new City would come into being on January 1, 1998. Now the clock was ticking.

The Province set up a Transition Team, composed of six current and former politicians who had decided not to run in the new City's first election. Its primary function was to develop a framework for the new City's governing

and administrative structure, and to suggest ways in which it could discharge its responsibilities. Essentially, it was to oversee the immense task of fusing together the seven municipalities. However, the Transition Team focused primarily on a vision for the City. It did not develop organizational structures or effective information systems to help that vision become reality.

The Transition Team hired just five people for key senior positions, all of whom were ratified by City Council at its first post-amalgamation meeting. Mike Garrett was the Chief Administrative Officer, Wanda Liczyk was the Chief Financial Officer and Treasurer, Novina Wong was the City Clerk, Brenda Glover was the Human Resources Commissioner, and Alan Speed was the Fire Chief. All other positions in the City would be filled by way of competition after amalgamation.

The megacity's first Mayor, none other than Mel Lastman, expected to walk into a "turnkey operation." What he got was near chaos. "They forgot to give me the key," he railed. "It was awful what everybody had to go through." The Transition Team had developed a book of instructions, but Mayor Lastman said, "You can't run a city with instructions, because not everything is covered in that book of instructions."

Mike Garrett was an impressive, responsible, senior public servant who took the principles of public service seriously. In a July 1999 report to Council, he wrote about the aftermath of amalgamation: "Toronto's organizational size and complexity alone are unparalleled in Canadian municipal government experience and placed extraordinary demands on Council and the administration to get the ship moving and pointed in the right direction."

Mr. Garrett was not impressed with the Transition Team's navigational aids for this new ship. In the same report, he said, "The Transition Team provided no administrative systems or basic operating tools to smooth the transition to a single City. Thus, the new City began life as seven separate administrative structures. These were in flux because of all the organizational uncertainty immediately preceding the amalgamation. To complicate matters, none of the necessary information systems were in place or had been planned by the Transition Team."

In other words, there were seven independent financial systems, seven independent human resources information systems; in fact, seven of everything, and staff in the new City couldn't communicate electronically with one another because their network systems were also different.

Mr. Garrett would return to the nautical metaphor in his testimony: “We had to build the ship as we were sailing it.”

Municipal services had been delivered in different ways and to different degrees in the seven former municipalities. All areas needed public health and fire services, garbage had to be collected, roads needed to be maintained, and properties needed to be inspected by health and safety officials. That was the tip of the iceberg. There were thousands of programs in the former municipalities that reflected diverse local needs, financial capacity, and priorities. Each program and service had its own set of policies, processes, procedures, and systems. Harmonizing and rationalizing all of these services was an immense challenge, to say the least.

Before amalgamation, there were 381 executive positions in the seven municipalities. That number shrank to 154. Overall, management and supervisory positions were reduced from 1,837 to 1,204, and significant corporate memory was eliminated along with the jobs. It would be 18 months before the management positions that were left were filled for each department, which meant that many were initially operating without permanent leadership. The new City also had to negotiate with all of the unions involved. In the end, 56 collective agreements were reduced to six. Wage harmonization was yet another priority. The disparity in pay for the same job in different parts of the City was large in some cases. It still is for many City employees, and almost eight years after amalgamation, as I write this report, the City is still struggling to harmonize wages. On the completion of one arbitration award harmonizing pay scales across the City in mid- 2005, budget chief David Soknacki said, “It’s a festering sore that needed to be lanced.”

For City staff, amalgamation created a tense environment. A significant part of the reason was insecurity about their jobs. In many cases, where once there had been seven jobs, there would soon be just one. Often, more than six or seven candidates competed for the same job. It was a grim game of musical chairs on a grand scale. People were playing for their very livelihoods and having no fun at all. Meanwhile, knowing that the efficiencies they were working to gain would eliminate most of their current jobs, they were expected to work with their counterparts in each former municipality to create a unified approach to service delivery. Tempers were frayed and strategic positioning was the norm.

Councillors had adjustments to make, too. Those who had served in the former municipalities were used to a much smaller Council. Only one, Metro Toronto, had had more than 16 Council seats. The new City had a Mayor and 57 councillors (reduced to 44 in the second term).

The atmosphere was different, too. For one thing, it seemed that there was now a more obvious affiliation to political parties. Councillor Bas Balkissoon, for example, said that, in contrast to his experience in Scarborough, factions and alliances were now often formed along party lines.

Former Councillor Dick O'Brien referred to the "deep philosophical differences" between former Metropolitan Toronto councillors and former City councillors. The former Metro councillors "had been dealing with matters on a macro level and tended to view issues through a wider lens." By contrast, the former City councillors were "more parochial and dealt with concerns within their smaller borders."

Whatever the reasons, interaction among councillors was strained. They were not yet working as a team. At the inquiry, Mayor Lastman said that councillors were "out to kill each other, out to embarrass one another," and were making "no effort to work together." Having had the opportunity to observe a number of Council meetings in the last few years, I must say that I have seen many examples of how little progress seems to have been made in this area to date—if there has been any at all. It was disappointing for me to see some councillors treating one another with obvious disrespect and even contempt.

After amalgamation, in fairness to the councillors, they were dealing with a much bigger and much more complex workload than they were used to. Councillor Balkissoon said it was four times the volume he had been accustomed to in Scarborough, and the monthly meeting agendas alone were up to 30 centimetres thick. Councillor O'Brien described the workload in the first term of Council as "horrific." Councillors didn't have the time to examine each report in detail, nor did they understand everything they did read. They had to rely on reports and recommendations from staff, and that brought to light another problem. Councillors in the former municipalities had come to know and trust staff and had developed reliable information networks. Those networks were gone, and staff at the new City were in turmoil. Some councillors didn't handle it well and, particularly in the early months of amalgamation, sometimes publicly criticized the staff in

an unprofessional, humiliating, and demeaning manner if staff performance failed to meet their expectations.

Meanwhile, there was other major integration work to be done. For example, there were 160,000 bylaws operating in the seven former municipalities. The City faced the daunting task of harmonizing them. There was also much work to be done in integrating property resources, such as consolidating office space and operational yards.

The situation was complicated, but there was another complication to come in the form of a further provincial government initiative. Called “local service realignment” by its proponents and “downloading” by its detractors, its aim was to provide a balanced and revenue-neutral exchange of service and funding responsibilities. The problem was with the revenue-neutral part of the equation. According to Mike Garrett, the City was providing more services without more revenue to cover the costs. The bill for the difference was about \$200 million per year. “Whoever did the math at Queen’s Park got it wrong,” he ruefully observed.

Major areas of responsibilities transferred to the City included social services, the Toronto Transit Commission (TTC), a share of GO Transit, and social housing. Social housing, for example, had been wholly subsidized by other governments and now became the sole financial responsibility of the City. Mayor Lastman said that the City became the largest landlord in the country. The cost of subsidized rent was about \$265 million a year. As Mike Garrett reported to Council, the Province was “rewriting the provincial-municipal relationship. . . . The responsibility for governing this urban area increasingly falls solely to municipal government.”

At City Hall, the frustration was palpable. The savings gained by streamlining service delivery were more than eaten up by the service realignment. As Mayor Lastman pointed out, a city’s only source of revenue is property tax. When costs for services and salaries increase, where is the city to find the money? He had made a campaign commitment to a zero tax increase for the first three years of amalgamation: 1998, 1999, and 2000. With a fixed revenue stream, consolidating the seven municipalities had to be, as Mike Garrett described it, a “Robin Hood” operation: services were evened out across the City by taking resources from the richer areas to give to the poorer ones.

Against this turbulent backdrop, the staff responsibility for delivering on Mayor Lastman’s zero tax increase promise fell to Wanda Liczyk, Chief

Financial Officer and Treasurer for the City of Toronto. It was a formidable assignment, but if anyone had the skill, energy, and political weight to do it, she did. And it was done. In the time leading up to and following amalgamation, Wanda Liczyk was juggling momentous financial issues, and she did it with her customary brilliance. But somehow, despite the many calls on her time and energies, IT matters—and Michael Saunders—made it onto her agenda regularly.

4. TWO TAX SYSTEMS, ONE CITY: HOW THE CHOICE WAS MADE, AND MADE, AND MADE AGAIN

Michael Saunders and David Maxson were in the process of rewriting TMACS to Version 2 when amalgamation was announced. TMACS would now have to compete to become the tax system for the new City of Toronto.

The first shots in the battle of the tax systems were fired in the spring of 1997. The amalgamation legislation had passed, and the deadline, January 1, 1998, was only months away. In the past, treasurers, tax people, and IT people from the seven municipalities would meet congenially to share information. Now, they would be competing for the few positions that would remain when the smoke cleared. Morale was low, but they still had to work together to choose a tax system.

The timing could hardly have been worse. On top of all the amalgamation headaches, Y2K was looming. “Y2K compliance” was the talisman that would ward off the doom awaiting all the world’s computers at midnight on the eve of the new millennium. Many city services depended on computers, and the IT systems had to be ready.

And there were other problems. The Province had introduced legislation to update all of the tax assessments in Ontario to reflect current market value, along with related legislation that made collecting the reassessed taxes even more complicated. The City would need a system that could handle it. At the time, there were only two known systems on the market with that potential. TMACS, brainchild of Michael Saunders and David Maxson, was one. The other was Tax Manager 2000, or TXM.

TXM started as a partnership between the governments of Scarborough and Mississauga in 1994. To develop TXM, they had chosen a path very dif-

ferent from the one followed by Messrs. Saunders and Maxson in developing TMACS. Before beginning work on the project, Scarborough and Mississauga signed a detailed partnership agreement, which included the creation of a steering committee composed of representatives from each municipality to manage the project. They elected to document all of their business requirements before even starting the systems work on TXM. TMACS, on the other hand, was developed in modules. Each module was developed, tested, changed on the fly, and then documented (or not) as the project went along. Each method has its merits, and each is a generally accepted approach to systems development.

The differences in approach now posed a problem. Both systems were works in progress. TXM had a detailed paper design, but it hadn't been built, so to speak. TMACS had some developed modules, but there was little on paper for useful comparison with the TXM design. It was truly like comparing apples with oranges.

The municipalities of Toronto and Etobicoke had signed on to the Scarborough-Mississauga TXM project in mid-1997. They knew amalgamation was on the horizon, that one system would ultimately prevail, and that it might not be TXM. Why didn't they wait to find out which one would be chosen? The answer is a complicated stew of hedging their bets, getting on with the job, strategic alignments, and simple preference. And they couldn't have foreseen that joining a partnership with a city in an adjacent region, Mississauga, would become problematic later on.

In the result, when the battle lines for the tax system were drawn, four of the seven participants had already chosen sides. Scarborough, Toronto, and Etobicoke sided with TXM. North York planted its flag firmly beside TMACS. East York, York, and the former regional government of Metropolitan Toronto (which had no taxing authority) had not yet decided which system to support. With the storm of amalgamation about to break, the combatants were in for a muddy conflict.

In May of 1997, a staff transition team made up of the municipal treasurers called in a neutral party for guidance. The accounting firm Deloitte & Touche was directed to organize an independent evaluation of the two tax systems. They were given only until the end of June to complete the task—less than ideal, but the pre-amalgamation “to-do” list was long. Two groups were to evaluate the systems. The “user” group was composed of those who

would be relying on the system in the end, generally the municipal tax directors. The “technical” group was made up of the IT staff who would be making it work. Each group had seven members, with one representative from each of the municipalities.

Many evaluators were already aligned on one side or the other, and they were firmly entrenched in their views. Sparks flew. Even the minutes of the meetings captured a heated, confrontational atmosphere. Passion and vitriol in a discussion about tax collection systems? Take unshakable views, add job competition, and confrontation is not surprising.

What is surprising is how deeply Wanda Liczyk was involved in the entire process, right down to the smallest detail. Indeed, she seemed to be the most passionate advocate at any managerial level. She was now also the City Administrator for North York, and the selection of a tax system was not in her burgeoning bundle of transition responsibilities. The practical work of carrying out the evaluation had been delegated below her, and she had plenty of other things to do. Al Shultz (who reported to her, and in whom she had considerable confidence) was North York’s Acting Treasurer and its representative on the treasurers’ transition team. Nonetheless, Wanda Liczyk’s views permeated the debate, and her fingerprints were on matters as trifling as selecting a meeting location.

No other City Administrator was involved in the Deloitte & Touche evaluation, and even the treasurers had delegated the work. Brenda Glover, for instance, the Treasurer for Etobicoke, trusted her staff to do their jobs and relied on their opinions. She didn’t think it was necessary for the treasurers to carry out a hands-on evaluation of the tax systems. She was right.

In the end, the evaluators favoured TXM by a vote of four to three in the user group and five to two in the technical group. The treasurers met and chose TXM by a vote of six to one, with North York alone dissenting. This was very unusual. The provincially appointed Transition Team made many, many decisions affecting amalgamation. Generally, by the time departmental staff from the municipalities came to the Transition Team for a decision, they had already agreed upon a recommendation. Paul Sutherland, a former Councillor and Deputy Mayor of North York appointed to the Transition Team, didn’t recall any other instance where a municipality dissented.

TXM had decisively won the battle, but not, as we shall see, the war.

Shortly after the treasurers' vote, Brenda Glover, who was responsible for leading the tax system selection, got a phone call from Wanda Liczyk. Ms. Liczyk was "very, very angry" about the decision to go with TXM and was "very, very strong about it." Brenda Glover didn't know Wanda Liczyk very well at the time, and she was taken aback. The treasurers had all agreed on an evaluation and selection process. At the end of the day, despite their individual professional opinions, they had reached an agreement, and they had done so through the agreed-upon process.

By this time (June 1997) Michael Saunders had been working on TMACS for six years. He had no other clients to speak of. TMACS was his livelihood. And he and Wanda Liczyk continued to be close friends.

No one else was as vehement during evaluation as Wanda Liczyk was, and no one else was as angry at the outcome as Wanda Liczyk was. No one else had a close friend whose livelihood was hanging in the balance. Coincidence? It doesn't matter. The possibility that it might not have been a coincidence is what counts.

The treasurers chose TXM at a meeting on July 15, 1997. In another noteworthy digression from her pre-amalgamation responsibilities, Wanda Liczyk attended the meeting. Hers was the lone voice of dissent.

The North York tax system team wrote a lengthy and detailed dissenting memo to file recording their opposition to the decision to go with TXM. Although it was a group effort, Wanda Liczyk was the primary author. She took the time to do it, and that is another sign of her deep attachment to the issue. Was her attachment to Mr. Saunders's tax system or to Mr. Saunders himself? The two were irreversibly jumbled and cannot now be sorted out. Ms. Liczyk made that impossible by keeping her conflict secret, even as she aggressively placed herself right in the thick of the tax system selection process.

North York's push for TMACS, championed by Wanda Liczyk, didn't end with the treasurers' decision in favour of TXM. Despite their clear and (except for North York) unanimous choice, Wanda Liczyk had told them that North York would continue developing TMACS, ostensibly because of the risk involved with TXM, and because North York needed TMACS for its 1998 supplementary and interim tax billing.

5. THE TURNABOUT

When the treasurers chose TXM, the competition for Toronto's tax system should have been over. It was not. In the months that followed, development continued on both systems. More demonstrations of the two systems were arranged, and a series of events took place that would eventually lead to the downfall of TXM. By October 1998, the TMACS victory was complete.

How did this turnabout happen?

It doesn't appear that Wanda Liczyk orchestrated the TMACS success from the very beginning, but when it was within her power to act in favour of TMACS, she did. Sometimes that meant taking on issues that were not hers, and sometimes it meant hiding the truth from others. She was certainly an important contributor to the eventual success of TMACS at the City of Toronto.

Ultimately, nothing really turns on the distinction between deftly orchestrating the triumph of TMACS and merely contributing to it. The central problem remains. Whatever she did for TMACS, she was effectively doing for her close friend, Michael Saunders, whose livelihood was TMACS. Therefore, anything she did to push for TMACS was too much.

The following is a chronology of the major steps in the ascendancy of TMACS and the fall of TXM, from September 1997 to October 1998. Each step taken by Ms. Liczyk is a discrete wrong on her part. Each is a violation of her duty, in light of her close friendship with Mr. Saunders, to step back and play no role at all.

September 1997

Amalgamation was looming. The workload was enormous and complicated. Harmonizing the tax system was just one of many important outstanding tasks. It was all hands on deck.

The Transition Team had approved the treasurers' choice of TXM as the new City's tax system. A formal agreement for its development couldn't be prepared between Toronto and Mississauga, since the new City of Toronto did not yet exist. Instead, the municipalities signed a "Letter of Understanding" for the TXM project that outlined their respective roles in the project. Every one of them, except North York, signed on for some

form of participation. Even East York and York, which had no money or people to give, had “observer” status. It was a big job, time was short, and North York had valuable expertise to contribute. In the midst of this urgent need, North York’s decision to withhold its help from TXM was a serious handicap.

According to Ms. Liczyk, TMACS Version 2 was being developed as a backup in case TXM failed, and because North York had to upgrade TMACS to do its 1998 interim billing. However, both Wanda Liczyk and Margo Brunning, North York’s strong-willed tax lead, acknowledged that TMACS Version 1, operating in North York since 1993, was capable of coping with the new current value assessment legislation. TMACS Version 1 could easily have worked for North York’s interim billing, and as a backup system for the new City, so there seemed to be no reason to continue developing TMACS Version 2 once TXM had been chosen. Did Wanda Liczyk decide to continue developing TMACS because she was determined to make it Toronto’s tax system? She denied it, but subsequent events raise doubt. Meanwhile, Michael Saunders continued to earn hefty consultant’s fees for TMACS.

December 1997

Wanda Liczyk had been appointed Chief Financial Officer and Treasurer for the new City of Toronto in November. It was North York all over again: Mayor Lastman and Treasurer Liczyk.

As Treasurer, she now had ultimate responsibility for the tax system. Wanda Liczyk claimed that she supported the ongoing development of TXM but didn’t have time to be an “active, visible cheerleader” for the project. Her attitude and actions do not suggest so much as lukewarm support or even benign indifference to TXM. They show doubt and scorn. She may not have had time to cheerlead for TXM, but she had time to criticize it, and time to actively support its rival, TMACS.

Wanda Liczyk went to Mississauga, the development site for TXM, to look at the project. She was very disparaging and told the TXM team they would never complete the system on time. A supporter would have tried to make more resources available to TXM to speed things up. Instead, Ms. Liczyk left her scarce development resources concentrated in North York, focused on the unnecessary upgrade of TMACS.

Wanda Liczyk approved a December 8 proposal from Michael Saunders to “Produce [the tax] Bill on Addabase [*sic*] system.” This was really TMACS Version 1. So, while awaiting TXM, North York could issue its 1998 interim bills on TMACS Version 1 after all. In other words, continuing the work on TMACS Version 2 had not been necessary.

January 1998

All of the former municipalities, except North York, issued their 1998 interim tax bills on their old systems. As we have seen, Michael Saunders and David Maxson had continued to develop Version 2 of TMACS, and that’s what North York ended up using.

North York had shunned TXM and that was a major concern, as the minutes of the January 9 implementation team meeting show. Estelle Lo, formerly Scarborough Treasurer and now in charge of the TXM project, asked Wanda Liczyk to authorize North York staff to help. The request leaves no doubt about who was in control over whether North York would help with TXM.

Both tax systems had been demonstrated several times before the choice of TXM was made. Now, both tax systems were demonstrated again: TXM on January 13 and TMACS on January 20. If the decision had been made, and TMACS was to be only the backup system, why was another demonstration necessary? It was as if the Transition Team’s decision had never happened and the choice of a tax system for the new City was still wide open. Estelle Lo couldn’t understand why debate persisted. TXM had been chosen six months earlier. She thought these demonstrations were a waste of time and resources.

Ed DeSousa was an experienced and astute professional civil servant. The former tax lead in Etobicoke, he knew municipal tax inside out. He also understood human nature. His testimony captured the sheer frustration that City staff were experiencing at this time. They were seeing everything they had worked for on TXM flattened as Wanda Liczyk steamrolled ahead, carrying the TMACS banner.

Estelle Lo was leaving the City, and Ed DeSousa had already let Wanda Liczyk know that he was interested in Ms. Lo’s job as interim tax lead. A few days before the North York TMACS demonstration, Ms. Liczyk sent Mr. DeSousa an e-mail. She dangled the interim tax lead job in front of him

as the carrot. The stick was his stated preference for TXM. She asked him to keep an open mind about the tax system, to “take a look at what we’ve got and let’s talk about which project is the least risky for the City.” Margo Brunning (an intransigent TMACS booster) would arrange for him to look at TMACS that week. What “*we’ve*” got, Ms. Liczyk had said. With that, she revealed her true feelings about TMACS and TXM. TMACS was her system, her North York team’s system, and her preference. TXM came from outside. It was as if amalgamation had not happened.

After the TMACS demonstration, Ed DeSousa wrote to Wanda Liczyk and suggested continuing to develop both systems. He actually preferred TXM, and was to endure pestering and verbal abuse from Michael Saunders later because of it. But after her tantalizing hint that he might get the top tax job, he knew that Wanda Liczyk was testing his loyalty. She clearly preferred TMACS and she had the upper hand. He was ambitious, and he did the pragmatic thing. He straddled the fence, assuming that declaring for TXM would be “career limiting.”

February 1998

Ed DeSousa’s tactful memorandum to Ms. Liczyk served its purpose for the short term, and she appointed him the interim tax lead on February 3. Mr. DeSousa thus took over responsibility for the TXM project.

Sometime in early 1998, Wanda Liczyk had actually told Brenda Glover that she had decided to go with TMACS. Ed DeSousa said he and others working on TXM saw that “the writing was on the wall.” TMACS was going to be the new tax system, especially in light of Ms. Liczyk’s strong views on the subject. They wondered if all of their hard work on TXM was for nothing.

After his appointment, Ed DeSousa asked Wanda Liczyk why she didn’t simply order the switch to TMACS. She replied that she couldn’t do it “politically” and that she would need a report from staff recommending the switch.

Ed DeSousa never went as far as to come up with that report, despite knowing that it might help make his interim job permanent. His ambivalent memo had secured him the interim tax lead position, but he could dilute his principles only so far. “Staff were not advising me that it was the right decision,” he said, “and as long as staff were telling me that it wasn’t

the right decision, I was basically following staff's recommendation and I wasn't comfortable with recommending TMACS."

Meanwhile, Wanda Liczyk again showed her negative attitude to TXM. This time, it had to do with marketing TXM to other municipalities to defray the cost of development. The TXM steering committee had learned that, on his own, a member of the TXM team originally representing Scarborough had all but completed deals to sell TXM to Brampton, Richmond Hill, and Markham. Debbie Barrett, a talented Mississauga representative on the TXM project, had taken over the marketing from the Scarborough representative and felt she had to honour those deals.

When Wanda Liczyk found out, she wrote to David O'Brien, then Mississauga's City Manager (and, by the time she testified, her boss at Toronto Hydro). She criticized Debbie Barrett for negotiating the deals without informing the TXM steering committee. The accusation was unjustified. It wasn't a Mississauga employee who had actually negotiated the deals. From the tone of the letter, Mississauga seemed to be considered more of an adversary than a partner. Ed DeSousa, Debbie Barrett, and David O'Brien all said that Wanda Liczyk prematurely escalated the matter. The TXM steering committee, not Ms. Liczyk, should have dealt with it.

In the same letter to Mr. O'Brien, Ms. Liczyk insisted that the proposed \$160,000 licensing fee for TXM was much too low, and it should be \$250,000 to \$300,000 at least. Actually, Michael Saunders had earlier licensed TMACS to Brampton for only \$50,000. Wanda Liczyk denied knowing that at the time she wrote to Mr. O'Brien. If that's true (and it is hard to believe, given their close friendship), she clearly had done no research into market value before putting a price tag on TXM. Either way, setting an unrealistically high price gives the impression that Ms. Liczyk was trying to thwart the successful marketing of TXM.

March 1998

Wanda Liczyk approved two more proposals from Michael Saunders. One was for the conversion of TMACS to TXM, and one was for the ongoing support of TMACS to June 1998. The cost of each was \$50,000. Wanda Liczyk's approval authority for sole-source contracts was \$50,000. She said she didn't feel she was exceeding her authority by signing two contracts simultaneously, for a total that was double her approval limit, because the

practice in North York had been that Michael Saunders would submit two proposals on his Beacon Software letterhead: one for himself and one for David Maxson. That practice had apparently seemed acceptable in the family-style, just-get-it-done days in North York, but in her new position as the Chief Financial Officer of Toronto, Wanda Liczyk should have been careful not to slip back into that comfortable, inappropriate informality. And given her financial acumen, it is difficult to imagine that she didn't see it for what it was: a clear example of contract splitting. No one was given an opportunity to object, because Ms. Liczyk showed those documents to no one.

By this time, TMACS Version 2 was operational, and it had already put out the 1998 interim tax bills in North York. Yet Michael Saunders was still flown in from Rhode Island weekly, put up at a hotel, and paid at a consultant's hourly rates.

The contract-splitting issue aside, Mr. Saunders's work at this time vaulted Ms. Liczyk's conflict of interest transgressions into an audacious new category. She had authorized Mr. Saunders to implement TXM in North York. In other words, his task was to put in place the very system that would put him out of business if it succeeded. To put a company in such a position vis-à-vis its major competitor can only be described as naive, unless of course there is an ulterior motive. It is like putting the fox in charge of the henhouse—and paying the fox handsomely for the privilege. Did she appreciate the implications of what she was doing? Or did she really expect Mr. Saunders to be completely altruistic? If the latter, then why did she keep his consulting proposals entirely to herself?

April 1998

Margo Brunning attended TXM "Train the Trainer" sessions and dutifully reported back to Wanda Liczyk that she was keeping a list of the problems with the TXM system. A team training exercise for a soon-to-be-implemented system seemed, strangely, much more like an opportunity for secret reconnaissance of the enemy to aid in a plan of attack. This was in character for Margo Brunning. She was an overtly passionate TMACS supporter, to the point of abandoning the fairness and objectivity so essential to making sound decisions in the public interest. Margo Brunning acknowledged that, had she worked on TXM from the beginning, she would have spotted the bugs in the system much sooner. Ms. Liczyk's decision to withhold

North York's helping hand, back in September 1997, was now, on the eve of the TXM rollout, having demonstrably negative consequences.

May 1998

Unfortunately for Ed DeSousa, although he got the top tax job on an interim basis back in January, he lost the competition for the permanent position. The title of Director of Revenue had gone to the very talented Giuliana Carbone. Her performance in the position was exemplary, but Ed DeSousa also rose to the occasion. Despite losing the job he wanted, he very ably and without complaint gave his new boss, who came into the job without any tax experience, the very best tutelage he could offer.

In early May, Giuliana Carbone was learning the ropes. She was a certified general accountant and had most recently served as North York's Director of Administrative Services in Public Health. Lacking tax experience, she had to work hard to bring herself up to speed. By all accounts, she was a quick and dedicated learner and rapidly earned the respect of her staff.

Within days of assuming her new post, Giuliana Carbone had to take on board the lingering competition between the two tax systems and the two opposing camps of supporters. Before the ink was dry on her contract, as it were, she was expected to choose between them. It was clear to her which system her new boss preferred. One of the first things Ms. Liczyk had told Ms. Carbone was that she doubted TXM would be ready for the June final tax billing. She had added that she trusted Michael Saunders, and he had never let her down.

Ed DeSousa had also briefed Giuliana Carbone on Wanda Liczyk's strongly held views. Ms. Carbone was properly relying on experienced staff for advice, and Mr. DeSousa didn't hesitate to tell her what was really going on:

We need to pick a system which represents least risk right now to the City, so we can get out a tax bill. Let's make a damn decision now and get on with it!!! I have made my choice on a system, but I am ready to support any decision (the key word being "decision") so we can end this agonizing torture of indecision, games being played, backstabbing, ill-feelings, low morale (I will stop now) that has gone on for over a year.

Ed DeSousa preferred TXM, but he thought TMACS was sure to win in the end thanks to Ms. Liczyk's influence. He was ready to work with

TMACS but was not about to be manoeuvred into recommending that the City choose it.

Everyone was frustrated with the endless vacillation, but Wanda Liczyk asked Giuliana Carbone to assess the two systems yet again. Ms. Carbone arranged demonstrations for May 13. When asked at the inquiry why there had been another demonstration, Ed DeSousa was understandably rueful, and even appropriately sarcastic: “Why not? We had been through so many demonstrations and the right system hadn’t been picked yet; so you keep going until you pick the right system.”

Giuliana Carbone had walked into a near-impossible situation. For almost a year, the TXM-versus-TMACS battle had raged unresolved. It seemed to the TXM team that the Treasurer’s office was the base camp for guerrilla warfare against TXM. They were beginning to buckle under the strain. Tax collection day was only weeks away.

Tax billing software is enormously important and enormously complex. Billions of dollars of revenue hang in the balance. Delays in collecting it, even delays counted in days or weeks, can mean that millions of dollars in interest is unavailable for the City’s use. Added to that pressure, perhaps nothing infuriates people more than errors on their tax bills. The heat is on to get it right every time.

Ms. Carbone had won the top tax job fairly, on merit. Her performance over time shows that she richly deserved the post. But when she had been on the job for mere days, having come to it with no tax background, Wanda Liczyk was pushing her into making a critical choice.

After the evaluation, Giuliana Carbone bravely shouldered her responsibilities and made the best choice she could. She decided to stay the course with TXM for the time being, but planned to separate from the partnership with Mississauga and bring the tax system in-house by the end of 1998. She would use TMACS as the template and incorporate the best features from both TMACS and TXM. In other words, she didn’t intend to simply discard TXM and replace it with TMACS.

Significantly, she didn’t know at the time that North York, and therefore the new City of Toronto, was completely reliant on Michael Saunders and David Maxson for the development, operation, and maintenance of TMACS. She didn’t appreciate that continuing to use or develop TMACS would bind the City to their continuous, long-term involvement.

How could she have known? Wanda Liczyk kept asking for and approving proposals from Michael Saunders. But he submitted them to her alone, and she didn't share them, or even the fact that they existed, with Ms. Carbone. Instead, she kept Mr. Saunders's proposals in her own office. Ms. Liczyk acknowledged that she should have given these proposals to Ms. Carbone but dismissed her failure to do so as an oversight on her part. It was one of many oversights, as it turned out.

Even while Giuliana Carbone was evaluating the two systems, Michael Saunders submitted two more proposals to Wanda Liczyk, at her request, to work on the main tax billing until July. Again, these proposals were for \$50,000 each, for a total of \$100,000. Again, it was contract splitting to avoid Ms. Liczyk's \$50,000 approval ceiling. She didn't discuss these proposals with Giuliana Carbone, and Ms. Carbone knew nothing of them until much later.

Wanda Liczyk was the most senior financial bureaucrat in a work force of many thousands in the City of Toronto. Michael Saunders was merely one consultant, working on one particular piece of software in one department. If not for their close friendship, it wouldn't have occurred to Wanda Liczyk to micromanage his contracts. It was not even remotely in her job description.

So, in the normal course of City business, who would have been responsible for Michael Saunders's contracts at that time? Giuliana Carbone. In the normal course of City business, who should have carriage of an apparently routine contract with a consultant? A very busy Chief Financial Officer or a manager at the appropriate level in the bureaucracy? The answer is self-evident. There was no business reason for someone in Ms. Liczyk's position to handle those contracts. But for some reason, she took the unusual step of keeping them in her personal possession, thus keeping them out of the regular contract management process and out of Ms. Carbone's sight. Not knowing of them, Ms. Carbone obviously had no access to them. Why did Wanda Liczyk keep Giuliana Carbone in the dark about Michael Saunders's contract? Was there anything going on—apart from Ms. Liczyk's well-established partiality to Mr. Saunders? There was.

Michael Saunders's May proposals were for the "1998 main billing and ongoing support to July 1998 on TMACS." The funny thing was that when he submitted those proposals (knowing, of course, that Ms. Liczyk would

authorize them), Ms. Carbone had only just seen TXM and TMACS demonstrated. She had not yet decided between them. The inescapable conclusion is that Wanda Liczyk had already made the decision for her. TMACS, and her close friend Michael Saunders, would prevail.

Wanda Liczyk tried to explain away the substance of those proposals: she had thought TMACS was going to be the base system, and they would then add in various desirable components from TXM. That explanation is flatly contradicted by the memo in which Giuliana Carbone recorded her actual decision, which was to keep TXM for the time being. It is further contradicted by Ms. Carbone's testimony, which I accept as true.

Following Giuliana Carbone's recommendation to stay with TXM, all of the former municipalities began implementing it, including North York. Michael Saunders was now in a delicate position. Back in March, Wanda Liczyk had tasked him with implementing TXM. But since she had also approved his May proposals, he had a green light to push ahead with implementing TMACS. Something had to give, and it was going to be TXM, not TMACS.

Wanda Liczyk's name for the software that was to encompass a City-wide, integrated revenue management system was "Revenue Management and Accounting Control System," or RMACS. It was based on TMACS, but with application beyond tax collection. Michael Saunders sent an e-mail to Giuliana Carbone on May 20: "If you believe that we should go to RMACS in the fall, why not keep North York on the [TMACS] system?" And that is exactly what he conspired to achieve. A few days later, he sent a cloak-and-dagger e-mail to his trusted TMACS ally, Margo Brunning: "Keep your mouth shut. I need to explore what happens if we stay on our current system."

June 1998

Cameron Currie was a Programmer-Analyst at North York. He worked quietly and diligently, and took great pride in his work. He often put in long hours without complaint to get a job done. In the late spring of 1998, he had been assigned to work on the conversion from TMACS to TXM in North York. Migrating from one system to another always has its technical challenges, and this project was no exception. Mr. Currie needed help, and he needed to get it from someone who knew TMACS well. He asked Mr.

Saunders to lend him a hand. Mr. Saunders refused. This was the same Mr. Saunders who was being paid handsomely to ensure a successful transition from TMACS to TXM. Of course, this was also the same Mr. Saunders who had every reason to want TXM to fail.

Bob Ripley had been the tax lead in Scarborough. He went to North York one afternoon in June to help Cameron Currie with the conversion to TXM. In his low-key way, he essentially corroborated Mr. Currie's tale of frustration in trying to do his job and get TXM working. Mr. Ripley recalled that Michael Saunders and David Maxson were not just withholding their help, they seemed amused and pleased that the conversion to TXM was rocky and rough going.

TXM was not meeting the deadlines. The go-live and sign-off dates were delayed more than once. Finally, on June 18, an incomplete version was released, providing just enough functionality for the City to put out the 1998 final tax bill.

One reason TXM was delayed was the Province's tardiness in issuing the necessary municipal tax-related regulations and supporting information. Another reason was that resources from the Toronto half of the Toronto-Mississauga partnership were disappearing. Debbie Barrett, in measured and insightful testimony, described how the TXM project could have been farther along at that point if it had not lost the valuable contribution of people such as Bob Ripley, Ed DeSousa, and Audrey Birt, the former tax lead for the old City of Toronto.

Ms. Barrett met with Giuliana Carbone and set out for her the importance of expert resources to the success of the project. But Ms. Carbone couldn't help. She had no people to assign to the TXM development office in Mississauga. Amalgamation was taking its toll: people were leaving, budgets were cut, and key allocation decisions had been set in stone before she arrived on the job.

Giuliana Carbone started as Director of Revenue in April and arrived much too late to make a difference to TXM. Her inability to help was a stark contrast to North York's bald refusal to help in September 1997. Back then, North York had resources dedicated to TMACS that could have made a big difference, at least in hindsight. The war between TXM and TMACS was fought at a time of limited resources. In effect, it was a war of attrition, which TXM lost. Before it ended, countless hours of diligent

effort by Toronto staff would be wasted. And most important, given that both TXM and TMACS could have met the City's needs, the war was utterly pointless.

July 1998

Between July 6 and July 20, all of the former municipalities, except North York, converted to TXM. June 16 was the original due date for Toronto's 1998 final tax bills, but delays with TXM meant that they didn't go out until August, with due dates in the fall.

North York never did convert to TXM. The 1998 final tax bills went out on TMACS, just as Ms. Liczyk authorized through her agreement with Mr. Saunders in May.

North York's TMACS faithful had entreated Giuliana Carbone to stay with TMACS for the 1998 final billing. She refused. Wanda Liczyk persuaded Ms. Carbone to change her mind. Ms. Carbone testified, "Wanda really wanted them to stay on the North York system. She was worried about Tax Manager 2000 [TXM]. She was strongly pushing that way." Wanda Liczyk was her boss. TXM was having problems, and Ms. Carbone thought Ms. Liczyk probably had good reasons for pushing TMACS. But until her discussion with Wanda Liczyk, she had not seriously considered staying with TMACS for the final billing. Ms. Liczyk persuaded Ms. Carbone to allow North York to stay on TMACS, supposedly "as a precaution," and North York could convert to TXM later.

Meanwhile, on July 17, Michael Saunders submitted two more proposals. Once again, these proposals reached Wanda Liczyk's eyes only. Without discussing them with anyone, and without authority, she approved them. The proposals even said when the TMACS victory would happen. The former municipalities would convert from TXM to TMACS between October 15 and November 30, 1998.

Michael Saunders closed his proposals on a triumphant note: "The City decision to go with TMACS with one database is the right decision... Thanks again for making the selection to TMACS." So the City would convert to TMACS. Michael Saunders and Wanda Liczyk knew it, but as we have seen, Giuliana Carbone, whose job it was to make the decision, did not. Wanda Liczyk, the Treasurer, took this final step with her close friend, the consultant, and didn't discuss it with her own Director of Revenue who

was responsible for it. Again, she kept the proposals in her office, where Ms. Carbone could have no knowledge of them.

Ms. Liczyk didn't have the authority to sign those untendered proposals. They were for \$225,000 and \$250,000—far in excess of her delegated authority of \$50,000. In a now-familiar refrain, she described her failure to get approval from her boss, Mike Garrett, as a simple oversight. Another oversight. A significant oversight. Not an oversight to be expected of the Chief Financial Officer of the City. Mike Garrett said, in another (but equally applicable) context, that the need to get authority to spend money is something a municipal manager learns early on. Going far beyond her authority was not an oversight. It was a calculated deception, and it put TMACS over the finish line.

Giuliana Carbone would continue to be out of the loop about the TMACS victory for some time. Michael Saunders was thanking Wanda Liczyk for choosing TMACS on July 17. It wouldn't be until after the September TXM steering committee meeting, when she would learn that the system wouldn't be finished until the end of the year, that Ms. Carbone would even start thinking about switching to TMACS permanently.

August 1998

At Wanda Liczyk's direction, Toronto stopped paying invoices from Mississauga for the TXM development costs.

Mississauga and Toronto were partners in the TXM program, and Toronto violated its agreement with Mississauga in withholding payment of the bills. The agreement was that Mississauga would pay the development costs and then invoice Toronto for its share. Mississauga was financially vulnerable in this arrangement, and Toronto took advantage. Nothing in the agreement authorized Toronto to withhold payment. Ms. Liczyk's TXM exit strategy was consistent with the disregard for process she had displayed in promoting TMACS.

September 1998

TXM continued to miss deadlines, and things were getting worse. At the TXM steering committee meeting, Giuliana Carbone learned that the system was again delayed and wouldn't be ready until the end of the year. Ms. Carbone was frustrated but pragmatically decided to wait until the October

meeting and then assess the progress again. She outlined her thinking to Wanda Liczyk. Ms. Carbone got the impression that Ms. Liczyk was not pleased about the delay, and not pleased with her for failing to switch to TMACS right away.

TXM had genuine shortcomings. It had been implemented as five separate instances, one for each amalgamating municipality (the exceptions were North York, which stayed on TMACS, and Metro, which didn't have taxing authority). It was incomplete, and items that were not part of the first phase of the project were still outstanding. Staff could not yet process tax appeals or refunds. They had limited information for explaining tax calculations. All of this meant a longer wait for people with questions for the call centre. The news media were critical of these shortcomings, and City Council was pressing for action to fix the problems.

Developing the system in partnership with another city had its challenges too. Toronto couldn't simply adjust the TXM system to reflect its own approach. Changes to the system had to go through the steering committee for approval.

TXM also continued to suffer from the lack of resources assigned to the project. In September, the last Toronto worker departed from the Mississauga development project office, and by the end of September, Mississauga was going it alone.

6. BOWING TO THE INEVITABLE: THE SWITCH TO TMACS

On October 7, Giuliana Carbone attended the TXM steering committee meeting. She saw little progress. She spoke to Bob Ripley about the problem the same day. He was an experienced tax professional and an ardent supporter of TXM. But he recommended that they switch to TMACS, and later put his recommendation in a memo. Giuliana Carbone accepted his recommendation. She took it to Wanda Liczyk, who immediately went to her boss, Mike Garrett. By the next day, Michael Saunders had already prepared a conversion plan for the City's switch to TMACS. By the end of November, all of the former municipalities had converted to TMACS.

On the surface, the switch from TXM to TMACS was businesslike, procedurally sound, and efficient. At a deeper level, internecine intrigue had

fuelled the tax system fight for well over a year. Bob Ripley's memo to Giuliana Carbone was not what it seemed. Giuliana Carbone's decision was not what it seemed. Wanda Liczyk's meeting with Mike Garrett was not what it seemed. And the end of the partnership with Mississauga was certainly not what it should have been.

Bob Ripley's memo to Giuliana Carbone said that TXM was "a poor second choice" compared with TMACS. When he wrote those words, he didn't believe them. He had capitulated. The events of the past year had made it plain to him that Ms. Liczyk wouldn't be denied what she wanted, and she clearly wanted TMACS. The relative merits of the two systems had long ceased to carry any weight.

Mr. Ripley could see that TXM, despite its merits as a tax system, was losing the war of attrition. The Toronto tax experts had all been pulled off TXM development, and Toronto had stopped paying the TXM bills from Mississauga. But TMACS was going full steam ahead.

When the City severed its financial and working relationship with Mississauga, Bob Ripley saw the death of any hope that Toronto would ever use TXM. For one thing, Toronto was the only municipality in Ontario to apply a phase-in program to the increased taxes resulting from current value assessment. The City of Mississauga was not doing it, and therefore had no need to build it into TXM. Toronto had stopped sending either people or money to the project, so there was no chance of adding the phase-in capability. Without it, TXM couldn't continue to run in Toronto. Other necessary features yet to be built into TXM would suffer the same fate now that Toronto had bled all its support out of the project.

In October 1998, Bob Ripley surveyed the tax system battlefield and saw that TXM was beaten. TMACS was the victor, and now the only choice.

Bob Ripley understood the role he was playing when he recommended the switch to TMACS. Some time earlier, he had asked Ed DeSousa why Wanda Liczyk didn't just order a switch to TMACS. Ed DeSousa had once asked Ms. Liczyk the same question. She had said she couldn't do it politically. She needed someone from staff to make the recommendation. Bob Ripley unenthusiastically decided to take it upon himself to give Wanda Liczyk "the tool she was looking for."

Giuliana Carbone's endorsement of Bob Ripley's advice was not what it seemed, either. Unlike Bob Ripley, though, she came to understand this

only in hindsight. In those turbulent times, and as a rookie Director of Revenue on a steep learning curve, she had little time to pause and contemplate the big picture. And an important part of the picture was still behind the veil concealing the true relationship between Wanda Liczyk and Michael Saunders. In hindsight, Ms. Carbone concluded that perhaps Ms. Liczyk was simply waiting for her to catch up: “[She was] guiding me along until I arrived at that decision.” Ms. Carbone’s notion that this was gentle guidance is far too kind. The triumph of TMACS is not a story of thoughtful mentoring. It is a story of arrogance, deceit, and abuse of power, all rooted in a conflict of interest.

Wanda Liczyk’s meeting with Mike Garrett was also not the routine briefing it appeared to be. Instead of an accurate account of the matter, she gave him half-truths. She told him the City was going with TMACS, but she deliberately neglected to mention that the Transition Team had approved the treasurers’ decision to go with TXM. At the inquiry, Mr. Garrett said that the decision to switch would have required a public report to Council and Council approval. She also neglected to mention her long-standing close friendship with Michael Saunders. Mr. Garrett was unequivocal, and unassailably correct, in his view that she should have declared this conflict and removed herself from any decision affecting Mr. Saunders, his company, or any companies related to his. This she had known for some time.

City Council should have been told of the tax system switch for another important reason. It meant terminating a significant legal partnership with another municipality. Wanda Liczyk claimed that Mary Ellen Bench, a Director in Toronto’s Legal Services Division at the time, told her that terminating the TXM agreement didn’t need Council approval. Ms. Bench denied discussing this with Ms. Liczyk; moreover, if Ms. Liczyk had asked for her advice, Ms. Bench would have told her that the matter should indeed go before Council.

The City didn’t bother to tell Mississauga that it was abandoning the TXM project. Wanda Liczyk tried to end the partnership without following the strict termination provisions in the original 1994 agreement between Scarborough and Mississauga. She had a few conversations with Mississauga City Manager David O’Brien about it, and a few draft letters were prepared, but Mississauga was never actually notified in writing that Toronto was pulling out of the project.

After discussing it with Wanda Liczyk, Giuliana Carbone drafted a letter to Mississauga for Ms. Liczyk's signature in December 1998. It said that Toronto was withholding payment to compensate for breaches of the agreement by Mississauga. The draft (which was never sent) didn't mention Toronto's misconduct in this partnership, namely withholding payment and reducing support for the project to nil, all without notice or compensation to Mississauga. The tone of the draft is further evidence of Toronto's adversarial attitude toward its partner and toward the TXM project generally. Mississauga had treated its partner, first Scarborough and then Toronto, fairly and patiently.

Another letter to Mississauga was drafted in February 1999. Inexplicably, that one wasn't sent either. The TXM partnership lingered unresolved for two more years, finally ending in March 2001. Mississauga staff reported the dissolution of the partnership to their Council. Toronto staff did not.

TXM now works very well in Mississauga, Brampton, Richmond Hill, and Markham.

C. OTHER PROBLEMS

The story just told explored the relationship between Wanda Liczyk's conflict of interest and the City of Toronto's choice of a tax system. But Ms. Liczyk's conflict of interest tainted much more than the choice of tax software. I touched upon one effect of that conflict when I described the chill that descended on her staff when it came to their dealings with Michael Saunders. There were others. Conflicts of interest on the part of senior managers can spread like toxic ripples into every corner of an organization. To fully appreciate the potential harm, it is necessary to look at the reach and variety of the damaging consequences. The following are some of the further serious effects of Wanda Liczyk's conflict of interest.

1. THE BEACON AND REMARKABLE CONTRACTS: WHAT WAS THE DEAL?

No documentation was available to the inquiry covering Michael Saunders's work in North York, other than the two proposals from December 1997 prepared less than a month before amalgamation. There

is not a single piece of paper to show for the roughly eight years (1989–1997) Michael Saunders worked at North York (through Beacon Software) before that. Even allowing for slippage during the confusion of amalgamation, this was deficient record-keeping, to say the least. It appears to have been a negative side effect of the excessively informal atmosphere in North York’s municipal government. In any event, neither the City Auditor investigating his dealings at the request of Toronto City Council nor this inquiry could conduct a thorough examination of Michael Saunders’s pre-1998 work for North York. Accountability suffers when records are not properly kept. Accountability always keeps close company with public trust.

The proposals from Michael Saunders that did survive were only two pages long, and notable more for what they lacked than for what they contained. When compared with proper legal contracts, the proposals were remarkably deficient. They did not, for instance, contain a provision protecting the City’s copyright interest in the software developed by Michael Saunders and David Maxson. Edwin Ngan, an IT consultant who worked with Messrs. Saunders and Maxson, testified that his own contract contained a clause giving the City ownership of anything he created for the City. That was “typical of a consultant contract.” Mr. Saunders’s proposals also failed to set out the reporting relationship for him or Mr. Maxson, and they did not contain provisions regarding indemnity or insurance. Wanda Liczyk never gave these proposals to North York’s legal department for review. No doubt, the lawyers would have insisted on including these provisions. In effect, her close friendship with Michael Saunders ultimately deprived the City of North York, to whom she owed her first loyalty, of important legal protections.

After amalgamation, Mr. Saunders and Mr. Maxson continued to work at the City of Toronto on the strength of proposals submitted throughout 1998 and half of 1999. The proposals signed by Wanda Liczyk in March, May, and July of 1998, and kept in her office, are examples. When it came to managing those contracts, the chances were slim indeed that the Treasurer and Chief Financial Officer actually had the time, even if she had the inclination, to manage them effectively. Since she kept the existence of the contracts to herself, no one else could discover, much less monitor, the agreed-upon work plan. Another effect of keeping them to herself was that

the City of Toronto suffered the same absence of legal protections as North York had in its dealings with Mr. Saunders.

The City finally signed proper agreements with Mr. Saunders and Mr. Maxson in 1999. Mr. Saunders himself wrote the heart of the contracts, namely the schedules setting out the terms and deliverables. None of the City employees who signed the schedules had a part in negotiating or writing them. Consequently, even when the contracts moved out of Ms. Liczyk's office drawer and into the light of day, the weight of many years of precedent allowed Michael Saunders simply to submit proposals for automatic approval, thereby preventing any meaningful independent assessment. Just because something has always been done does not necessarily make it right.

2. THE TERMS: ALL HE HAD TO DO WAS ASK

For more than a decade, Michael Saunders depended on one thing for his livelihood: Wanda Liczyk's approval of his proposals. Their close friendship guaranteed that the necessary approval would always be forthcoming, and on his terms. Perhaps the most striking proof of this lies not in the detailed evidence heard at the inquiry, but rather in what was not heard. Not a single document, not a single word even hinted that Mr. Saunders had ever lowered his terms or compromised on anything he asked for. Arm's-length bargaining often involves strategic retreat from an opening position. Opening positions typically allow room for subsequent compromise, or at least the face-saving appearance of compromise. Michael Saunders never had to compromise. Ms. Liczyk gave him everything he asked for, every time.

We could assume that Mr. Saunders asked only for what would be in the best interests of the City, ignoring his own interests, and that's why he got everything he asked for, every time. But that assumption would be entirely inconsistent with all the other evidence I heard about Michael Saunders. He looked after himself first, as he is entitled to do in business. The assumption also suffers from his refusal to co-operate with the inquiry. He repeatedly and steadfastly refused to appear at the inquiry or to be interviewed by commission counsel, leaving open the question of whether he had something to hide about his dealings in Canada.

3. INVOICES AND EXPENSES: NO QUESTIONS ASKED

Mr. Saunders and Mr. Maxson improperly billed several expenses to the City of Toronto, as the City Auditor reported to Council on May 31, 2002. Examples include airfare for Mr. Saunders's wife and daughter, car rental expenses in the United States, entertainment expenses from his home state of Rhode Island, charges for golf and skiing with City staff, liquor, and "tickets" of some kind. The Auditor also found evidence that Mr. Saunders billed the City for his time on days he spent golfing with City staff. Records were only available from 1998 on, so the Auditor couldn't comment on billings in North York, but it may be safely assumed that the practices were the same there.

After amalgamation, there was confusion about whether the IT Department or the Revenue Division should be responsible for checking the invoices from Michael Saunders and David Maxson. The result was that neither department was checking them properly. In any case, only Wanda Liczyk had access to the proposals that served as contracts with Mr. Saunders and Mr. Maxson, and therefore only Wanda Liczyk could have confirmed whether the time and expenses charged were in line with their contracts. Given her close friendship with Mr. Saunders, she was clearly unsuitable for the auditing task, but she didn't perform it in any event. And without receipts (which Ms. Liczyk said they were not required to submit), it was impossible to determine whether their expenses were reasonable and appropriate.

Giuliana Carbone tried to pay attention to contract management. She asked Wanda Liczyk whether she should check the invoices from Mr. Saunders and Mr. Maxson against any contracts or documentation. Ms. Liczyk didn't tell her that she had the proposals in her office. She told Ms. Carbone to speak to Al Shultz about it. Mr. Shultz, who likewise didn't know that the proposals were in Ms. Liczyk's office, told Ms. Carbone that the services were covered by purchase orders in North York under its purchasing bylaw.

Ms. Carbone was at times uneasy about the invoices from Michael Saunders and David Maxson. For one thing, she didn't have details of their contracts. For another, she felt they were charging for "everything." She was right. She had mentioned it to Al Shultz, but he had assured her that the

billings were consistent with past practice in North York. She even told Ms. Liczyk that Michael Saunders was charging the City for meals with Toronto staff, but Ms. Liczyk said it was acceptable because the meals were during business meetings. Ms. Carbone got the impression that she should not be asking too many questions about the invoices, and that Ms. Liczyk didn't like her asking these questions. Ultimately, Ms. Carbone was frustrated in her attempt to appropriately monitor payments to outside consultants.

4. HARD CURRENCY LESSONS

In the early 1990s, Michael Saunders asked for and received his payments in U.S. dollars. At the time, the Canadian dollar was hovering at around 86 cents U.S. By the time Michael Saunders left the City in 2001, the dollar had fallen to around 65 cents U.S. This represents a roughly 25 per cent increase in the price paid for Michael Saunders's services.

Negotiating at arm's length, two parties from different countries should, as a matter of course, specifically address the question of which of them will bear the risk of the fluctuating relative value of two currencies. Neither North York nor Toronto did that with Michael Saunders. As noted, there was no negotiating of any kind. He submitted proposals, and they were approved.

The currency issue highlights another pitfall of the failure to negotiate and monitor contracts. There is risk inherent in perpetuating or incrementally expanding a business relationship without review. If not carefully related back to an overall plan, small steps can cumulatively lead to a big difference. The 25 per cent fall in the Canadian dollar took place slowly, over several years. The full financial impact of the incremental decline was revealed only by looking back over the entire period of Messrs. Saunders and Maxson's work in Canada. This illustrates the wisdom of periodically driving a stake into the ground, a specific point at which a comprehensive reassessment of any business relationship must be undertaken. In this case, if a thorough analysis had been done after five years, the currency issue would probably have surfaced. In fairness to Mr. Saunders, it is true that his rate stayed the same throughout his long tenure. Nevertheless, he was effectively getting substantial increases in his rate because of the fall in the Canadian dollar, and those increases were

not negotiated. Between the early and mid-'90s, the Canadian dollar fell by fully 10 cents against the U.S. dollar. The need to reconsider the financial terms of the contract should have been obvious if anyone had been paying attention.

5. OWNERSHIP AMBIGUITY

The proposals Wanda Liczyk approved didn't contain any terms intended to protect the City's ownership interest in TMACS. Ms. Liczyk testified that she assumed North York owned the system and that Mr. Saunders had verbally agreed this was the case. Given that Mr. Saunders was marketing TMACS, as we shall see, it is difficult to accept that she believed this.

In any event, the ownership of something as important and expensive as custom-designed, in-house tax billing software should have been a central topic of an arm's-length agreement. Yet this very important point was never actually negotiated, at arm's length or otherwise, and Ms. Liczyk never made sure it was put in writing.

In a presentation to the technical group during the Deloitte & Touche evaluation, Mr. Saunders told them that North York owned "a version of TMACS for all its purposes," but not that it owned TMACS outright. He claimed that, because North York didn't want to assume any risk in marketing the software, his company, Beacon, had been assigned the marketing rights. North York would receive 20 per cent of the licence fee for every system sold until it had recovered 150 per cent of its investment. After that, presumably, all of the profit would go to Mr. Saunders's company.

Similar terms were set out in the first draft of the dissenting opinion North York prepared after the treasurers chose TXM in July 1997. A later version, however, said something very different: It stated that North York owned the software, 100 per cent. Ms. Liczyk was the principal author of that version. Why did she change the ownership details? Did she know that the City didn't own the software outright, or that there might be some ambiguity? Was she deliberately hiding a thorny problem?

It was Mr. Saunders's company, alone, that licensed TMACS to Brampton in the fall of 1997. North York didn't participate in the negotiations and was not a party to the agreement. There was no written agreement that North York would receive any profit from the deal. When Wanda

Liczky found out about the Brampton agreement, her only reaction was to tell Michael Saunders that his first priority was the 1998 interim tax billing in North York. She didn't tell him the software was not his to sell. Once again, she had sidestepped an important issue to her employer's detriment and her close friend's benefit.

Michael Saunders registered TMACS with the United States copyright office in 1992. Ms. Liczyk claimed she didn't know. If she was telling the truth, then Mr. Saunders deceived both her and the City. If she did know, then she was covering up for him. Either alternative is an unpalatable consequence of mixing public business with private intimacy.

When Giuliana Carbone phoned Mr. Saunders to tell him that he wouldn't be doing any more work for Toronto, he made a reference to the ownership of the software that shook her: "I hung up that phone, I thought, 'Oh my God, don't tell me we don't own the system.'" The City was vulnerable because Ms. Liczyk didn't settle the ownership issue.

6. DEPENDENCY

One of the concerns about TMACS identified in the Deloitte & Touche evaluation of May and June of 1997 was that the City would be dependent on just two contractors, flying in from two different locations in another country, to run the system. This was valid, but it was an understatement. In fact, Mr. Saunders was primarily the project manager. He didn't have a deep technical understanding of the software. On technical matters, the City was entirely dependent on one man, David Maxson.

After switching to TMACS, Giuliana Carbone worried that if something happened to Mr. Saunders or Mr. Maxson, or they simply didn't return to the City, she wouldn't be able to run the system. She didn't have the internal resources or expertise to do so. At the time, Edwin Ngan, another consultant who had worked on TMACS, was the only person apart from Mr. Saunders and Mr. Maxson who had any technical understanding of the software at all. Mr. Ngan said that he wouldn't have been able to run TMACS on his own until 2000.

Thus, for over two years—from 1998, when the City switched to TMACS, until 2000, when Edwin Ngan was up to speed—Toronto was entirely reliant on the services of just one American consultant to maintain

the tax billing software responsible for bringing in virtually all of the City's revenue. The disastrous financial, operational, and political consequences of even the temporary unavailability of one man, David Maxson, put the City of Toronto at an entirely unacceptable level of risk during those years. That risk was thrust upon the City by the tainted victory of TMACS over TXM. Yes, Mr. Maxson and Mr. Saunders got the work done and they did it well. But Ms. Liczyk's objectivity about this reckless level of risk was completely compromised by her close friendship with Mr. Saunders.

The City's reliance on Mr. Saunders and Mr. Maxson also inhibited the City when it came to challenging them on their questionable bills. Giuliana Carbone was "careful not to antagonize" them with questions about invoices because her division was "totally reliant on Michael Saunders and David Maxson for its systems support." She recalled one occasion when their payment from the City was a little late. The consultants told her that unless they got a cheque they were not coming back. The threat speaks to the power they possessed, and their willingness to wield it for their own ends. When Giuliana Carbone wanted to break the City's reliance on Beacon and Remarkable by issuing a Request for Proposal, she had to handle the situation "delicately," because she still needed Beacon and Remarkable to transfer knowledge to the successful contractor.

Even after the City Auditor noted irregularities with Beacon's and Remarkable's expenses in 2001, it was not easy to change the consultants' long-standing practices. After the Auditor's report came out, Giuliana Carbone assumed responsibility for reviewing David Maxson's expenses (Michael Saunders was no longer contracting with the City). She said, "I decided I was going to do things the way I would feel more comfortable doing things." But she still needed David Maxson to stay in the City long enough to transfer his knowledge, so she had to tread carefully.

Mr. Saunders and Mr. Maxson had all the TMACS knowledge, so they also had the upper hand. Two outside consultants had all the power. The City never should have been in that position. The consultants had the power because Ms. Liczyk was not dealing with them at arm's length. What if Mr. Saunders and Mr. Maxson had carried through with their threat and walked away?

7. WHO WAS IRREPLACEABLE?

During all his years at North York, and then Toronto, Michael Saunders was a project manager. His job was to connect with the client and assess the client's needs. He would then pass that information to the systems architect, David Maxson, who would design software to meet those needs. Mr. Saunders didn't have technical knowledge that would have made him irreplaceable. In this respect, he was very different from David Maxson. Yet for more than ten years, he was paid \$100 per hour in U.S. funds, plus airfare back and forth to Rhode Island almost every week, plus hotel expenses in Toronto, plus meals, plus all the incidentals that he billed without restraint.

Quite wisely, the City now has in-house project managers in the IT field. Prevailing wages for these positions are nothing close to \$100 per hour in U.S. funds (plus airfare back and forth to Rhode Island almost every week, plus hotel expenses, plus meals, plus generous incidentals). The City now gets sound project management in-house for a good deal less money.

At the time, though, nobody was taking a hard-nosed, objective look at the work Michael Saunders was doing. No one was asking if it could have been done less expensively in-house. The answer, based on what the City often does now, is "quite possibly." It was certainly a question worth asking, but no one did ask it during all those years during which Mr. Saunders was benefiting richly from a close friendship.

Conventional economic wisdom on consultants goes roughly like this: Consultants cost more per unit of time than full-time employees. However, consultants provide services as needed; only occasionally, and for short periods. On balance, it is cheaper to pay a consultant more per unit of time for short bursts than to carry a similarly qualified, full-time, permanent employee whose skills are needed only sporadically.

Michael Saunders and David Maxson were paid at the higher consultants' rates, and were paid consultants' benefits like travel, accommodation, and daily expenses, almost continuously, for over a decade. Their enduring presence, at those rates and with those benefits, defies conventional economic wisdom. Perhaps this departure from the sensible norm was warranted by circumstances unique to North York and Toronto between 1991 and 2001, but nobody asked the question. The conflict of interest made sure of that.

8. IS IT BETTER TO BUY LOCALLY?

Governments buy billions of dollars' worth of goods and services every year. It is often desirable to favour local service providers so that the economic ripple effect of government spending is enjoyed within the jurisdiction. On the other hand, in an increasingly global marketplace, pursuit of the greatest savings and the greatest expertise—the best deal—should not stop reflexively at the border. Balancing these two factors is a constant tension in public sector procurement. The important point is that the tension must be acknowledged, and resolved in a considered way.

While Michael Saunders and David Maxson were in North York and Toronto, the millions of dollars paid to them flowed into the United States. A lack of available or competitive local expertise may well have made this the right decision, but the point didn't receive the balanced consideration necessary to give confidence that this was so. Instead, it now looks like an American supplier had the business for so long because of his close friendship with Wanda Liczyk.

9. FAMILY TIES

For one summer, perhaps more, Michael Saunders's daughter worked at the City of Toronto. She was not paid by the City, but we don't know if Mr. Saunders paid her. Doubtless, the work benefited her in some way, financially or otherwise. The inescapable inference is that his influence at the City allowed him to bestow this benefit on a family member. At the City, she reported directly to him. Again, in performing her duties, she had an unusual advantage in that she reported to a boss who was a family member. Was it nepotism? Was it appropriate? No one even asked. Did Mr. Saunders's daughter come into her job with the City in a way that ran afoul of collective agreements? Once again, the issue was never addressed.

10. INSTANT CONTRACT: JUST ADD WATER

Mr. Saunders and Mr. Maxson's 1999 contracts were primarily for the development of the Water Management and Collection System (WMACS), the City of Toronto's water billing system. How they ended up getting the contract to develop WMACS is very important because it illustrates the lax controls at the City at that time. It is also another example of the influence

Mr. Saunders was able to exert because of years of favourable treatment. In essence, Mr. Saunders was able to trick the City into awarding him the contract for the water billing system.

In December 1998, Giuliana Carbone recommended to Wanda Liczyk that the City contract with Mr. Saunders to complete the “partly developed” water module of TMACS, which would allow the City to have an integrated tax and water system. In fact, there was no “water module” of TMACS. There was an incomplete water system from North York, but that had been developed by Cameron Currie, a North York employee. Cameron Currie’s work had no connection with TMACS, Michael Saunders, or David Maxson. The functional integration of TMACS and WMACS was not achieved until 2004. Until then, the water system couldn’t have been plausibly described as a module of TMACS. Each was a system in its own right, and each could run independently of the other.

Giuliana Carbone testified that it might have been Mr. Saunders who described the North York water system to her as a module of TMACS. In any case, she thought WMACS was a module of TMACS when she recommended to Wanda Liczyk that Mr. Saunders should do the job. When she moved to North York from Metro Hall in the spring of 1999, Ms. Carbone learned that Cameron Currie had been more involved in the water system than she had realized.

Michael Saunders misrepresented WMACS to win business for himself. His claim that it was a module of TMACS was accepted without question. Nobody thought to look into his assertion, or to put the water system job out to tender. Michael Saunders and David Maxson were simply handed the contract after the City converted to TMACS. Their long tenure at the City and influence with the Revenue Division let them evade the independent scrutiny that would have been applied to anyone else.

11. DECEPTION AS DAMAGE CONTROL

One problem with most covert wrongdoing is that avoiding detection invariably requires more deception. Ms. Liczyk’s covert wrongdoing surrounding her close friendship with Mr. Saunders is a typical example. Her ultimately fruitless attempts to avoid detection forced her into yet more deception and made her look even worse.

In the fall of 1999, *NOW Magazine* ran an article about the City's suspicious contracts with Mr. Saunders and Mr. Maxson. Wanda Liczyk became concerned. Her attempt at damage control in response included both strategic divulgence and outright deception.

She divulged her close friendship with Mr. Saunders to a political assistant in the office of her long-time supporter, Mayor Mel Lastman. Certainly, from the point of view of the public service structure, this was very odd. Why would any senior public servant disclose such a thing to someone on the political side instead of the bureaucratic side? Why would Ms. Liczyk tell an aide to the Mayor, but not her own boss, CAO Mike Garrett? Did she think she would be covered if she could say she told someone at City Hall?

Wanda Liczyk went beyond simply failing to disclose her conflict through proper channels. She wrote to the City Auditor, Jeff Griffiths, giving him her version of the events surrounding the contracts with Michael Saunders and David Maxson. The memo was slanted in her favour. It was silent about her close friendship with Michael Saunders. Deliberately omitting that fact can only mean that the memo was a calculated effort to mislead.

She didn't tell either Mr. Garrett or Mr. Griffiths about her relationship with Michael Saunders because she knew they would hold her to the standards that were there in black and white in the ethics guidelines and her employment contract. Those standards required her to avoid conflicts, and to declare them and recuse herself when they did arise.

D. INTIMACY AND DETACHMENT

Throughout her years at North York and the City of Toronto, and throughout this inquiry, Wanda Liczyk could not or would not see that her relationship with Michael Saunders was a problem. The most she would admit is that her friendship with Michael Saunders "may have created the appearance that work was given and continued to be given to Beacon and Remarkable because of the friendship." She maintained that, despite their affair and subsequent close friendship, she was able to separate her personal feelings from her official duty and remain objective when it came to Michael Saunders.

The story of TXM versus TMACS counters Ms. Liczyk's claim to objectivity. The story is replete with dramatic examples of Wanda Liczyk's bad judgment in favour of her close friend. Objectivity requires detachment, and detachment does not co-exist with strong emotional bonds. Even if it could, how is detachment to be verified where a personal relationship is involved? That is why the appearance of conflict is important. That is why the simple devices of disclosure and recusal from decisions involving friends and relatives play a central role in sound decision making in municipal government and elsewhere. Disclosure and recusal preserve our capacity to be, simultaneously, fully human, autonomous in our private emotional lives, and wisely governed.

Even if Wanda Liczyk was able to deal with Michael Saunders dispassionately and never once let her feelings get in the way of business, and even if he never received a single benefit or advantage because of his close friendship with her, and even if every deal with Michael Saunders was indeed in the City's best interests, Wanda Liczyk never should have been the person making the decisions about his dealings with the City.

She was in conflict according to North York's Code of Ethics by not putting the public interest above her own interests or those of Mr. Saunders, and by using her position to secure advantages for her close friend. Further, she was in conflict according to her employment contract with the City of Toronto, which required her "to avoid circumstances that may give rise to (or give the appearance of giving rise to) conflict of interest situations." Because she didn't declare the relationship or remove herself from any decision-making role, the legitimacy of any decision involving Michael Saunders is compromised. In particular, the decision to switch from TXM to TMACS is tainted.

Clearly, Ms. Liczyk should have declared her close friendship with Michael Saunders and abstained from any decision-making role that involved him or his company. If she chose not to declare the nature of the friendship, she should still have ensured that she didn't have any role in the contracting decisions that involved him or his company.

Wanda Liczyk was one of the top civil servants in North York and then in Toronto. She was the Chief Financial Officer and Treasurer of the largest municipality in Canada and oversaw a budget of \$5.5 billion. Her duty was not only to handle the taxpayers' money well, but also to be seen to be han-

dling it well. The public has a right to expect that public servants will use the power given to them openly, ethically, honestly, and responsibly. Her dealings with Michael Saunders should have been both justifiable and transparent. They were neither.

Wanda Liczyk's closeness to Michael Saunders played a role in the reason Toronto's tax bills are now sent out by TMACS software rather than TXM software. Wanda Liczyk's closeness to Michael Saunders also played a role in affecting the morale of a great many public servants. Both effects are important. Ethical lapses that affect government are matters of grave concern to all citizens, but of no less concern are ethical lapses that have day-to-day harmful effects on individual people just doing their jobs.

As one witness noted, Wanda Liczyk rose far and fast. She ascended the professional ladder without the setbacks that so often mature and refine a sense of judgment. But the most important lessons from this inquiry are not directed at individuals. They are directed at improving city government. More particularly, they are about avoiding and dealing with conflicts of interest that can impair the judgment of decision-makers. The major lessons are these:

- Conflicts of interest are inevitable. They can arise without wrongdoing by anyone. Plans must be made to deal with them.
- When and how a conflict may arise is as unpredictable as the paths of the heart, and it is not possible to legislate feelings. We need rules, but rules are not enough. The availability of confidential advice is also essential. The slightest concern should prompt us to seek advice, because we are not very good at recognizing conflicts of interest in ourselves. We are far better at seeing them in others.
- To help ensure that seeking advice on potential conflicts is the rule, not the exception, it must be made clear to all that having a conflict of interest is not necessarily cause for censure or alarm. Only failing to deal with it is.
- Early disclosure and/or recusal can solve the problem, and it is always safer to over-disclose than to under-disclose.
- Late disclosure and recusal is undesirable, but it is far better than not doing it at all.

If there could be doubt about the importance of these lessons, it would be dispelled by imagining how different Wanda Liczyk's situation would have been had she digested and practised them. For all her talent and hard work, Ms. Liczyk's enduring legacy to the City is a perfectly functional tax system, rendered suspect by a tainted selection process. It is not her only legacy, to be sure, but its consequences will likely overshadow her accomplishments for some time.

III. THE LEASE FOR THE COUNCILLORS' COMPUTERS: MFP'S FOOT IN THE DOOR

THE WINDS OF CHANGE OFTEN BRING with them a cloud of turmoil. Usually, someone will spot opportunity in the midst of the turbulence. Amalgamation was indeed turbulent, as we have seen, and there certainly were some who saw opportunity.

To create the new City of Toronto, seven municipalities had to become one. Legally, all that was required was an Act passed in the Ontario Legislature, and amalgamation would happen on January 1, 1998. Practically, it was a complex matrix of integration and rationalization of seven sets of overlapping services, with different benchmarks and different delivery systems.

As amalgamation drew closer, it was clear that information technology would be a critical factor in the most ambitious municipal transformation since Confederation. If the seven amalgamating municipalities were to function as one, the City would need a solid, up-to-date, fully unified technological foundation. That was all the more important because Y2K was coming. It is easy to forget now that in late 1997, many experts were predicting widespread systems failure when the internal clocks of the world's

computers passed 11:59 p.m. on December 31, 1999. That didn't happen, of course, but back then, the potential consequences were chilling.

Therein lay one of the opportunities in the turmoil of amalgamation. Because of amalgamation and also because of Y2K, the City would need upgraded technology fast. The City would have significant consolidated purchasing power, and existing vendor relationships would dissolve with the old municipal structure. The word on the street in IT sales and financing was that a colossal amount of business would be up for grabs.

MFP Financial Services Ltd. saw the opportunity and seized it. It was well known that the computers in the councillors' offices were generally old, clunky, and incompatible with one another. The provincially appointed amalgamation Transition Team agreed that they needed new ones. Putting new desktops and laptops in place, ready for the new roster of councillors and their staff, was a small deal relative to the monumental technology overhaul that would soon be needed, but it was a foot in the door for MFP. Through that deal, MFP developed and nurtured relationships with City staff, and ultimately it got the lion's share of the new City's computer leasing business.

To understand how this story sets the scene for later events examined in this inquiry, it helps to know something about leasing generally and something about how MFP did business. The inquiry heard evidence, in person and by written report, from a leasing industry expert, but the short digression that follows should provide enough background on both the industry and the company.

A. LEASING 101

Leasing is a term for the financial and legal vehicle by which a customer (the lessee) acquires the time-limited use of an asset from its owner (the lessor) in exchange for payments. The concept is simple, but the implementation and management is not.

In this inquiry, the assets in question were IT hardware and software. Different considerations may apply to leasing other types of other assets.

Overall, the leasing industry in Canada accounts for about \$100 billion in financing. Up to 85 per cent of all organizations, public and private, lease at least some of their IT assets. Yet it was apparent from the expert's evidence and from that of other witnesses, including City staff, that very little

training in leasing is available in either the public or private sectors. Industry associations, the Canadian Finance and Leasing Association (CFLA), the Purchasing Management Association of Canada (PMAC), and the National Institute of Governmental Purchasing (NGIP), have generated codes of conduct that apply to leasing-based IT acquisitions, but neither these organizations nor public sector employers, including the City of Toronto, offer technical training in leasing. Indeed, at the time of the inquiry, the only comprehensive courses of study offered in Canada were those designed by the inquiry's expert.

1. TO BUY OR TO LEASE?

At one end of the acquisition spectrum is buying equipment or services. A decision to purchase leads to an undertaking to pay the whole amount upfront using capital resources or reserves. An alternative would be to make payments over time out of income generated from operations. In the case of the City, that would mean payments funded from tax revenues. Or the money could come from any combination of debentures, other external borrowing, or the use of reserve funds. Borrowing where the funds are earmarked for a specific acquisition is another alternative. A conditional sale is another option in purchasing. In that case, the seller owns the title to the asset until the buyer pays it off.

The other end of the acquisition spectrum is leasing, and that broad category includes renting. The original owner continues to own the asset, but, depending on the terms and conditions agreed to by the parties, ownership may pass to the user of the asset at some time during or at the end of the term.

The most commonly cited advantage of leasing is flexibility. The rapid development of technology often drives the need for flexibility in financing of IT assets. Depending on how the lease is set up and on the willingness of the parties to revisit negotiations, flexible arrangements can be made to change the asset mix, lease terms, payment timing, and length of the lease, among other things. Finance contracts, bank loans, and debentures are, by their nature, less flexible. However, making changes to lease terms can be expensive. It is therefore important to undertake a full analysis of the financial implications of making future changes before signing a lease.

Assets are generally leased at a fixed financing rate, whereas bank rates fluctuate with the money markets. Locking in a fixed rate could protect against higher rates in the future and offers the advantage of predictability. Purchasing can tie up capital resources and compromise the ability the City would otherwise have to fund its programs. Leasing relieves that financial pressure.

With leasing, the cost of using equipment can be matched with the equipment's expected useful life. Put another way, leasing lets the user pay for assets as they are used. In that sense, the cost of leasing is an operating expense, like salaries and benefits.

For municipalities, acquisitions funded by debenture financing must, by law, tie the life of the asset to the term of the debenture. IT assets may have a useful life of as little as three years, but traditional municipal debentures are issued for 10-year terms. Shorter-term debentures are not common and may not be attractive to investors. By contrast, short-term leases and flexible lease lengths are widely available.

A debenture is not tied to a certain asset or sets of assets. It is a general debt instrument and is shown as such on an organization's balance sheet and financial reporting documents. Leasing obligations are generally not reported on financial statements and are described as "off balance sheet financing." This may or may not be an advantage, but one possible advantage is that the credit rating of a municipality might be enhanced by not showing IT assets on the liability side of its balance sheet. Another advantage might be that lease obligations may fall outside the provincial reporting requirements for municipalities.

Leasing companies often offer asset management and other value-added services. They can help manage inventory and the life cycle of the equipment, as well as allocate the cost of the assets to various departmental budgets. This can be a big advantage where there are thousands of individual assets involved.

Leasing also lets the customer return the leased equipment at the end of the lease term. If the equipment still has useful life left in it, the leasing company and not the customer bears the responsibility and cost of storing, handling, and marketing it. If the equipment has little or no further useful life, the leasing company bears the environmental, administrative, and other costs associated with disposing of it.

2. POSSIBLE PITFALLS

It might seem from all of these factors that leasing presents nothing but advantages, particularly when it comes to IT equipment. However, one of the critical lessons learned from the inquiry is that leasing must be understood and managed closely in order to realize those advantages. Failure to do so can result in advantages evaporating and costs skyrocketing. Regrettably, it is not uncommon for customers to lack the necessary expertise to properly evaluate whether they should be leasing acquisitions or finding some other way of acquiring the equipment they need. Leasing companies are in business to make a profit from selling leasing services; they have no legal obligation to educate prospective clients. A typical lessor would assume that an organization the size of the City would know what it is doing.

The leasing industry is largely unregulated. CFLA does not mandate leasing procedures or documents. Consumer protection legislation does not apply to leasing transactions. Unless specifically negotiated, lease documents do not have to set out clearly the amount of interest payable throughout the term of the lease or the effective interest rate involved. They do not have to contain a schedule or clear statement of all the elements in the total cost. The leasing company will produce information and documentation on request, but in a competitive marketplace, and in any arm's-length transaction, customers must be vigilant, perform their own due diligence, and make sure they understand all of the terms before they sign.

3. TYPES OF LEASES

There are two basic types of leases: capital leases and operating leases. Both came up in the inquiry.

In capital leases, the original cost of the asset is paid off over the term of the lease. Normally, the customer can acquire title to the asset at the end of term without cost or at minimal expense.

In operating leases, much less than the capital cost of the leased equipment is paid off over the term. Where an option to buy at the end of the term is built into the agreement, the customer has to pay the amount agreed upon, or calculated according to a formula, before taking ownership of the asset.

For a capital lease, the leasing company may borrow from a financial institution substantially all of the money needed to buy the assets it intends to lease out. In most cases, the lender will not expect the leasing company to put up any money. This is so because the whole capital cost of the asset will be repaid by the customer during the term of the lease, so the lender can expect to be paid in full. A capital lease where the leasing company has no equity position or financial investment is known as a spread lease. In other words, the leasing company has not put up any money, and its profit is the “spread” between the cost of borrowing to buy the asset and the customer’s payments on the lease.

If there will be a shortfall at the end of the term after the customer has made all of the payments, the lender will likely require the leasing company to invest in the transaction. This happens most often with operating leases. In that case, the leasing company’s equity position (the amount of money it puts into the deal) is the difference between the original cost of the asset and the investment made by the lender. A lease where the leasing company makes this kind of equity infusion is called a leveraged lease or equity lease. The leasing company can syndicate its equity position or subsequently assign it to a downstream funder (such as an insurance company).

In some cases where a leasing company assigns an interest in a transaction to a downstream funder, the leasing company will also assign to the funder the right to receive payments on the lease directly from the customer. Sometimes, the funder will step into the shoes of the leasing company and administer the lease as though it had become the lessor in the transaction. In other cases, the customer is not aware of the downstream funding.

Typically, in an operating lease the customer will have the right to purchase the leased assets during or at the end of the term in exchange for payments on top of the lease payments. If the customer does anything other than return the assets on time, the cost to the customer will go up. It is very unlikely that any customer with thousands of assets across multiple locations will be able to avoid all end-of-lease costs.

If an asset still has some useful life at the end of a lease term, a customer may choose to continue a lease after it expires. This transaction is called an extended lease or stretch lease. The lease rates for the extension period may vary from those in the original lease.

Lease documents can vary in length from three to 30 or more pages. The rights and obligations of contracting parties to lease transactions and the

triggering events for each can be many, varied, and complex. Typically, lessors will design and present their vision for the transaction in an opening version or draft of the lease contract documents. This can include a master lease and program agreement, contracts under which the customer leases currently needed assets and can acquire other assets under the same basic terms and conditions without negotiating a new contract, and lease schedules or equipment schedules, which describe in detail the items being leased and which may also state the lease term, commencement date, repayment schedule, and location of the equipment. The parties can negotiate all aspects of any lease documents.

Again, it is important for customers to read the lease documents, all of them, and make sure they understand all of the terms and conditions before signing. Lease documents are complex and the language in them can be baffling to the non-expert. The customer must be vigilant in ensuring that the meaning of the language is clear, which underscores the need to have a leasing expert and/or a lawyer examine the documents, particularly ones involving large sums of money. When there is no in-house expertise, it may be advisable to hire an independent expert to help understand the transaction and assist in negotiations with the leasing company.

Once a lease is in place, it must be managed. The lease arrangements should be reviewed regularly to identify and react to changes in technology, market conditions, or the customer's own needs. These reviews would also alert the customer to milestones during the term of the lease, such as dates or times when options arise or expire. At some point in the life of IT assets, the cost in time and money to maintain and upgrade them will become prohibitive. The customer needs to evaluate that, as well.

B. MFP FINANCIAL SERVICES LTD.

Before this inquiry, MFP Financial Services Ltd. was not a household name. But it had been operating for 20 years as an independent financial services company providing financing for major technology, capital equipment, and infrastructure purchases. In 2000/2001, it had profits of about \$17 million, and it was one of the largest independent technology lessors in Canada. It was based in Mississauga and once had as many as 250 employees.

Peter Wolfraim and three other partners established the company in 1984. In 1988, Mr. Wolfraim became President and Chief Executive Officer, a position he held until September 24, 2003, when he retired. The company went public in 1993, and in 1998 it formally changed its name to MFP Financial Services Ltd. Effective October 1, 2004 (in the wake of the inquiry), it was changed to CLEARLINK Capital Corporation. As of the end of July 2005, CLEARLINK had moved out of its core business of equipment leasing to concentrate on developing the equipment trading division, managing its residual book of business, and writing only selected business with existing customers.

Before 1989, MFP mostly provided lease financing in the computer mainframe market. As the computing market shifted toward personal computers, so too did MFP, moving out of the mainframe market and into lease financing for PCs and related peripherals. It did business with the federal government, all 10 provincial governments, 20 municipalities, and about 25 to 30 other public sector organizations. Its portfolio was distributed fairly evenly among the Canadian public sector (including the City of Toronto), the Canadian private sector, and the U.S. private sector.

Many computer manufacturers have leasing divisions or close relationships with leasing companies. MFP was an independent leasing company, meaning that it provided lease financing for any computer regardless of manufacturer.

MFP offered a wide range of services in addition to leasing, from procurement to asset management to end-of-lease services like remarketing (most often to customers themselves) and disposal. It made money at the beginning of the lease, but it was from these related services, particular the end-of-lease services, that it made the best part of its profits.

An operating lease price has two components: the lease rate (the “front end”) and a value put on the equipment at the end of a lease, known as the “residual value” (the “back end”). To balance risk, a leasing company will typically price its services low at either the front end or the back end, but not both.

At the end of an operating lease term, a customer has three choices: return the equipment to the leasing company, buy the equipment, or renew the lease. If the customer returns the equipment, the leasing company resells it in the wholesale or retail market (remarketing, or “residual

realization”), hoping to get more for it than the residual value ascribed to it in the lease. This may seem like the conventional end of a lease, but in MFP’s case, it only happened that way about a quarter of the time. The rest of the time, its customers opted to buy the equipment at the price agreed to at the beginning of the lease. Obviously, if the price is higher than the fair market value, the leasing company makes a profit. If the customer decides to renew or extend the lease, the terms may be different from the original ones. Also, if a customer modifies the lease during the term, the rewritten lease will generally trigger a termination payment and new lease terms and rates.

Each of these scenarios, each change, is a revenue-generating opportunity. Good sales representatives never stop trying to sell to the customer. In MFP’s case, they did that by concentrating on building relationships.

C. A RELATIONSHIP COMPANY

According to its mission statement, updated periodically for its annual reports, MFP’s mission was to succeed “by investing capital, time and collective expertise to help customers satisfy their financial and technology management requirements in a manner tailored to their specific needs. MFP is focused on creating and retaining long-term, direct customer relationships through personalized service.”

It makes good business sense to understand your clients. Peter Wolfrain, who was still President and CEO of MFP when he testified, said that it was less costly to build business with existing customers than to acquire new customers. An intimate understanding of its customers was one of the “value-added” benefits the company delivered. MFP saw that as its competitive advantage, so relationships were strategic and vital. As we heard more than once in this inquiry, people buy from people.

In its 2000 annual report, Mr. Wolfrain expressed the company’s core value this way:

At the core of each project will be a strong relationship based on insight, understanding and trust. It may sound like corporate motherhood. Yet it is absolute fact at MFP: people-based partnerships and relationships will make the biggest difference of all.

Corporate motherhood? Maybe. But people-focused partnerships and relationships are intangible and unquantifiable. Those dynamics were said to be the key to success for MFP, but should they factor in public sector procurement decisions?

D. RELATIONSHIP MARKETING AND THE PUBLIC SECTOR

Most people understand that taxes are necessary so that governments will have the means to provide the services we need. Nevertheless, we all know that paying taxes is not voluntary. If we disagree with the way a government is spending our tax dollars, we can let it know at the ballot box, but we are still obliged to pay taxes. Moreover, even though elected officials make the policy decisions about how our tax money is spent in broad terms, it is civil servants, who are rarely in the public eye and who do not stand for election, who implement the actual spending. Thus, we have no choice but to trust them to spend it wisely. Given this compulsory trust, the taxpayers have a right to expect civil servants to manage public money properly and not spend it as though it were their own. The antidotes to skepticism about that trust are transparency in decision making, manifest objectivity, and full accountability. Those conditions are not met if company A wins a contract over company B because a civil servant had a better personal relationship with the people at company A. That is an intangible and unquantifiable factor. Transparency, objectivity, and accountability demand something concrete.

Of course, it would be naive to suppose that the human element can be wholly eradicated from procurement decisions, even in the public sector. That is why good governance demands that civil servants follow rules designed to keep the allure of a good relationship with a vendor from affecting their decisions in the course of spending the taxpayers' money.

For their part, companies seeking to do business with the public sector should recognize that they are dealing with the trustees of public money. They should realize that in the public sector, their real relationship is with the taxpayers, and the taxpayers expect the trustees of their money to insist on value that is easily and objectively demonstrated. Softening up a public servant with a nice dinner or a round of golf does nothing to advance the

public interest. Such sales stratagems wrongly appeal to the personal interests of public servants. These tactics are inappropriate and should not be used. Favour-based relationship building with public servants as a deliberate and calculated sales tactic undermines the integrity of public sector procurement. If companies use these tactics for private sector sales, they should change their habits for the public sector. If they fail to do so, taxpayers may quite properly hold the company to account, as MFP was to discover.

MFP's relatively small deal for leasing the councillors' new computers eventually became one of the subjects of this inquiry, and scrutiny of the transaction was specifically mentioned in my terms of reference.¹

E. AN MFP "FARMER" PLANTS A SEED

Like so many other senior managers on the eve of amalgamation, in the fall of 1997 Jim Andrew had pressing responsibilities. He was the Director of Information and Technology for the Municipality of Metropolitan Toronto, and a front-runner for the position of Executive Director of IT for the City after amalgamation. (He would get the job in May 1998.) He appreciated that technology would be the circulatory system in the body of the megacity. He had to acquire new equipment on a scale unprecedented in the region's municipal experience, and with Y2K looming, he also needed to get it done quickly. At this very busy time, Jim Andrew got a cold call from MFP.

Rob Ashbourne was a competent, low-key salesperson, and MFP's Regional Marketing Manager, with almost 20 years' experience in computer leasing. He wanted to meet Mr. Andrew to discuss possible opportunities. Jim Andrew had some experience with leasing in previous employment, but the municipality had not financed acquisitions through leasing to any significant degree. There was little internal expertise on the subject.

Rob Ashbourne's cold call was not spontaneous. Irene Payne, Senior Vice President of Sales and Marketing at MFP, knew Jim Andrew. They had met in the late 1980s, when he was Manager of Technical Services at Ontario's Ministry of Natural Resources, and they had maintained a friendly professional relationship. After Mr. Andrew left the provincial government and was working at Metropolitan Toronto, they saw each

¹ [Appendix A\(i\): Terms of Reference, Toronto Computer Leasing Inquiry.](#)

other from time to time at government seminars and trade shows. They kept in touch occasionally by telephone. Ms. Payne was instrumental in bringing Mr. Andrew and Mr. Ashbourne together in the same room in November 1997.

Irene Payne, shrewd and strategy-conscious, divided salespeople into two personality categories: “hunters” and “farmers.” Farmers, she said, patiently and methodically cultivated and managed accounts over the long term. Hunters were high-energy self-starters who could open doors and go after accounts aggressively. Most companies, Ms. Payne said, needed both.

Irene Payne put Mr. Ashbourne in the farmer category. He was an expert in leasing, and his sales approach was to nurture relationships over time, tend them carefully, and allow them to grow naturally. For now, Irene Payne was content to send a farmer to plant a seed at the soon-to-be-amalgamated City of Toronto.

At their first meeting, in November 1997, Jim Andrew told Rob Ashbourne, in general terms, what the megacity would probably need. He talked about the problems presented by amalgamation, particularly the need to harmonize seven different data centres and seven sets of IT equipment inventory. He believed that leasing was quickly becoming the favoured means of financing IT hardware and software acquisitions at the Ontario government and in other municipal and provincial jurisdictions. For his part, Rob Ashbourne set out the services MFP could provide and the features he felt distinguished his company from the competition. Mr. Ashbourne clearly understood leasing and could give his clients useful advice and assistance. In the end, Mr. Andrew suggested that Mr. Ashbourne give him some materials on the benefits and drawbacks of leasing versus purchasing IT equipment. Rob Ashbourne was happy to oblige.

Rob Ashbourne knew that, in 1997, municipalities in the Toronto area usually bought assets and financed them directly or through municipal debentures. The new City might not readily warm to the unfamiliar concept of leasing. As he prepared the materials for Jim Andrew, he highlighted the financial advantages of leasing first. Monthly payments on leases would be lower than traditional loan payments. MFP would be flexible in structuring them, and would offer fixed rates to protect against inflation and permit certainty in budgeting. The City wouldn't have to make a down payment, and that would free up cash. Leasing costs would be off the balance

sheet, so the City's borrowing capacity would not be affected by putting debt on the books. He pointed out other advantages. At the middle and end of lease terms, equipment could be upgraded or "refreshed," so the City could always have up-to-date technology. And MFP would look after the labour-intensive task of selling the old equipment. The administrative burden that goes with IT equipment would be further relieved by simplifying budget allocation and by taking advantage of additional MFP services.

Obviously, this was a sales pitch and not an impartial analysis. A sales pitch couldn't be expected to be a substitute for proper research on the part of the City into the pros and cons of leasing. On the other hand, the stated benefits do provide a benchmark for measuring the deliverables, as defined by MFP itself, against its performance.

As a senior IT manager, Jim Andrew was particularly interested in the ability to periodically upgrade the City's technology, but he also saw that relieving pressure on the capital budget would be an important benefit. Mayor Lastman had campaigned on a zero tax increase promise. That, coupled with the provincial service delivery realignment, meant grave fiscal challenges for the City. The financial advantages were not a big factor in acquiring new computers for the councillors, but the City would ultimately need thousands of computers costing many millions of dollars. Getting Council to spend that money might be easier if the sum could be broken up into leasing chunks rather than spent all at once to buy the machines outright.

Rob Ashbourne had planted the seed of long-term leasing in fertile soil. Leasing would certainly make life easier for City staff. Within days, Jim Andrew proposed to the Transition Team that the City lease the councillors' computers over a three-year term.

On December 9, less than a week after sending his materials to Jim Andrew, Rob Ashbourne met with him again. This time he brought with him Bill Smethurst, MFP's Vice-President of Operations. Mr. Andrew was going to have to explain and make a case for leasing versus purchasing to his City colleagues, and he needed more information. He now revealed that the potential volume of business in three-year leases could involve as many as 15,000 computers, about \$80 million worth, all to come from "Tier 1" suppliers like IBM, Compaq, and Dell—the best in the business. The word on the street had been right. It was indeed a colossal amount of business.

There was great potential for business, but the City's immediate need was much more modest. Jim Andrew was seeking to lease about 200 computers, with a three-year term to coincide with the councillors' three-year term. He needed them quickly. The newly elected councillors would have their first Council meeting in January 1998. That was just weeks away, and during those weeks business productivity would decline amid the seasonal religious and secular revelry traditional in late December.

F. MFP THROWS A LOW BALL

After further encouraging telephone conversations with Jim Andrew, Rob Ashbourne plowed ahead, with hopes of a bountiful harvest. On December 19, he presented a proposal to MFP's investment committee, a group of senior executives that included President Peter Wolfrain and Senior Vice President Irene Payne. He spoke of the immediate opportunity to lease over 200 computers for the councillors, and of the tantalizing potential for up to 15,000 more at a rate of 5,000 per year.

Rob Ashbourne identified Jim Andrew as the key contact, and pointed out that Mr. Andrew's prior relationship with Ms. Payne held promise for landing the business. Mr. Andrew was "a strong supporter of leasing," he told them, and with MFP's assistance over the preceding six weeks, Mr. Andrew had persuaded the new Treasurer, Wanda Liczyk, that leasing was the way to go. That may have been an overstatement, but Mr. Ashbourne's meetings with Mr. Andrew had certainly been encouraging. In any case, by that date, Mr. Andrew had indeed convinced Ms. Liczyk and others in Finance to go with leasing.

There wasn't time for a formal competitive tender process but through Jim Andrew, the MFP executives knew that if the City decided to lease the councillors' computers, it would be asking for quotes from more than one leasing company. Mr. Ashbourne thought MFP should bid aggressively to get its foot in the door. Once in, they would be poised to go after the big opportunities to come. Rob Ashbourne proposed the following strategy:

- Focus on MFP's strength as independent and ability to support both [of the City's preferred] suppliers. . . .
- Asset Management and disposition are important issues which we have already started to address with Jim as part of our long term leasing solution.
- Get in early while transition still taking place and develop standard government model in 1998. (i.e. Work deals to budget constraints.)

Timing was everything, and he had worked out the strategy carefully. The pricing he proposed for the councillors' computer lease wouldn't make a cent for MFP—in fact, it would amount to a loss—but he was looking to the lucrative long term. If MFP won this unprofitable business, getting future business could be easier. Meanwhile, the City would become familiar with MFP's master lease agreement, Rob Ashbourne thought, and would look to it as a model for future leasing. He reasoned that with the shakeup of vendors that would come with amalgamation, those who got in early would get the opportunities. By the time amalgamation took effect, he wanted to have the City on a program that would make it increasingly convenient to funnel business to MFP.

MFP analyzed every lease transaction (possibly as many as 3,500 a year) from a risk management point of view. The deal for the councillors' computers was above MFP's usual maximum allowable equity investment. But as Peter Wolfram explained, "We essentially decided to do the deal with no profit in order to get in the door." This was an opportunity to do business with the new City, and MFP was interested in "becoming entrenched."

Ultimately, the City would pay just under \$1 million over three years on the councillors' leases. Even though MFP decided to do the deal with no profit, based on its historical averages, it might have made a profit of about \$40,000 on the transaction instead of losing a projected \$38,631. But MFP clearly didn't expect to lose money in the long run.

G. THE BID

The City kept very poor records of the discussions about the councillors' computer lease. Nonetheless, it appears staff made good-faith efforts all around to get the necessary approvals under pressing time constraints.

Jim Andrew was favourably disposed toward leasing, and he could see no other way of funding the computers if they had to be on the councillors' desks within a month. By December 1, he had persuaded the Transition Team to acquiesce, and by mid-December, Wanda Liczyk had agreed. The City Clerk's office had sought and received approval for the computers from CAO Mike Garrett.

On December 20, 1997, Wanda Liczyk signed the necessary requisitions, clearing the way for Toronto to go to the market and lease the councillors' computers. With Council scheduled to meet on January 6, the need was clearly urgent. The City of Toronto did not yet exist (legally, it would come into being on New Year's Day), but the City-to-be still had to buy a number of items immediately for its future needs. The approvals for these acquisitions came from the governing bodies of one or another of the seven amalgamating municipalities—their last acts of service to their residents. For the councillors' computers, the authority appears to have been a 1995 procurement resolution passed by Council for the Municipality of Metropolitan Toronto.

Despite the tight deadline, and despite the distractions of the festive season, the leasing business for the councillors' computers had to be awarded through some sort of competition. Indeed, a brief, informal competition did take place. Someone from IT contacted David Beattie, a mild-mannered, experienced Buyer in the Purchasing Division at the old City of Toronto, to alert him to the City Clerk's office's urgent need to lease new computers for the Mayor and councillors. Few records of the events survive, and precise details of what happened next are elusive.

Mr. Beattie remembered receiving the urgent phone call. It was almost Christmas, he said, and an extremely quick turnaround was needed. After discussions with two of his superiors, he organized a telephone bidding opportunity. Telephone bid procedures were in place for urgent items, usually involving a low dollar amount.

Mr. Beattie contacted prospective bidders by telephone on December 22 or 23. He might have contacted about half a dozen prospective bidders, but again, the details are sketchy. The bidders were asked to provide their best lease rates for the quantity and type of computers approved in the purchase orders signed by Wanda Liczyk on December 20. They gave their quotes verbally and confirmed them by fax. The whole bidding process took only

one day. Telephone bidding was not common, but neither was it all that unusual. Although it was done in haste, the time constraints and the relative simplicity of the acquisition made it permissible and appropriate in all of the circumstances.

On December 23, before the winner was announced, Jim Andrew had lunch with Irene Payne, Rob Ashbourne, and Dave Robson from MFP. It was the first of many contacts between City staff and a vendor in questionable circumstances. In this case, the problem was the potential for the perception that MFP had an unfair opportunity to influence the outcome of the bidding. Mr. Andrew denied he even knew MFP would be invited to bid, and there is no evidence to suggest that this lunch influenced the outcome. But that is not the issue. The issue is perception. Competitors might have thought they had reason to be concerned about fairness if they had known about this lunch, taking place so close to the time when bidders were invited to fax their quotations.

Around December 30, MFP was announced as the winner. Its winning bid was very reasonable, but as we have seen, that was hardly surprising since MFP had calculated its bid using a little red ink in the hope of landing bigger deals to come. Wanda Liczyk signed a lease with MFP for assets valued at \$991,430. The lease term was 36 months, with a purchase option at the end.

The "farmer," Rob Ashbourne, had his first harvest and a small commission. A salesperson bringing in a deal where MFP stood to lose money would typically make no commission, unless MFP chose to pay some commission for subjective reasons. In this case, MFP elected to pay Mr. Ashbourne \$7,811, which he had to split with another salesperson who had worked on the Toronto account.

MFP's foot was in the door.

H. THE SEED BEGINS TO GROW

Councillors seemed surprised that their offices were equipped with shiny new computers when they arrived in early January to conduct the megacity's first business. They wondered where the money to pay for them had come from. Mike Garrett briefed the Council on the background of the hasty acquisition and explained that the Metropolitan Toronto Commissioner of Corporate Services had also verbally approved the com-

puter transaction beforehand. That settled the matter for the moment. But the City might have been able to get the money elsewhere. There was provincial funding available for certain amalgamation transition costs, but it appears that no one from the City ever made an application to cover the cost of these computers, and no one was able to give any reason for this apparent oversight.

In 1998 and 1999, as the councillors settled into their work, some would occasionally request additional computer equipment. These further acquisitions were placed on the original lease. They should not have been. The additions totalled about \$102,000. The City Auditor noted in a January 2002 report that many of these later acquisitions were made without the necessary signing authority, and he was right. It was sloppy. The sloppiness was subsequently remedied.

In December 2000, at the end of the three-year lease, the councillors got new computers again. Most of the old computers were returned to MFP, but a number of councillors purchased some of the old computers for themselves. The next lot of new computers for the councillors had been on the City's radar screen since May 1999. Through various discussions, IT staff, the City Clerk's office, and the councillors' staff had agreed that the new computers were necessary. Staff prepared a report for the Administration Committee of Council on June 28, 1999, and a business case on October 16. Various options were explored for the duration of any new lease, termination options for the old lease, and budgeting. The original lease had been signed under authority granted by the now-defunct Municipality of Metropolitan Toronto. But Jim Andrew believed that Council had already decided this issue at its July 1999 meeting when it approved a "Corporate Refresh Strategy" together with the leasing program. Assuming that these new leases would simply be another schedule on the City's contract with MFP, he told staff that the report already prepared didn't have to be submitted. He was wrong. Council approval was indeed necessary.

Much had changed between 1997 and 2000 that puts into context the addition of more computers to the existing lease without authority, as well as the failure to take the councillors' lease renewal to Council. It was a staff error, nevertheless, but at the time, unfortunately, it was also business as usual. The story of mismanaging the leases with MFP is told in detail later in this report. Suffice it to say for now that by 2000, MFP had far more

than a foot in the door of opportunity. It had moved in, and it held a de facto IT leasing monopoly throughout the City of Toronto.

I. ERROR ON TOP OF ERROR

In leasing the councillors' computers in 1997 and 2000, the City piled error on top of error. Jim Andrew seems to have obtained information about leasing only from vendors, relying heavily on MFP's sales pitch. No proper business case was prepared. No one independently analyzed the advantages and disadvantages of leasing. Mr. Andrew obtained the Transition Team's verbal approval to lease, but nothing in writing. There are no records to show how the decision to use telephone bids was made or how the bidding process was carried out. Documentation of the whole transaction was slipshod from beginning to end.

Having said all that, there were mitigating circumstances for some of the errors. Making the councillors' offices fully functional was an urgent need that included installing new computers in their offices. The new Council had to start dealing with the City's business in the first days of the New Year, and it was properly a high priority to give them the equipment they needed to do the job. Meanwhile, amalgamation was imminent. Staff were moving around, the lines of responsibility were blurred, and they were coping as best they could with the general confusion. Approval processes were nebulous as the old municipalities dissolved into the megacity.

On balance, therefore, I am satisfied that the staff involved had the best of intentions in acquiring the councillors' computers and financing them through leasing.

However, there are two points for which there are no mitigating circumstances. First, additional equipment should not have been put on the existing MFP lease without proper approval. That was done several times, and long after the turmoil of amalgamation had abated. Second, when the original three-year lease term expired, the next set of new computers, and any new or renewed lease to finance them, should have been put before City Council.

Those mistakes were made down the road, however. In 1998, City staff would soon turn their attention to the much larger IT acquisition Jim Andrew had described to Rob Ashbourne.

IV. THE DELL COMEBACK FROM NOWHERE

NOBODY LIKES TO BE TURNED DOWN, and some people don't take no for an answer. In 1998, Dell bid on a huge computer acquisition tendered by the City of Toronto. Dell was knocked out of the running, but it didn't give up. The company came back—seemingly from nowhere—and won a big contract after all. Dell went on to provide the City millions of dollars' worth of top-quality computers, and excellent service, at a great price.

There was only one problem. Companies eliminated from competitive tender processes are supposed to stay eliminated, not win the contract. When the seemingly impossible happens, there may be invisible hands at work somewhere. So what was the story with Dell? How was it transformed from out-of-the-running bidder to major supplier?

To understand the invisible hands at work, it is important to understand the backdrop to the story: the City's preparations for the year 2000.

A. THE BACKDROP: A RACE AGAINST TIME

From the comfortable vantage point of 2005, the widespread apprehension about Y2K might seem like colossal overreaction. Y2K-watchers held their breath as the last seconds of 1999 ticked away, but the stroke of midnight brought only the quiet hum of business as usual. But to be dismissive about the anticlimax in hindsight is unfair. Y2K anxiety prompted extraordinary

action at a time when a lackadaisical approach could easily have led to catastrophe.

In 1998, the City was not nearly Y2K-ready. The challenges ahead were daunting. By May, the City had identified 31 computer systems that could harm health and safety if they failed, 51 systems vulnerable to legal implications, and 28 systems in which failure would mean financial impact greater than \$1 million. On top of those, 227 systems had some chance of failing because of a Y2K defect. The City estimated its possible financial exposure from Y2K-related failures at more than \$750 million. That included lost revenue due to business failures and/or decreased use of chargeable services, and increased costs due to greater demand for emergency, health, and social services. The \$750 million didn't include the cost of possible lawsuits against the City because of death and personal injury, nor did it include the cost of collateral damage caused by Y2K failures in external organizations.

The pressures of amalgamation distracted many former municipalities from preparing for Y2K. The IT amalgamation transition team had done some work, but it was rudimentary.

Two years to get ready for Y2K might seem like enough lead time, but given the massive task at hand, the City was in a very tight spot. The Canadian Institute of Chartered Accountants had said that organizations should fix all critical programs by the end of 1998, leaving all of 1999 for testing. Banks and insurance companies started serious work on Y2K projects as early as 1994. The City lagged far behind and now faced an inflexible deadline. Y2K was coming, ready or not, and there was no pleading for more time.

Early in 1998, Margaret Rodrigues, then Toronto's Commissioner of Corporate Services, established the first post-amalgamation Y2K planning body, called the Year 2000 Committee. Later, there would be a body called the Year 2000 *Steering* Committee, but that had a different function even though the names are confusingly similar.

The first body, the Year 2000 Committee, had four tasks: (1) evaluate the City's computer environment and prepare a consolidated inventory of all systems potentially affected by Y2K; (2) summarize all Y2K efforts to date; (3) assess the City's Y2K readiness; and (4) devise an integrated action plan for the outstanding tasks.

The committee issued its Assessment Report and Action Plan on May 31, 1998. Ultimately, the work turned out to be less thorough than was needed, and much of the same ground would have to be covered again.

1. LANA VIINAMAE TAKES ON RESPONSIBILITY FOR Y2K

Lana Viinamae had been in IT with the former Municipality of Metropolitan Toronto. After amalgamation, she won the job of Director, Computer Operations and Telecommunications, but she never assumed the post. Instead, she became Director of the Year 2000 Project Management Office. She hadn't wanted the job at first and didn't apply for it when it was posted. Jim Andrew, the City's Executive Director of IT, personally asked her to apply after the competition closed. The City had a immense job ahead and very little time to do it. The job needed someone driven and tough. Ms. Viinamae fit the bill. She agreed to be interviewed and won the job the very next day.

In her new post, Ms. Viinamae reported to Jim Andrew. During the inquiry, Mr. Andrew tried repeatedly but unconvincingly to deny this reporting relationship, presumably to minimize his responsibility for the failings of those under him.

When she started as Director of the Y2K Project Management Office in early June 1998, Ms. Viinamae had the May 31 report from Margaret Rodrigues's Year 2000 Committee, but little else to go on. The immovable Y2K deadline was just over 18 months away.

One of Ms. Viinamae's first tasks was to prepare a Y2K plan and a budget. The plan needed approval from the Corporate Services Committee of Council, and then from full Council. By June 8, a week after taking on the job, and under incredible pressure, Ms. Viinamae had the Y2K report ready. She asked for initial funding of \$80 million.

Ms. Viinamae's June 8 report didn't sail through the committee and Council. It ran aground for lack of detail. Y2K was a top priority, but Council wouldn't give carte blanche approval, and \$80 million, for the plan as written. Council was concerned that Y2K might well cost even more. Ms. Viinamae was sent back to the drawing board. She was told to develop a list of priority projects, a work plan with a timetable, and a budget for the work plan. To get things rolling, Council allocated \$5 million for start-up costs:

\$1.5 million to staff and equip the Y2K Project office, and about \$3.5 million to rework the critical systems assessment begun by Margaret Rodrigues's Year 2000 Committee.

2. THE YEAR 2000 BUSINESS CONTINUITY PLAN

City Council was right to think Y2K would cost more than \$80 million. After much revamping with the help of external consultants from IBM, Ms. Viinamae's far more detailed Year 2000 Business Continuity Plan was ready on November 3, 1998. The budget was now \$149.6 million. Of that, \$79.7 million was for City-wide business functions, including the desktop computers Dell would eventually bid on. Also included were networks, server platforms, improvements to the City's 1,700 buildings and its vehicle fleet, and a number of external partnerships and agreements. Lana Viinamae's Year 2000 Project Management Office would control all these City-wide initiatives.

Councillors were given presentations on the plan, some amendments were made, and at its meeting on November 25–27, 1998, Council approved the plan.

3. SPECIAL MEASURES FOR Y2K SPENDING

Council had approved nearly \$150 million for Y2K, to be spent on a host of critical upgrades in just 13 months. Council wanted to oversee this expensive and crucial job, but time was short and decision making had to be efficient. To meet the two requirements of sound oversight and speedy decision making, Council did three things:

- It created the Year 2000 Steering Committee.
- It approved the use of business cases to justify spending.
- It delegated to the Chief Administrative Officer, the City's most senior staff person, special approval powers.

a. Year 2000 Steering Committee

The Y2K Steering Committee directed the Year 2000 project. Membership reflected the high priority the City gave it. Councillor Dick O'Brien chaired the committee, representing the Mayor. Other members included Jim Andrew and Margaret Rodrigues. In June 1999, Margaret Rodrigues was

replaced by Wanda Liczyk. Jack Schachner, an outside consultant and Assistant Project Director, was also a member of the committee.

The Y2K Steering Committee was to oversee Ms. Viinamae's stewardship and make sure the Y2K Project stayed on time and on budget.

b. Business Cases

City staff, working with IBM consultants, had a three-step Y2K strategy. First, inventory all vulnerable systems. Second, assign them a priority from one (most critical) to four. Third, develop a business case for each "Priority One" system. The business cases were to include the results of the survey by the first Year 2000 Committee, the results of further analysis of current Y2K-readiness, and the most cost-effective remedy for a given situation.

The business cases were essential. They were to show that there was a thoughtful plan in place, and they were a tangible benchmark to assess whether a project was on time and on budget. Variation from a business case required Y2K Steering Committee approval through a "Change Request." Business cases were the key tool to keep the Y2K Project on track.

c. CAO's Delegated Approval

The CAO's Delegated Approval was one of the measures designed to streamline the decision-making process. The report approved by Council in November put it this way:

The Year 2000 Program will be required to enter into agreements to implement solutions to ensure year 2000 readiness on a timely basis to enable the City to meet the immovable deadline. These requests will be forwarded to the Year 2000 Steering Committee for review. Based on its recommendation, the CAO will enter into the necessary agreements. This information will be reported to Council on a regular basis.

Time was very short. All Y2K spending decisions had to be made quickly, and the normal approval process through committee and Council was too slow. So CAO Mike Garrett was given authority to sign agreements for the full amount of Y2K expenditures until June 2000. This eliminated the usual approvals by Council, but he was guided by the Y2K Steering Committee.

A “Year 2000 Delegated Approval Form” formalized the streamlined expenditure process. The form required staff sign-offs before the CAO’s final approval. The Delegated Approval Form was to be used for Y2K-related expenditures and nothing else.

4. POST Y2K: SERIOUS QUESTIONS SURFACE

Led by Lana Viinamae, the City’s Y2K team won the race against time. January 1, 2000, was practically a business-as-usual day at the City. There were a few expected Y2K-related failures, but no catastrophes. Water flowed, traffic lights worked, and emergency systems responded as needed. The Y2K Project came in on budget. In just over 18 months, Ms. Viinamae and her team had pulled the City back from the brink of Y2K disaster.

However, as things settled down after Y2K, some serious concerns floated to the surface. MFP was supposed to lease the City \$43 million of computer hardware and software for three years, most of it for Y2K. So why was there more than \$80 million on lease, most of it for more than five years? Why did the City have \$11 million worth of Oracle software on lease with MFP? These questions are answered elsewhere in this report. But there was another question: How did Dell, left off the winners’ list after an RFP for vendors of record for computer equipment and services, come to supply the City with more than 11,000 desktops?

B. DELL LOSES, WINS A BIT, AND LOSES AGAIN: THE SEPTEMBER 1998 RFP

1. DRAFTING THE RFP: JIM ANDREW STAYS AWAY

Desktops are ubiquitous, critical cogs in the machinery of City government, used in every City service, in every neighbourhood. They all had to be Y2K-compliant, and by the summer of 1998 it was clear that the City would need many thousands of new ones.

Naturally, this wasn’t the first time the City had bought desktops. In the past, the City had used “value-added resellers,” or VARs. And that is what City staff and their IBM consultants recommended in the Y2K business case for the desktops.

VARs are a link in the chain between computer manufacturer and customer. They buy desktops from manufacturers and then perform “value-added services”: configuring, imaging, adding memory, adding modems and drivers, asset tagging, installation, and setting up. VARs tailor the equipment to the client’s needs, doing the jobs that might baffle a computer novice if a new computer simply landed on his or her desk, still in the packing crate.

In the summer of 1998, Jim Andrew directed Kathryn Bulko to draft an RFP to select at least two VARs as vendors of record to supply hardware, software, and other IT services. The winners wouldn’t be guaranteed any business, but they would be the companies invited to quote on contracts for three years. At the time, Kathryn Bulko had the non-managerial position of Client Services Specialist and was still part of a bargaining unit.

Jim Andrew gave his instructions, and then played the hands-off boss role that seemed to be his trademark. He failed to give Ms. Bulko any guidance or supervision whatsoever. This was a dereliction of duty. He didn’t need to micromanage or replicate her analysis, but, given Ms. Bulko’s junior level, he should have at least ensured that a more senior person, possibly himself, reviewed the RFP before it went out at the end of August.

Jim Andrew’s reason for staying out of drafting RFPs and RFQs, and refraining from supervising those who did, was to “avoid any perception of undue influence” over his subordinates: “People may take my views for being gospel views and may not want to put their own thoughts down on paper.” He seemed to think his views as a senior executive would so overwhelm or intimidate his staff that they wouldn’t be able to make the best decision. I saw Mr. Andrew over 13 days at the inquiry. He was not an intimidating man. His staff described his style as “informal.” Warm, pleasant, easygoing, and supportive, he was if anything malleable and easily persuaded. The idea that his views would intimidate his staff is out of the question.

Having delegated a task, Jim Andrew most certainly had an obligation to provide advice and guidance, to supervise, and to follow up. It would have been reasonable to assess the actual expertise of those to whom he delegated responsibility and then supervise accordingly. But to abdicate all responsibility? Shameful.

Jim Andrew enjoyed frequent favours and entertainment courtesy of vendors. I could not help but feel, as I watched Mr. Andrew over all those days,

that his real reason for not wanting to know too much about what was going on in his office was that he so enjoyed being entertained by suppliers that he almost needed to protect himself from having too much information to divulge. How ironic that the same vendors who plied him with meals, drinks, golf games, hockey tickets, trips, and other favours no doubt assumed he was closely supervising tenders for many millions of dollars in acquisitions.

Ms. Bulko wouldn't have been awestruck by a little guidance. Mr. Andrew had worked in IT since the 1960s and had much more experience than she did. He was responsible for the RFP and he failed to ensure that it was complete and correct.

Mr. Andrew would fail to do his job in another major acquisition the following year: the computer leasing RFQ. He would justify it with the same twisted logic.

Kathryn Bulko had drafted several RFPs with the pre-amalgamation City of Toronto. She did the best she could, working with another employee. Using precedents from their former municipalities, they cobbled together a detailed RFP.

Nevertheless, two bidders noticed that the hardware specifications in the RFP were obsolete. Kathryn Bulko explained they had just used the specifications for hardware the City was currently buying. Mr. Andrew agreed that it might have been helpful to have a more senior person review the RFP. His "more experienced eyes" might have noticed that the City was going to market with a shopping list of obsolete items.

The RFP took about six weeks to draft, including getting input from the Purchasing and Legal divisions. It was issued on August 25, 1998, with a closing date of September 17. The responses were evaluated by a team of six, including representatives from various divisions, former municipalities, and the police services commission.

2. DELL IS ELIMINATED, AND A SMALL VICTORY IS LOST BY OMISSION

Today, Dell is a household name in Canada. Seven years ago, however, it was a young company from Texas just breaking into Canada's public sector. In 1998, the public sector saw Dell more as a supplier of PCs for the home than as a vendor meeting the needs of large organizations.

Dell's unique direct-sale business model was not widely understood at the City in 1998. Traditionally, computer factories produced and warehoused standard units, which they sold to an intermediary, like a VAR, to be customized to the buyer's needs and then resold. Dell's model was to build to order, combining production and customization at one location. Dell didn't need a VAR because it did almost everything the VARs offered.

Questech, SHL Systemhouse, and GE Capital were VARs. They were the winners in the City's September RFP for vendors of record. Given that the RFP was specifically designed with VARs in mind, it was not surprising that Dell was not chosen.

But there was a small victory for Dell. Some City departments already had Dell equipment. The RFP evaluation team therefore recommended that Purchasing retain the flexibility to buy Dell computers for those departments.

With the preferred VARs chosen, Kathryn Bulko had to draft the report that would go first to the Corporate Services Committee and then to Council for a final decision. But for some unknown reason, she left out the evaluation team's recommendation to allow departments to continue buying from Dell. It simply vanished without a trace and never went before Council.

This was Kathryn Bulko's first report to Council. Departing from his usual practice, Jim Andrew did bestir himself to give her some feedback on her drafts. But he didn't catch the omission of Dell either. Neither he nor Ms. Bulko could explain why Dell was dropped. Dell's Bruce Mortensen sized up the situation in an internal e-mail: "We were toast!"

But all was not lost. Dell would get a useful referral from Jim Andrew, and a kaleidoscope of systemic flaws would put Dell back in the running. Ultimately, Dell would become the sole supplier of computers for the City's Y2K program, 11,318 of them, in a deal worth more than \$18 million over less than one year.

3. FLASHBACK TO SEPTEMBER 1998: JIM ANDREW GIVES DELL A REFERRAL

Before the September 1998 RFP for desktops, Dell was not a major supplier to the City. But in that summer of 1998, Dell, like the rest of the IT sector, knew that the recently amalgamated City would have very considerable

Y2K needs. Dell had established a public sector business segment in March 1998 and David Toms became its Director. To compete for the lucrative City business, Dell had to understand how City procurement operated.

Fortunately, David Toms had an excellent contact at the City: the head of the IT Division, Jim Andrew. They had met before Mr. Toms started with Dell. So in September 1998, Mr. Toms called Mr. Andrew to ask him what Dell could do to improve its competitive position. Mr. Andrew's advice? Consider hiring lobbyist Jeff Lyons. Jim Andrew was recommending that Dell hire a lobbyist to lobby Jim Andrew himself! It is hard to imagine this advice as anything other than Mr. Andrew doing a favour for Jeff Lyons.

Dell eventually followed Jim Andrew's advice, and after it hired Jeff Lyons, Dell's also-ran position as a hopeful supplier to the City improved dramatically.

4. THE JEFF LYONS LOBBYING STYLE

Jeff Lyons was a lawyer, rainmaker, and lobbyist. By 1998, he worked primarily, perhaps exclusively, as a lobbyist. Relationships were his stock-in-trade, and, as he told a newspaper reporter, everyone wanted to be on his Rolodex. Yet he downplayed the importance of his connections to his lobbying at City Hall:

I've been involved in the City and working with all these people over the years, and knowing them, I sort of had an innate sense of what things worked and what didn't work. It wasn't necessarily connections; it's your experience. You're selling them all your years of experience that you have, being on the political scene, being involved with the City.

In reality, his relationships with City officials, real and perceived, made him Toronto's most influential and sought-after lobbyist.

Mr. Lyons liked the nickname "Brother Jeff." He saw it as a folksy trademark: "That's me being friendly," he would say. "I do that to make everybody sort of feel at home." The nickname caught on at City Hall. Even Mayor Lastman would greet him with the friendly moniker.

City staff, councillors, clients, and movers and shakers all attended the annual Brother Jeff Golf Tournament, a benefit for a deserving charity. It

was for a good cause, yes, but it sent a powerful message about the influence he wielded at City Hall.

Mr. Lyons had more than a charity golf tournament in his arsenal. As we will see later, he had also consistently proven that he could deliver the money municipal candidates needed for their election campaigns, and he made sure they knew it.

Often, he would offer, or be asked for, tickets to events: “I had access—I was on Boards, I... had use of a box at the SkyDome. And a lot of people called me for tickets. I almost became like a ticketmaster.”

Mr. Lyons openly used favours to cultivate influence with councillors and staff, and in 1998, that was par for the course. Bestowing favours on City officials was good business, Mr. Lyons said, and he felt no need to apologize for doing it. It was part of cultivating business relationships. Mr. Lyons said that in 1998, he didn't really understand the City's conflict of interest policy for staff and councillors. Perhaps he had a general knowledge of it, he said, but “most people never paid any attention to it.” Nobody at the City ever brought it up with him.

In 1998, there were no City guidelines for lobbyists. When the City did pass such a bylaw in 2001, Mr. Lyons considered it unfair to his clients and challenged it unsuccessfully in the courts. He thought it had a chilling effect on their contact with decision-makers. Staff, he said, wouldn't want to talk to his clients because his clients would have to record the time, date, and name of the staff member.

In 1998, Jeff Lyons was actively cultivating relationships with Jim Andrew and Lana Viinamae, the staff members at the heart of the major Y2K desktop acquisition. He gave Jim Andrew information he wouldn't otherwise have, such as what key City appointments were coming up—before they were officially announced. For Jim Andrew, such intelligence was hard currency, because in his workplace, information was power. The relationship brought Mr. Andrew other benefits, too. He could pick up the phone and call the “ticketmaster,” as he did when he wanted tickets to treat a friend from Scotland to a Buffalo Bills football game. In return, Mr. Andrew gave Mr. Lyons valuable inside information. He claimed he wouldn't share “top secret plans,” but that was not true.

Lana Viinamae also had a cozy relationship with Jeff Lyons. When Jim Andrew left the City, Mr. Lyons lobbied senior staff, councillors, and

“somebody in the Mayor’s office” to choose her to replace him. When she didn’t get the position, he complained to senior staff. At the inquiry he said that his only regret was that he “didn’t phone more councillors to help this woman.”

The processes of government procurement can be mystifying—a maze to outsiders. There are so many complicated steps: the tendering processes, evaluating the bids, and approvals involving staff, committees, and Council. Lobbyists can steer a hopeful vendor through the maze, and there is nothing wrong with hiring a lobbyist for that purpose.

Jeff Lyons’s style of lobbying, however, was different. Rather than educating his clients about the City’s processes, giving strategic advice, and advocating their products, Jeff Lyons was essentially an influence-peddler. Mr. Lyons had important IT clients, even though he lacked technical knowledge of their products. For his style of lobbying, understanding a client’s product didn’t matter. He did political fundraising and bestowed tickets and other favours on councillors and staff, and he banked on the favours they would do his clients in return. And it often worked. Decisions about how to spend public money were made, or looked like they were made, based on who hired Jeff Lyons instead of who offered the best product. Stripped of its folksy embellishments, this was cronyism.

And what better example of cronyism than a high-ranking City official, Jim Andrew, recommending to Dell the lobbyist it should hire to lobby him? Jim Andrew would have followed up this advice by telling Jeff Lyons what he had done. In the ongoing give and take of his relationship with the lobbyist, he could expect a return on the favour in due course.

5. MR. LYONS GOES TO WORK FOR DELL

On Jim Andrew’s advice, Dell’s Dave Kelly met Jeff Lyons on September 16, 1998. Mr. Kelly asked Mr. Lyons for a proposal outlining his fees and strategic initiatives for Dell. Mr. Lyons put together a package the same day. His proposed fee was \$7,500 per month, and if there was “any success with respect to any RFP,” he proposed an additional “success bonus” of one-quarter of one per cent of the value of the contract.

Dell’s executive committee decided that the monthly fee was reasonable, but not the success fee. It was a variable they couldn’t measure and it didn’t

fit in with Dell's strict financial management. So Mr. Lyons's eventual retainer letter contained no success fee.

Jeff Lyons's success fee proposal came and went without strife. It was part of routine business negotiations. In murkier circumstances, Mr. Lyons would claim that he later asked for a success fee from another client, Dell Financial Services.

For Dell, the key strategic initiative in Mr. Lyons's September 1998 proposal was this: "Win I.T. Request for Proposal." The desktop computer RFP was to close the next day, but Mr. Lyons was clearly saying that it was not too late to work his magic. In his testimony, he said that after an RFP and during the committee and Council approval process, there was potential, at least, to influence the outcome: "So maybe at that point there could be some intervention to put their case forward."

Jeff Lyons was proposing to lobby for his future client, Dell, in the middle of a tender process. No doubt he had every reason to assume that, based on his past experience at the City, this was standard procedure for lobbyists, accepted by lobbyists themselves, vendors, City staff, and councillors. And he was probably right. But that was 1998, and now things are, or should be, very different.

Mr. Lyons was not formally retained by Dell until November 12, 1998. But by November 9, when the Corporate Services Committee considered Kathryn Bulko's report recommending the three VARs, he was already lobbying for Dell.

So what, exactly, did Jeff Lyons do for Dell?

Before the Corporate Services Committee meeting, Mr. Lyons called Jim Andrew. He described Dell's business model and how it offered better computers at a better price. Mr. Lyons recalled that he didn't have to push Dell's position because Mr. Andrew was already receptive. According to Jim Andrew, he told Mr. Lyons that the City would have to buy through the VARs. Mr. Lyons was not particularly concerned with that level of detail:

He might have said they might have to go through one of the vendors [of record]. I don't really care if they had to go through the vendors, but I'm telling you, the hardware should be Dell because you're going to save money. And you want to put a vendor on it like a VAR and mark it up some more, that's your problem. But... I wasn't there to solve the whole process.

Mr. Lyons didn't attend most committee meetings, but he made sure to be at the Corporate Services Committee meeting when the report on the RFP was considered. Jim Andrew pointed him out to Kathryn Bulko as Dell's lobbyist, then steered her away from him. Jeff Lyons didn't yet have a signed retainer letter, but Jim Andrew already knew that he was working for Dell. That is hardly surprising, since Mr. Andrew was instrumental in getting Dell to hire him.

Jim Andrew steered Kathryn Bulko away from Jeff Lyons for a reason. The meeting was a public forum and he didn't want to get caught being chummy with a powerful lobbyist. But away from the public eye, Jim Andrew was very chummy with him indeed. He had already helped Mr. Lyons with the very issue before the committee. Mr. Lyons sent Dell a copy of the Corporate Services Committee report the day after the meeting (though he still didn't have a signed retainer letter). In his covering letter, he mentioned his "several discussions with the Executive Director, Information and Technology" about the report. The Executive Director was of course Jim Andrew.

C. DELL IS POISED FOR A COMEBACK

1. JEFF LYONS THINKS JIM ANDREW IS LISTENING

The Corporate Services Committee meeting was on November 9. Council would finally decide the winners of the RFP at their meeting of November 25–27. Dell didn't have much time, and Dell executives wanted to know Jim Andrew's position. So, sometime between November 9 and 25, Mr. Lyons took two Dell people to meet him.

During or after this meeting, Jeff Lyons got the sense that Jim Andrew was going to "help to reopen it so they [Dell] could bid." Mr. Andrew hadn't told him "the solution," but Mr. Lyons "just thought that they were going to find an answer to it."

Mr. Lyons could have gone over the heads of staff, to lobby councillors directly. But he didn't need to. Jim Andrew was on side. He was a strategic ally, a source of inside information, and he was not to be undermined. As Jeff Lyons explained:

[I]n this instance, I sort of got a favourable reaction from the head of the IT Department, and I wasn't out to undermine him, because when you start going to councillors, you're undermining the staff... because you're asking them to take a contrary position. And why would I do that to Mr. Andrew if he was listening? And I knew him well enough to think that, you know, he wasn't playing a game with me... I didn't really want to start this campaign [to lobby councillors] because I didn't want to undermine the... IT Director.

For Dell, things were looking up.

2. A LUNCH, A PHONE CALL, AN AMENDMENT, AND EXCESSIVE CREDIT FOR MR. LYONS

A flurry of activity surrounded the November 25–27 Council meeting. On November 25, Kathryn Bulko's report was "held." In City Council parlance, this meant that one or more councillors had questions about the report, and Council wouldn't vote on it until the questions were addressed. IBM was considering moving its software lab out of Toronto, and it had come up in Council that a way should be found to keep IBM in the City. Some councillors seemed to think that this report, since it dealt with a major computer acquisition, might affect that bigger picture. The report was held for that reason. This was a stroke of luck for Dell, because the report that excluded it from the City's desktop computer business would be delayed.

Dell now had a window of opportunity. Dell sales representative Bruce Mortensen met Jim Andrew for lunch the same day. They likely talked about the report, and the fact that Dell was not a recommended vendor of record.

The next day was November 26, the second day of the Council meeting, and Mr. Lyons was scheduled to have lunch with Lana Viinamae. Neither one remembered the lunch, but if they met, Mr. Lyons would have lobbied for Dell: "I was always big on making sure, if I got a moment of opportunity, [to] use it."

The same day, Bruce Mortensen called Kathryn Bulko about an RFQ for computer hardware that the City would be issuing after Council approved the report. He thought Dell might have a second chance at that time to bid

on the City business. A few days later, on November 30, he sent her an e-mail that spoke volumes: "Further to our telephone conversation of Thursday, we at Dell are anxious to submit formal prices for the upcoming RFQ that you are intending to issue." Dell was back in the game.

On November 27, Kathryn Bulko's report passed in Council, with an amendment by Councillor David Shiner recommending that the "Commissioner of Corporate Services be requested to submit a further report to the Economic Development Committee on the hardware and systems configuration." He wanted to know exactly what the City would be buying.

The Dell people believed this amendment was the key that opened the door for Dell to bid on the upcoming December 1998 RFQ for desktops, which Bruce Mortensen had already discussed with Kathryn Bulko the day before. It was great news for Dell, and Mr. Mortensen wrongly believed that Jeff Lyons had made it happen. In an internal e-mail he wrote: "Within a few days of having Jeff Lyons as a Dell advocate, he managed to wield his clout with both staff and politicians just enough to allow Dell to be added to the Council Resolution as a Hardware Supplier ONLY."

Mr. Mortensen heard of the amendment from Mr. Lyons's office, so it's not surprising he thought Mr. Lyons engineered it. Mr. Mortensen also believed that the successful VARs were unhappy about the amendment that he thought would let Dell bid anew. He wrote, "They went to Council members and the Mayor and senior staff to cry foul.... [But] Jeffrey had beaten them to the punch again. He had already gone to the Councillors and Mayor."

Mr. Lyons was flattered by Mr. Mortensen's testimonial: "I should put this on my web site, this e-mail." But he conceded that he had nothing to do with the amendment, and that Mr. Mortensen overstated the case: "He was trying to help to keep me for another year, I guess." Clearly, to help Mr. Mortensen convince Dell to continue his retainer, Mr. Lyons had encouraged him to think that he had orchestrated the amendment.

Neither Councillor Shiner, who proposed the amendment, nor City staff saw it as helping Dell. Councillor Shiner simply expected staff to report back before buying anything. Kathryn Bulko started drafting the report requested, but it was never finished. It simply evaporated, and with it went an important opportunity for control and transparency.

On the surface, when Council passed the report selecting three VARs over Dell, the contest was over: the VARs had won and Dell had lost. Yet Dell was gearing up to bid on the very hardware contract it seemed to have lost.

Council passed Lana Viinamae's Y2K Business Continuity Plan at the same meeting. It included the City's Y2K business plan for desktops, prepared at around the same time as Kathryn Bulko was drafting the RFP for the VARs. Both documents proposed to "use the City's vendors of record" to acquire desktops. Reading the two documents together, it is clear that Council approved the Y2K plan to buy or repair desktops using the VARs recommended in the report to the Corporate Services Committee. But that is not at all what happened.

D. DELL'S FIRST BIG WIN: THE DECEMBER 1998 RFQ

1. THE VARs ARE SIDELINED

On December 7, 1998, Kathryn Bulko issued the RFQ to computer hardware manufacturers Dell, IBM, and Compaq, asking them to provide their prices for 1,000 to 4,000 desktop computers for the Y2K desktop rollout. That rollout had just been approved by Council the week before as part of the Y2K Business Continuity Plan. At the same meeting, Council had approved three VARs as vendors of record for the desktop rollout. Yet Kathryn Bulko was issuing an RFQ directly to the manufacturers, not to the successful VARs. The RFQ directed manufacturers to submit their prices to the VARs, who would add prices for their value-added services and send complete quotes to the City. Yet Dell submitted its prices directly to the City because Dell didn't sell through VARs.

Why was the RFQ structured this way? Why was it so accommodating to Dell? Because Dell asked at the right time, and the City listened. An e-mail from Bruce Mortensen to Kathryn Bulko on November 30 reads as follows:

I am requesting that the hardware prices be solicited separately from the other services that the VARs will be providing. In effect, this should allow you to compare exact hardware prices for exact configurations from each of the hardware manufacturers.

And that's just what the City did. IBM and Compaq sold their computers through VARs, so they gave hardware quotes to the VARs to include in their own quotes. But Dell, which sold directly to the customer, quoted to the City directly.

VARs offered a complete package: computer hardware and the additional services to make it fully functional for the customer. However, if the package was unbundled, with the hardware and additional services priced separately, then Dell gained a key competitive advantage over the VARs on the largest component of the unbundled package, namely the hardware. Selling directly to the customer, Dell could almost always quote lower on hardware alone. It cut out the VAR middleman along with the VAR's markup. By convincing the City to unbundle, Dell had all but guaranteed its victory in the RFQ for hardware. As Bruce Mortensen said, "This is exactly what Dell had hoped for."

Bruce Mortensen's November 30 e-mail to Kathryn Bulko had another strategically important influence on the wording of the RFQ: he suggested the exact specifications for the desktop configuration. Kathryn Bulko took those specifications and put them into the RFQ without significant change. Tellingly, both Dell and another bidder had suggested changes to the desktop specifications for the September RFP, but the City ignored both suggestions. This time, however, Dell had the City's ear and thus succeeded in defining some of the conditions for its own success.

Why did the computer specifications matter to Dell? Dell built computers to order. It carried virtually no inventory, and thus had the strongest competitive advantage selling the newest technology. When Bruce Mortensen suggested the most current specifications, she liked the idea—it would give the City the latest technology available. The road to Dell's success was paved with Ms. Bulko's good intentions.

Predictably, Dell won the RFQ, beating the next-best bid by nearly \$200 per computer. With these dramatic savings, City staff chose Dell for the entire Y2K desktop rollout. Gone was any thought of minimizing risk by spreading the multimillion-dollar purchase among three different vendors.

One VAR fought on to the bitter end. It was noon on Christmas Eve. City staff were putting on their coats, getting ready to head home early, when a VAR representative showed up with a computer hardware bid in

hand. To their credit, City staff put their holiday departure on hold and considered the bid seriously. It was lower than Dell's early December bid. After much anxiety, they decided that it would be wrong to accept the bid weeks after the deadline had passed. It was rejected, and the battle was over. The VARs that thought they had won a great feast were left with only the crumbs of providing installation services.

2. A READY-OR-NOT RFQ

The September RFP was fully developed and detailed and the process was transparent. The 55-page public document took weeks to draft. There was a 23-day response period, a six-member team to analyze the responses, a major report to the Corporate Services Committee, and presentation at a full Council meeting.

By contrast, the multimillion-dollar December RFQ could hardly have been more abrupt. The major terms came straight from Dell's Bruce Mortensen. Kathryn Bulko referred to it as a "mini-RFQ." She sent it out in a one-page e-mail on December 7, 1998, with no warning to the manufacturers, and without even verifying that the recipients were in their offices that day. And the responses were due back within 24 hours. What if one of the recipients had been off sick, at a conference, on vacation, or out of the office for any other reason? That person's company would have lost out on a multimillion-dollar opportunity and the City wouldn't have had the advantage of considering its bid.

3. WHERE WAS THE APPROVAL?

Kathryn Bulko told Purchasing about the "mini-RFQ" plan after it was set to go. The role of Purchasing was thus limited to being told of a decision already made. She didn't consult Legal Services at all. A purchase this large needed approval—either by Council or through a Y2K Delegated Approval Form. There was neither. So in issuing the RFQ directly to the manufacturers, City staff went against the direction of Council. And Council should have been told that the RFQ was not going to the VARs it had just approved. As a result, among other things, Council had no chance to debate the change in risk management strategy that came with moving from three suppliers (the VARs) to Dell alone.

Lana Viinamae, Kathryn Bulko, and (to a lesser extent) Michael Franey were the three City people closest to this RFQ. In the witness box, they spent a great deal of time contradicting and pointing fingers at one another. Little of what any of them said made much sense or shed much light on how Dell came to win a large contract after it was knocked out of the competition. This was surprising, because both Ms. Bulko and Ms. Viinamae were deeply involved—or ought to have been.

Ultimately, the decision to include Dell in the RFQ had to have come from Lana Viinamae. Lobbying by Jeff Lyons might well have influenced her decision. In any case, she was in charge and she told Kathryn Bulko to include Dell. Ms. Viinamae must also bear responsibility for her failure to seek the necessary approval, from Council or through a Delegated Approval Form.

Kathryn Bulko must also bear some responsibility, not for falling for Bruce Mortensen's strategy—there she was simply outmatched in the manoeuvres of commercial competition. But she knew that Council had approved the VARs, not Dell, for the desktop rollout. When Lana Viinamae told her to include Dell in the RFQ, she (and Ms. Viinamae and Mr. Franey) should have established that it was in line with Council's direction. If Dell's proposal was the best deal for the City, there was nothing to prevent a return to Council, or a Y2K Change Request. Instead, she just charged ahead with an RFQ contrary to what she knew Council had just approved.

E. DELL'S SECOND BIG WIN: THE CITY BUYS MORE COMPUTERS

Since Dell's computers cost almost \$200 less than the competition's, the City could replace more of them than originally set out in the Y2K Business Continuity Plan without spending more money. The Y2K Steering Committee approved, and a Change Request was prepared. The committee also recommended that Lana Viinamae get the "approval" of the Audit Services Department. Actually, Audit didn't approve departmental plans; it only gave comments and advice if requested.

Lana Viinamae did ask Audit for a report. Audit agreed with Ms. Viinamae that the City could replace more computers with the same budget but also proposed the choice of not buying more computers, thereby saving

money. Lana Viinamae didn't want the money-saving option in the report and never put it before the Y2K Steering Committee. Yet somehow, the committee concluded incorrectly that the Auditor had "approved" the Change Request.

In all likelihood, the strategy to replace more computers was best for the City. But whatever the merits of the decision, Lana Viinamae should have submitted the report from Audit to the Y2K Steering Committee, including the money-saving option. By suppressing Audit's views, she overstepped her role in a troubling way. Audit departments must make sure that the taxpayers' money is spent wisely. Decision-makers cannot make the wisest possible spending decisions if staff suppress the independent voice of the auditor or censor plausible alternatives they don't happen to like.

There was another procedural lapse in changing the desktop strategy. The Y2K Status Reports to Council usually listed any Change Requests to Priority One business cases approved by the Y2K Steering Committee since its last report. The desktop computer rollout was a Priority One business case. But there was no mention of the desktop Change Request in the status reports, so Council was never informed.

In June 1999, the City had a chance to revisit its relationship with Dell. All the computers ordered after Dell won the December 1998 RFQ were delivered, and now the City needed 4,000 more. Staff were happy with Dell: the company had delivered as promised. The City ordered 3,500 more computers without a tender, without a Delegated Approval Form, and without informing Council of the Change Request.

"Yeah Baby!!!" It was a coup for Dell, and Bruce Mortensen didn't try to contain his excitement as he heralded the big news in an internal e-mail. The City had been extremely pleased with Dell's service and support, he told them, and would buy thousands more desktops without an RFQ, even though City staff said they would be paying a significant premium over an unsolicited bid from another manufacturer.

Dell did cut its prices by \$200 per computer for the June purchase. But Ms. Viinamae knew that a VAR had beat Dell's price with an unsolicited bid on December 24. She knew prices were falling fast, and six months was enough time for a big drop. In September 1999, the City would issue an RFQ for another 700 to 1,000 units. Why go through competitive bidding in September but not June? Could a tender in June have saved Ms.

Viinamae more than \$200 per computer? Perhaps not. And there was also risk in changing suppliers. The City had tested crucial applications on Dell PCs, so switching suppliers and retesting could have set the City back on its tight Y2K rollout time line.

If re-tendering in June was the wrong business decision, surely it would have been easy to justify in a Delegated Approval Form. But there wasn't one. And there was no authority to sole-source from Dell. Perhaps Ms. Viinamae made the right business decision not to tender in June. But in public service, that is not enough. Public service demands transparency and accountability in decision-making, which in turn requires the right approvals. Getting those approvals was Lana Viinamae's responsibility.

In the end, Dell sold the City of Toronto top-quality computers at a very competitive price. It delivered on time and provided service that was, by all accounts, excellent. The Y2K team, led by Lana Viinamae, met daunting deadlines within budget. By these yardsticks, all was well. But that's a little like saying that it's all right to fall off a cliff because there was one instance when the person who fell wasn't badly injured. An acceptable outcome despite systemic errors must be looked at in the light of what could have happened, and what could happen in similar circumstances if those errors are left uncorrected.

Hindsight can sometimes be a harsh view. To be fair, it's important to remind ourselves that the people involved were operating under the circumstances of the day. That is why public inquiries distinguish between wrongdoing and systemic flaws. It is wrongdoing when people failed, for whatever reason, to adhere to standards they knew or ought to have known applied to them at the time. Where systemic flaws are found, on the other hand, it is important to pinpoint them so that they can be corrected. But identifying a wrongdoer doesn't necessarily follow, because the standards were different at the time.

In the story of Dell's coming back from nowhere to win the City's Y2K desktop business, both wrongdoing and systemic flaws can be found. Examining both can point the way to doing things better, but it is important to keep them distinct and not be unduly hard on those who accomplished quite a lot in very challenging, changing times at the City.

A full RFP process resulted in Council approval of three VARs for the City's desktop computers. Yet in a matter of days, Dell was able to persuade

the City's receptive, malleable staff to radically alter the direction of a multimillion-dollar procurement process that had taken months to complete. Dell pulled the rug out from under its competitors who thought they'd won, and nobody bothered to tell City Council that a few strategic meetings and phone calls had rendered its approval obsolete. That is the desktop acquisition story in a nutshell.

The wrongdoing by individuals involved has been identified in the detailed recitation of the story. But taking the broader view, the principal theme that emerges is the vulnerability of the City's procurement process. In three different ways, it was vulnerable to influence which, with hindsight, we can say was inappropriate.

The first point of vulnerability was the power and influence that could be wielded by a lobbyist like Jeff Lyons. In large measure, this was a systemic flaw. Mr. Lyons openly and unapologetically trumpeted the advantages of his favour-based, influence-peddling lobbying style. He seemed to be almost everyone's ticketmaster and fundraiser and he was friendly with City officials at the upper levels, up to and including the Mayor. At the time, the City had no policies limiting lobbying activity. In short, it was a different era, and Jeff Lyons set the standard. Now, however, we can see how this approach to lobbying, secretly capitalizing on influence over the individual government decision-maker, undermines openness in government and the primacy of the public good.

Because these lobbying practices, though clearly unacceptable now, were standard operating procedure at the time, it would be wrong to find fault with Jeff Lyons for what he did for Dell in the narrow context of the desktop acquisition. (Other events in this inquiry will tell a different story.) He cultivated relationships as he had always done, this time with Jim Andrew and Lana Viinamae, and then he lobbied them. He made a phone call, had a meeting or two, and wrote a reporting letter—nothing of any significance on its own. Indeed, it is clear that, despite Bruce Mortensen's hyperbolic e-mail to the contrary, Jeff Lyons had little if any influence over the City's decision to buy from Dell.

Neither can Dell be faulted. The company simply hired Jeff Lyons, obviously with no way of knowing what a public inquiry might say about his lobbying practices several years later. In 1998, Dell was relatively new on the municipal public sector scene. Not understanding City procurement, it

simply retained a lobbyist who practised in a way we now find unacceptable. But Dell fully intended to play by the rules. The retainer Mr. Lyons signed explicitly stated that he was to “comply with all applicable laws and government policies, including without limitation, the Criminal Code of Canada, government policies regarding gifts to government employees and procurement activities, and any applicable lobbyist registration legislation.”

A second vulnerability in the City’s desktop procurement was that it was highly porous. Dell, to its advantage, had access to important decision-makers long after the bids were due. The City didn’t impose any blackout period—nothing to send a clear message that during key decision-making stages, all contact with vendors, directly or through lobbyists, must cease. The RFP did identify Kathryn Bulko as the contact for questions on the RFP, and specified that “proponents submitting a proposal in response to this RFP may contact no other City personnel with questions regarding this.” But that narrow language was not nearly up to the task of defining a blackout period that would preserve the integrity and evenhandedness of the City’s decision-making processes. For example, Bruce Mortensen achieved his crucial influence on the December RFQ while still adhering to the contact rules of the September RFP: he spoke to Kathryn Bulko. The rule was especially inadequate in the atmosphere of open, liberal, and unconstrained lobbyist access prevailing at the time.

The undesirable results of such a porous procurement process are obvious. Dell was the only vendor that got a second kick at the can. Dell was the only vendor that had input into the RFQ; indeed, Dell virtually dictated the part that described the bulk of the business. And Dell had all of that critical input out of the public eye. No other vendor was notified until the RFQ, designed Dell’s way, went out. The final decision was never debated in Council. No councillor ever had the opportunity to compare the original RFP with the crucial RFQ and publicly question the big change in direction. The City’s process was informally open to sales tactics, and it shouldn’t have been. All of the advantages enjoyed by Dell came from that.

Third, the City’s desktop procurement process was vulnerable because the staff involved either were in over their heads or didn’t do their homework. Dell had a good product, and a smooth, aggressive, well-trained, and well-deployed sales staff able to sway City personnel. The City had an inadequate knowledge of the options available in the market when it went into

the procurement process. It didn't make a considered choice between VARs and Dell's direct sales model. As a result, a little information from Dell had the City fundamentally changing direction in the middle of the course.

And what of the December 24 counterproposal by a VAR, with a price that beat Dell's? Why was it unfair to consider a late bid by an approved VAR, but not unfair to let Dell, three weeks earlier, avoid the Council-approved VARs altogether and bid on the hardware directly to the City? No one at the City had a good answer to that question. The problem the City found itself facing with the unsolicited Christmas Eve bid again flowed from an ill-considered procurement plan that simply fell apart. Instead of muddling along, the City should have gone back to Council with a new design.

How, then, to fix the systemic errors revealed by the desktop acquisition story? That is the subject of the *Good Government* volume of this report. It contains extensive recommendations aimed at improving procurement and governance, controlling lobbying, and creating a strong ethical culture inside City government.

Finally, during the public hearings of this inquiry, details came out about City officials accepting excessive entertainment. It is important to point out that Dell was offering none of that. Dell didn't spend lavishly in an attempt to influence or cultivate relationships with councillors or City staff. In the course of winning a multimillion-dollar contract, it paid for only a few business lunches and one golf game. Dell had a laudable employee code of conduct which conveyed the clear and correct message that public sector employees should never be wooed with baubles and feasts.

Dell's restraint and its deference to the imperatives of public service in this respect distinguished it markedly from other participants in this inquiry.

V. MFP HIRES A HUNTER

A. THE CITY SWINGS INTO ACTION ON Y2K

THE BUDGET FOR THE Y2K PROJECT had been approved in late November 1998. Almost immediately, work had begun in earnest. But still there was nagging doubt. Could the City really meet the Y2K deadline? IBM, acting as project managers for the City's Y2K project, had reported in late January 1999 that the City was at risk of not being Y2K-ready on January 1, 2000. City staff were under tremendous pressure. In particular, Lana Viinamae, as Director of the Y2K Project office, was now under the gun to move quickly.

The City shifted into high gear. The Y2K Project office expanded quickly. In that nerve centre and throughout the City, people were seconded to work on Y2K readiness. Lana Viinamae said that by the end of the Y2K project, 1,000 people had been employed through the Y2K program. The new Dell desktops were arriving. Everyone was putting in long hours. All the while, there was a sense that the City was in desperate straits. Only a concerted and all-out effort could pull it through the crisis.

And then the hard work started paying off. By April 1999, the tide had begun to turn. IBM reassessed the situation and reported that the City was now on track for Y2K readiness. Staff could allow themselves a cautious sigh of relief, but the City was not out of the danger zone yet. There was still the matter of 15,000 desktop computers, 1,100 servers, three mainframes, more than 600 networked sites, more than 2,000 facilities, about

6,000 vehicles, and about 2,000 critical suppliers. All had to be assessed, repaired or replaced, and deemed Y2K-ready. There was still a great deal of work to do.

B. HOW TO PAY FOR IT ALL?

The Y2K project budget was about \$149 million. To raise the money for it, City Council had approved issuing 10-year debentures as part of the Y2K Business Continuity Plan. When it came to the computer equipment needed, that financing strategy hit a snag.

Section 140(1) of the *Municipal Act*² said that a municipality couldn't issue a debenture to pay for something that wouldn't outlive the debenture. The life span of IT equipment and software is usually no more than five years, so the debentures issued to finance them would have to be redeemable in five years. That was the problem. Council had approved 10-year debentures, but the City couldn't issue 10-year debentures to raise the money for equipment that would have to be replaced in five years, unless the acquisition was a relatively small item tacked on to a larger acquisition that would outlive the 10-year debt. The computer acquisition was not a small item.

In recent memory, at least, the City had never issued debentures for less than 10 years. The City had options other than financing through debentures, but when the shopping spree for computers began in the spring of 1999, there was still a big question mark over how it was going to pay for them.

MFP wanted to persuade the City that leasing was the answer. In fact, it had already deployed someone to target the decision-makers: a hungry young man whose natural charm and unlimited expense account would translate into powers of persuasion. Enter Dash Domi. How did an erstwhile hairdresser and sometime entrepreneur come to be in a position to sway a major City decision? To answer that, we have to return to MFP.

² *Municipal Act*, R.S.O. 1990, c. M.45, s. 140(1), as rep. by *Municipal Act*, 2001, S.O. 2001, c. 25, s. 408(3). The Act was replaced in 2001. The old section stated: "A money by-law shall provide that the whole debt and any debentures to be issued for it shall be made payable within a term not to exceed the lifetime of the undertaking up to a maximum of 40 years." The new section states: "The term of a debt of a municipality or any debenture issued for it shall not extend beyond the lifetime of the undertaking for which the debt was incurred and shall not exceed 40 years."

C. MFP SWINGS INTO ACTION ON THE CITY

MFP had not been idle since it won the contract for the councillors' computer leases back in 1997. For one thing, it had been gathering intelligence. The whole IT industry knew that a big Y2K contract was imminent at the City. MFP President Peter Wolfrain saw this as "the last big Y2K prospect" because the City was the last major IT user that hadn't yet made the transition to Y2K-compliant products. By late 1998 or early 1999, he was expecting the magnitude to be about 15,000 computers. He was not far off. In the end, the City replaced almost 14,000 computers, 2,000 of which were funded by the province.

If the City decided to finance the computers through leasing, it would be a strategically important account for MFP. It had recently lost public sector business to GE Capital and other competitors. Peter Wolfrain decided to get personally involved in developing a strategy to win the City business. He assembled his team. Irene Payne, Senior Vice-President of Sales and Marketing, would be the key point person in formulating a plan.

D. ROB ASHBOURNE: THE "FARMER"

Rob Ashbourne had not been idle, either. His prediction that the councillors' computer leases were just the beginning seemed to be coming true. The City was poised to acquire millions of dollars of hardware and software. By rights, MFP's City of Toronto account belonged to him. He had planted the seed. He had met with Jim Andrew and explained the advantages of leasing to him. He had followed up with presentations. He had convinced MFP to bid low on the councillors' computer leasing to get its foot in the door in hope of a long-term payoff.

After MFP won that business, Rob Ashbourne continued to patiently cultivate the soil. He met and made presentations to other City staff, including Len Brittain, Director of Treasury and Financial Services, his Senior Financial Analyst, Nadir Rabadi, and Kathryn Bulko, Client Services Specialist in IT. Mr. Ashbourne was steady and persistent. But there was muttering in some quarters at MFP. He was not aggressive enough. He would set up meetings with Wanda Liczyk and she would cancel them.

Councillor Tom Jakobek had been identified as another key City contact, but Rob Ashbourne had not even tried to arrange a meeting with him.

Peter Wolfraim had tasked Irene Payne to be the point person on the strategy to get the City's impending Y2K business. It was Irene Payne who thought of salespeople as either "farmers" or "hunters" And to her, Rob Ashbourne was a farmer. Now they needed a hunter. As it happened, a hunter was soon to knock on Irene Payne's door.

E. HIRING THE HUNTER

In the summer of 1998, Dave Robson, MFP's star salesperson, happened to be playing in a golf tournament with hockey star Tie Domi of the Toronto Maple Leafs. Incidentally, Dave Robson had recently been the architect of MFP's deal with the City of Waterloo. That deal would culminate in a public inquiry as well.³

Somewhere on the green, Tie Domi mentioned to Dave Robson that his brother, Dash, was looking for work. Mr. Robson offered to talk to him about the leasing business. Tie Domi was a famous hockey player. In a country that considers hockey its national pastime and in a city that loves its Toronto Maple Leafs, the Domi name could open doors. For Dash Domi, it opened the door to MFP. He met with Mr. Robson and landed an interview with Irene Payne and Peter Wolfraim.

Dave Robson described Dash Domi to Irene Payne as a charismatic, energetic entrepreneur. But Mr. Domi's résumé was light in sales experience. He had absolutely no experience in IT, lease financing, or IT asset management. He had no formal training in either sales or IT, and he had never worked for a leasing or IT company. In fact, he had never worked in a corporation and had no idea how a public company operated. He was a rookie or, in his own words, "green."

³ In March 2002, the City of Waterloo called the City of Waterloo Judicial Inquiry, known as the RIM Park Financing Inquiry. The inquiry examined the financing arrangements Waterloo entered into with MFP Financial Services Ltd. for the funding of RIM Park, a recreation centre in Waterloo's northeast end. That inquiry heard from 54 witnesses between September 9, 2002, and June 19, 2003. The Honourable Mr. Justice Ronald C. Sills of the Ontario Superior Court of Justice served as Commissioner and released his final report on October 20, 2003. Another matter concerning MFP, the City of Windsor, and Essex County, Ontario, did not result in a public inquiry.

After finishing high school, in 1985 Dash Domi attended hairdressing school for a year. He worked in a salon for 11 years, his longest employment in one place. He turned in his scissors in 1994 and worked for about a year in a friend's printing company. Meanwhile, he tried his hand at entrepreneurship. He bought a small frozen-yogurt shop in Toronto and started a fitness club. His partner in the club was famed boxer Lennox Lewis, gold medalist for Canada at the 1988 Olympics in Korea and destined to become the undisputed World Heavyweight Champion in 1999. Mr. Domi sold his interest in the fitness club in July 1998. So while his brother was playing golf with Dave Robson that summer, Dash Domi was looking for a new business opportunity.

The interview with Peter Wolfraim and Irene Payne was not structured or formal. In what Mr. Wolfraim described as a “conversation,” he told Dash Domi how he had established MFP. Mr. Domi said that he, too, was an entrepreneur who had started businesses. Peter Wolfraim valued the experience of people who operated their own businesses—they were “self-starters” and they had initiative. But Mr. Wolfraim left the hiring decision to Irene Payne.

MFP billed itself as a “relationship company,” and Mr. Domi did have experience in building and sustaining relationships with his clients, both as a professional hairdresser and in his work at the fitness club. “Hairdressing clients sit in your chair for 45 to 60 minutes,” he explained at the inquiry, and during that time, “you’ve got to sell them on making them feel better obviously, with the look that you can achieve. . . . You’ve got to deliver.” And he had a knack for getting to know people quickly:

As a hairdresser, you have to get to know strangers every day. If you don't have that skill, and you can't acquire that skill by working daily with strange people or new clients recommended to you, you'll be out of that business very quickly. So, I think it was a skill that I acquired over time in building relationships. . . .

Both Irene Payne and Peter Wolfraim acknowledged that hiring someone like Dash Domi as a sales representative was a departure from their past practices. An ideal sales representative would have been an experienced technology sales rep with a history of success and a healthy group of accounts. Choosing Mr. Domi “wasn't logical initially,” as Mr. Wolfraim said. Mr. Domi “didn't

know anything about leasing” and “didn’t know anything about technology.” He had a “non-sales, non-financial, non-technology background.”

But what mattered to Ms. Payne was not what was on Mr. Domi’s résumé. She was looking for other qualities—hunter qualities. She wanted to strengthen her public sector team for the push to get the impending City of Toronto business. She needed to recruit what she called “entrepreneurial-type people” who could cultivate relationships with decision-makers. She wasn’t put off by Mr. Domi’s lack of formal sales experience or knowledge of IT or the leasing business. In other words, if someone with people skills could establish a relationship, open a door, and get in, there were always technical people to back them up and help them close the deal:

He was... what we thought was a natural salesperson, and our strategy was to surround him with good technical expertise and have him go and open opportunities for us and we would have a team around him to make sure that he followed through and did the right things for the client.

Irene Payne had found her hunter. He was charismatic, a dynamo, and aggressive. And he had the very famous Domi name. There was no need to check his references. By the end of October 1998, he had a contract with MFP, and he started in early November.

Mr. Domi himself considered the contract terms generous and was very pleased with his monthly draw against commission of \$8,334. He estimated that he would earn about \$100,000 per year, a substantial increase from his previous income. He hadn’t made anywhere near \$100,000 a year in the gym business. He also got a \$550 monthly car allowance, almost \$7,000 per year. And there was an expense account:

You will be reimbursed monthly for any out-of-pocket expenses incurred upon completion and approval of an expense account with proper receipts attached. You will also be reimbursed for costs (line + toll charges only) relating to the business use of car or portable cellular telephones.

There was nothing in the agreement or in the MFP Policy Manual to set a limit on his expenses. MFP trusted its employees to spend appropriately.

The starting package was quite generous, yes, and an entry-level sales representative could be expected to be more than happy with it. Before long,

however, Dash Domi would collect bonuses totalling more than 10 times his projected annual income, all to do with a single transaction. He would be a millionaire. It is almost unimaginable. How many neophyte sales representatives, who know nothing about what they're selling, earn well over a million dollars for landing their first deal? In the leasing business, certainly not many. One of Mr. Domi's much more experienced competitors would later say that for the same transaction, he would have expected a commission of far less than one tenth of Mr. Domi's astonishing windfall.

Hiring Dash Domi marked a change in strategy for MFP. Traditionally, this "relationship company" had been developing relationships in a conventional way. Sales representatives like Rob Ashbourne would meet prospective customers, listen to them, and propose solutions—as Mr. Ashbourne had been doing at the City. There was substance in the sales pitch. Now, substance gave way to style and connections.

Dash Domi knew nothing about leasing, but he had mastered the art of the soft sell. He had learned to size people up quickly and give them what they wanted. They came to trust him and want to tell him things. And he could use his famous brother's celebrity as leverage. Dash Domi was deployed to work on the City account, too.

F. SUPPLANTING THE FARMER

Rob Ashbourne continued his yeoman service to the City account. In the several months' overlap when he and Dash Domi both worked on the account, they operated independently and developed their own network of contacts with City staff.

Len Brittain recalled that he met with Rob Ashbourne on March 30, 1999, and got a presentation on the concept of leasing. Mr. Ashbourne remembered preparing the presentation, but didn't remember the meeting. In any case, according to Mr. Brittain, it was not unusual for City staff to meet with vendors to discuss new concepts, and computer leasing was quite a new concept for the City. If the City was interested in the idea, it was expected that it would then conduct its own analysis to assess whether the vendor's concepts had merit.

On April 13, Rob Ashbourne sent Senior Financial Analyst Nadir Rabadi material on leasing versus purchasing IT equipment in preparation

for meetings with City staff scheduled for the end of that month. He also sent him the presentation he had prepared for Mr. Brittain two weeks earlier. According to his calendar, Mr. Ashbourne had two meetings arranged at the City on April 27: one with Nadir Rabadi and the other with Lana Viinamae from IT.

Rob Ashbourne had made no attempt to meet with Councillor Jakobek regarding the prospective RFQ. He believed it was more important to win over the IT and Finance staff, who would conduct the analysis and make recommendations to Council, than to try to influence Councillor Jakobek. He attempted to have dinner with Wanda Liczyk on a couple of occasions. Ms. Liczyk cancelled, and Irene Payne criticized him for failing to establish contact with her.

Meanwhile, Dash Domi had his own approach. When he started working on the City account, he didn't understand the organization of the City departments or the procurement process: "I didn't have a clue on how things operated." He didn't know the key decision-makers or the effect of political decision making on procurement. He didn't know the benefits of leasing over debenture financing. He didn't get any formal training in leasing or MFP's strategic approach to it from his employer.

Irene Payne wanted Dash Domi to find out who the decision-makers were and to make sure MFP got in front of them. She wanted the City to consider MFP a "partner." The goal was to get the City to trust MFP to know its business, to trust MFP to give appropriate advice regarding the City's leasing needs, and to believe that MFP had the City's best interests in mind when it recommended leasing strategies. Peter Wolfrain wanted him to "get to know as many people as he could at the City, understand how business was done, where the opportunities were and what the opportunities were."

Irene Payne was responsible for all of MFP's accounts and normally left the details of individual accounts to the sales force. But the City account commanded special attention. Ms. Payne decided to assume direct responsibility. She asked Rob Wilkinson, Vice-President Sales Support and Special Projects and self-described "numbers guy," to work with Dash Domi on the account, and in particular on the forthcoming computer leasing RFQ. Mr. Wilkinson recalled that Irene Payne thought MFP was not making enough progress on the City account and wanted to focus more closely on it herself.

Her new hunter, Dash Domi, seemed to be making some headway on the City account in his own fashion. Knowing Irene Payne had a long-standing business relationship with Jim Andrew, he made contact with him. Mr. Andrew was in favour of leasing the IT acquisitions, but Mr. Domi needed other names. As luck would have it, he had a friend in the Mayor's office. He could use his friend to help him identify the right targets.

Vince Nigro was a Special Assistant to Mayor Mel Lastman. Dash Domi had known him socially since 1994/1995 through his sister, Trish Domi. Mr. Nigro said Mr. Domi was "very green and had no idea of how the process of government operated." When his friend asked him for names of influential staff and City councillors, Mr. Nigro told him that "Wanda Liczyk was a key decision-maker at the City because she was the CFO and had good knowledge of the overall government." He might also have pointed out that Ms. Liczyk had a good relationship with the Mayor. He considered Councillors Tom Jakobek, Lorenzo Berardinetti, and Betty Disero some of the key decision-makers. In particular, Mr. Nigro said "Councillor Jakobek was the Budget Chief and was another person that he should get to know." By reputation, Mr. Jakobek was a tough person to work with, Mr. Nigro said, but he had a cordial relationship with him. He may have mentioned that he had assisted Mr. Jakobek with some of his campaigns

By February 23, Dash Domi and Irene Payne were having a breakfast meeting with Tom Jakobek. The purpose was to raise MFP's profile with the Councillor.

Vince Nigro claimed he was agitated on learning that Dash Domi, whom he described as aggressive, persistent, and pushy, and "not your average kind of guy," was dropping his name at the City. He said Mr. Domi would frequently and unexpectedly show up at City Hall, and he felt his friend was taking advantage of him.

Vince Nigro had no hard feelings about the name dropping, apparently. Eighteen months after he started at MFP, Dash Domi would bring Vince Nigro on board, too. Meanwhile, he entertained Mr. Nigro on his MFP expense account. They went out for drinks and meals and attended sporting events. According to Mr. Nigro, before the end of May 1999, he had meals with Mr. Domi several times a month, had drinks or coffee with him several times a month, and attended hockey games with him about twice a

month, including one in Philadelphia, right after he left his job in the Mayor's office. This Philadelphia trip would later feature prominently at the inquiry. Mr. Nigro believed he was opening doors for Mr. Domi at the City and helping the MFP salesman gain access to key decision-makers.

Dash Domi had been determined to learn about the City's operations and make contact with staff and politicians who could affect the outcome of the prospective tender. The people he decided to contact turned out to be Wanda Liczyk, Jim Andrew, and Councillor Tom Jakobek. And he had wasted no time. By the end of March, he had taken Wanda Liczyk and Jim Andrew to a charity dinner to which his brother had lent his famous name, he had treated Jim Andrew to box seats at an Air Canada Centre hockey game, and he had been able to get a meeting for himself and Irene Payne with Councillor Tom Jakobek. Already, he had done what Rob Ashbourne, tending the City of Toronto account for almost two years, had not. He had met Wanda Liczyk and Tom Jakobek.

How did he do it? Mr. Domi had gathered information on Wanda Liczyk from Vince Nigro, and he doggedly set about making contact with her. After a City committee meeting in February 1999, Mr. Domi introduced himself to her. Ms. Liczyk would later say that this first meeting was in March, but both agreed that the conversation was brief. Mr. Domi had already called her a number of times before this encounter, but she hadn't returned his calls. After meeting her, he called her assistant several times to arrange an appointment with Ms. Liczyk. He had to be persistent. Ms. Liczyk was difficult to reach and was notorious for cancelling meetings. He recollected that he might have invited Ms. Liczyk to a few hockey games at the MFP box at the Air Canada Centre before the spring of 1999, without success. At last, he persuaded her to attend the Tie Domi Celebrity Sports Dinner on March 15 at the Royal York Hotel.

Dash Domi seemed to be making headway in getting close to the right people, as assigned. Sometime in April 1999, Ms. Payne made the decision to remove Rob Ashbourne from the City account entirely. She instructed John Rollock (Mr. Domi's boss at the time) to take back the provincial government accounts he had assigned to Mr. Domi. Mr. Domi would now report directly to her and concentrate on the City account.

Peter Wolfrain concurred with that decision. He considered his company to have started at a "pretty significant disadvantage" compared with its com-

petitors. MFP had been unknown to City staff outside of IT and didn't have "brand recognition." It had invested in Mr. Domi and his ability to network and establish relationships, and he was beginning to deliver.

The City of Toronto account now belonged to Dash Domi. Rob Wilkinson would back him up with technical information, but with no leasing, sales, or IT experience, Dash Domi was now expected to reel in a huge account.

G. RELATIONSHIP BUILDING GOES INTO HIGH GEAR

On April 17, 1999, Mr. Domi chartered a private plane to take Vince Nigro and other Toronto notables to a hockey game in Montreal. On April 23, he bought a selection of Tie Domi hockey sweaters, charged to his expense account as gifts for City people. On the 24, he met Councillor Jakobek and Jim Andrew at a hockey game at the Air Canada Centre. He invited them to the Platinum Club, where he picked up the tab. By now, Mr. Domi had Councillor Jakobek's unlisted home telephone number. He had called him there twice that day. Actually, Mr. Domi began to contact Councillor Jakobek by telephone in March 1999. According to Mr. Domi's cellphone records, there were two calls in March, two in April, and 21 in May. Most of the calls were to Mr. Jakobek's unlisted home number or cellphone. Mr. Jakobek also called Mr. Domi six times on his cellphone during this period. Why would a sales representative have a City Councillor's unlisted home and cellphone numbers?

On April 30, it was a hockey game again. Mr. Domi's expense receipt claimed it was for Tom Jakobek, Jim Andrew, and Wanda Liczyk, but the former two denied being there. Wanda Liczyk was there, though. During that evening, the ex-hairdresser boldly discussed Ms. Liczyk's coiffure with her and offered to get her an appointment with a well-known stylist. By now, he had her cellphone number and he had called her three times that day. He followed up, and on May 6, Ms. Liczyk had her appointment.

Mr. Domi admitted that perhaps this was part of building a relationship with the CFO. But building relationships was his "lifeblood," he said. "It's just the way [I] am." Arranging this hair appointment with his very good

friend (according to him, the best hairdresser in Toronto) was “insignificant...it was a haircut...I didn’t think it was a big deal. I still don’t.”

Not a big deal? Wanda Liczyk was the most senior financial official in the City. Rob Ashbourne hadn’t been able to get one appointment with her, but Dash Domi had managed to take her to a charity gala, entertain her in a private box at two or three hockey games, and arrange a hard-to-get hair appointment for her. Regardless of how he saw it, it certainly is a big deal when a potential bidder entertains and arranges a personal grooming appointment for a senior City official, especially when another big deal, a large tender, is weeks away, as Ms. Liczyk knew. Between March 1999 and May 1999, records show twelve telephone calls from Mr. Domi’s cellphone to Ms. Liczyk. The last one before the release of the computer leasing RFQ was on May 20. He did try to bring Rob Wilkinson and Ms. Liczyk together before the May 31 release of the RFQ, but the meetings he set up were cancelled.

On May 2, Mr. Domi chartered a private plane to take Councillor Jakobek and others to a hockey playoff game in Philadelphia. That remarkable trip is discussed in detail later.

During the roughly three months from the time he was given responsibility for the City account to the release of the RFQ at the end of May, Dash Domi submitted expense receipts to MFP totalling \$19,984.60 for entertainment attributed to the City of Toronto. How reliable were the dates and figures and names that went with nearly \$20,000 worth of winning and dining and hockey games? Apparently, not very.

We spent several arduous days at the inquiry wading through the muddy waters of Mr. Domi’s entertainment expenses. He had, as it turned out, a very elastic approach to recording them. The receipts were typically marked “City T.O.” or “Tom Jakobek” or “Tom J.” or “Wanda L.” or “J. Andrew.” That may seem straightforward on the surface, but his guests often denied being with him on the corresponding dates. They clearly had good reason to want to minimize the amount of largesse lavished on them by Mr. Domi—they had a lot to lose—but that was not the only thing muddying the waters.

Mr. Domi suggested that his receipts couldn’t be considered in a conventional way, such as assuming that the person shown on the receipt was present in physical form. It seems he had a more creative approach. If he

was thinking of someone while entertaining someone else, he would attribute the receipt to the person he was thinking about. Sandy Pessione, MFP's Business Development Manager, helped him with his expense reports. It wasn't part of his job description—his job was to support sales staff and respond to RFPs. Typically, Mr. Domi would give Mr. Pessione a pile of receipts accumulated over two or three months. At first, they were ascribed to certain people, but after a while, the receipts revealed nothing about the purpose or who had been entertained. Mr. Domi didn't seem to know which names went with which chits, so Mr. Pessione would guess or make it up—hardly commendable behaviour. As a result, at the inquiry, Mr. Domi's recollection of whom he entertained and when and where was shaky, at best. However, he didn't dispute that he was aggressively trying to build relationships with key decision-makers at the City in the lead-up to the RFQ, and he was succeeding.

Dash Domi's approach meshed perfectly with MFP's apparently new style-over-substance attitude to building relationships: cultivating the right people, entertaining them lavishly on an unlimited expense account, and splashing the MFP name around by sponsoring City events. MFP wanted the City's business. Dash Domi wanted to make a lot of money, and MFP's generous bonus policy would give it to him if he delivered. It was a win-win situation.

H. THE WILLING BENEFICIARIES

Dash Domi was an aggressive salesman. He knew little about appropriate boundaries in dealing with the public sector. Those boundaries are the critical protective wall against inappropriate influence that erodes public trust in the public service. The personal ethics of senior public servants must be above reproach and they must be alert to attempts to try to cross the line. Yet key people inside the City, far from protecting their ethical boundaries, enthusiastically let him in. They seemed to revel in the inappropriate attention he paid them and did nothing to let him know he was trespassing.

1. WANDA LICZYK

Wanda Liczyk was the CFO and Treasurer of the largest municipality in Canada. She ought to have known that the duties of her high public office

were to be discharged with scrupulous integrity, for the public good. But she had a history of crossing the line. The story of Michael Saunders and the TMACS tax billing software illustrated her willingness to ignore the conflicts of interest arising from intimacy. For years before MFP arrived on the scene, Ms. Liczyk had intermingled personal and public interests in her dealings with Michael Saunders, often in secret. It is perhaps not surprising that she was willing to do so again with a disarming flatterer like Dash Domi.

For Dash Domi, Wanda Liczyk was an important target. She had the procurement portfolio and a great deal of influence inside the City. When she rebuffed his first overtures, he showed up at a public meeting at City Hall and introduced himself. Still no luck. Then he played the Domi card. He invited her, along with Jim Andrew, to the Tie Domi charity dinner, and a chance to rub elbows with the sports elite and other notables. She and Mr. Andrew both accepted.

After that evening, Wanda Liczyk and Dash Domi grew to like each other and there were more evenings out—though probably not as many as might be supposed from Mr. Domi's expense receipts. Ms. Liczyk described her association with Dash Domi as “a friendly relationship to start with and it became friendlier” over time. While there was no evidence that the relationship was sexual, there is no doubt she failed to maintain the professional boundaries and distance that one would expect of the CFO of the largest city in the country.

Dash Domi showered Ms. Liczyk with the favours he was in a position to bestow. Tickets to the Tie Domi/MFP corporate box at the Air Canada Centre would flow her way. Sometimes it was a single ticket; other times it was a pair or two pairs so that she could invite family or friends. He seemed to have no difficulty obtaining hard-to-get playoff tickets. Dinner at a stylish restaurant or in the private box was usually part of their hockey nights.

The level of familiarity Dash Domi had reached with Wanda Liczyk showed in an e-mail to her from one of her sisters: “Is it possible that you can ask Dasherooni for another set of hockey tickets for the 28th of March (Wednesday night). These are for me! Let me know.”

Within months of being given the City of Toronto account, Dash Domi had easily jumped over the public sector ethics defence line and into Wanda Liczyk's private life. On the surface, it may have seemed that he simply enjoyed spending time with her socially. Scratch that surface, and a calculated sales tactic is revealed. Mr. Domi was buying his way into the City.

Ms. Liczyk invited Joan Anderton, Commissioner of Corporate Services, to one of Dash Domi's Maple Leafs game corporate box evenings. Ms. Anderton accepted, not knowing who was behind the event. On the way into the arena, she asked Ms. Liczyk where the seats were. Ms. Liczyk replied cryptically that they were "going to sit in a box with some friends." The "friends" turned out to be MFP. Ms. Anderton said, "Once I realized who was hosting the event, I was uncomfortable but as the 'new kid on the block' felt I should remain silent."

After the game, Ms. Anderton was silent no longer. She explained to Ms. Liczyk that in Winnipeg, where she had come from, such conduct was prohibited. According to Joan Anderton, Ms. Liczyk's answer was a version of "That's how business is done in Toronto and it's okay as long as there isn't an active RFP."

Clearly, it was not okay. But Wanda Liczyk, her blinders still firmly in place after years of mixing public service and private intimacy with Michael Saunders, apparently could not see that. Nevertheless, although she didn't recognize where the boundary lay, she seemed to know there was one. For example, since Dash Domi's corporate largesse didn't stop at Toronto's city limits, he arranged for a private jet to a hockey game in Ottawa. Wanda Liczyk went on that trip and enjoyed herself, but afterward she paid a part of the cost back. She had decided that letting MFP pay would cross the line.

She also stopped short of accepting MFP's invitation for a trip to Hawaii, explaining that "this would be over the line of comfort for me." Opulence heightens the risk of exposure, and the Hawaii invitation was certainly opulent. Less lavish line crossing continued, however. There was the hair appointment already mentioned, and golf games—lots of them. Ms. Liczyk averaged 13 rounds of golf on weekdays per summer over three summers. Vendors with active City contracts paid for eight of these golf games, along with the usual assortment of golf-day extras like food, drinks, and golf-related gifts. She also played on a private golf course in September with Mr. Domi, Jim Andrew and Tom Jakobek. The game was followed by drinks at Mr. Jakobek's home.

When Mayor Lastman was shown a printout chronicling the golf games of his senior staff, he was stunned: "The first thing that came to my mind is 'When are they working?'"

The relationship between Dash Domi and Wanda Liczyk went beyond corporate events. She invited him to her 40th-birthday party at her home.

How close were they, really? A look at the telephone records might provide a clue. Between March 1999 and October 2002, Mr. Domi called Ms. Liczyk's office 247 times. She called him 49 times. Clearly, he was the one who was doggedly pursuing this relationship. No other sales representative called Wanda Liczyk at home, but Dash Domi did so 60 times. He called her on a weekend 38 times. No other salesperson did that, either. He called her after midnight, even at 12:41 a.m. Ms. Liczyk adamantly maintained that she "was not in any way involved on a personal level" with Mr. Domi. Yet, when asked about a time when they spoke for over 67 minutes in the wee hours of the morning, starting at 1:11 a.m., she explained that she was still grieving over her mother's death two months earlier and Mr. Domi had lent a sympathetic ear. Most of us would expect close friends to help us through bereavement. How many of us would look for sympathy from a casual business acquaintance, and in the middle of the night? It seems much more likely that she thought they were close friends. Ms. Liczyk seems to have let her guard down when it came to Dash Domi. Mr. Domi was a sales representative pursuing the goal of building a relationship with an influential public servant. Letting her guard down, once again, compromised her judgment.

A startling example of Ms. Liczyk's compromised judgment in her dealings with MFP is her decision to appear in a testimonial in MFP's annual report in the summer of 2000. She allowed herself to be photographed, interviewed, and prominently featured in MFP's promotional material. What hope of evenhanded treatment could MFP's competitors entertain after she had praised MFP in print? How would the public be able to trust the spending decisions of a senior public servant who played the role of corporate booster for a supplier? Yet Ms. Liczyk saw nothing wrong with it at the time. She thought about it and went ahead and did it. The rustiest ethical compass should have pointed her firmly away.

Further telephone records provide an epilogue to this story. After Ms. Liczyk left the City's employ to work elsewhere, she transferred Dash Domi's phone number to her own cellphone. He called her about 60 times. Some of those calls were to her home, and some were made in the evenings and on weekends.

The calls to and from Dash Domi after Ms. Liczyk left the City correlated with some events in this inquiry. City Council voted in favour of the inquiry during its meeting of February 13 to 15, 2002. He called her twice on February 14, once at work and once at home. When the City first released key documents pertaining to MFP, she called him that evening. He called her the day after inquiry lawyers first interviewed him. He called her five times on the days when she was interviewed.

How did he know when she would be interviewed? Interview dates were not made public, so she likely told him when her interview was scheduled. They continued to call each other repeatedly as the hearings approached. Was it a coincidence that these dates related to the inquiry? Unlikely. It may be that they were looking out for each other's interests.

As she had done before with Michael Saunders, Wanda Liczyk had walked into a conflict of interest with her eyes wide open. As she had done before with Michael Saunders, she adamantly denied that her relationship with Dash Domi compromised her judgment. In the inquiry witness box, she said she always put the public interest first. She said she never let her guard down with salespeople but seemed to have forgotten that Dash Domi was a salesperson. She said she would understand the need to keep a professional distance from suppliers, including Dash Domi, but she didn't. She claimed that she always asked herself three questions before accepting a favour of any kind: Was the City involved in an active procurement period? Would accepting the favour create a sense of obligation to the supplier? Would accepting the favour have an impact on her decision making?

She never seems to have asked herself those three questions with respect to Michael Saunders, who was still on the scene at that point. In her long-standing social relationship with Dash Domi, Wanda Liczyk repeatedly failed her own three-part test. Interestingly, her questions always seemed to produce the same answer: no. There were times her questions should have produced a yes. She put too much trust in Dash Domi and MFP, and it clouded her judgment. As she had done before with Michael Saunders, she had failed to see that close friendships compromise decision making. She also failed to appreciate that Dash Domi, like Michael Saunders before him, would be putting his and his company's interests first. She, on the other hand, as the person responsible for the City's financial due diligence, had a responsibility to put the City's interests first.

2. JIM ANDREW

Attentiveness and friendship had worked on Wanda Liczyk, but MFP had a different tactic for Jim Andrew: the trough. It overflowed with hockey tickets, basketball tickets, golf games, lunches, and dinners—and it worked. Peter Wolfrain said that Jim Andrew liked to be entertained.

As the MFP spending spree was laid out in the inquiry hearing room, Jim Andrew was driven to admit that he had accepted excessive personal benefits. He recognized the obvious: he had violated the Code of Conduct of the old municipality of Metropolitan Toronto, which applied to him post-amalgamation because he was a former Metro employee. That Code of Conduct correctly pointed out that the ethical precepts were “particularly relevant to department heads and senior management who are in a position to make or influence decisions of the corporation.”

Jim Andrew was the perfect target for MFP. He was more than content to let the company woo him with entertainment and favours, but sometimes he didn't wait until personal favours were offered. He asked. Many other bidders had contact with Jim Andrew and entertained him, but there were no other bidders with whom Jim Andrew had as much contact, and there were no other bidders who entertained him as frequently.

Jim Andrew's contact with MFP began in the 1980s when, as an Ontario government employee, he met Irene Payne, then an MFP sales representative. They saw more of each other when Rob Ashbourne began entertaining Mr. Andrew in 1998. That year, the MFP perks for Mr. Andrew included hockey games and dinners, a night out surrounding the Blue Jays' opening home game, and MFP's “Legends of Hollywood” dinner, with drinks and a boat cruise around the Toronto Islands. Dash Domi upped the entertainment ante considerably when he arrived on the scene in 1999, and Jim Andrew remained complicit.

Mr. Andrew tried to justify business entertainment as an important opportunity to learn about suppliers' products. This self-serving rationale might have had a speck of credibility when Rob Ashbourne was representing MFP. Jim Andrew knew Rob Ashbourne as an experienced IT leasing sales representative. The two of them just might have been able to share productive IT insights between bites of steak or during intermissions at the game. Dash Domi didn't know anything about IT leasing and he didn't pretend to know

anything: “I probably didn’t have the know-how to discuss business.” For that, he would rely on one of the other MFP people, such as Rob Wilkinson. Jim Andrew was an IT veteran, so Dash Domi couldn’t have imparted any substantive wisdom about the IT market to him. Even if he could have, Mr. Domi said he never talked business at the games, and he had a rule that people were welcome in the private box only if they liked the game. Thus, Mr. Andrew’s flimsy excuse to justify his prodigious appetite for corporate freebies evaporated entirely when Dash Domi took over the City account.

From early 1999, when Dash Domi started on the City of Toronto account, a steady stream of invitations flowed to Mr. Andrew. By early March, he regarded Mr. Domi as an important source of hockey tickets. He went to the Tie Domi charity dinner with Ms. Liczyk that month, and a regular cycle of lunches, hockey tickets, and other favours continued thereafter.

Significantly, Jim Andrew continued to communicate with Mr. Domi after the computer leasing RFQ was released and before the City had decided the outcome. To be fair to MFP, he was in touch with other suppliers during that time also. For example, he also accepted an invitation to a Dell/DFS golf day during the period. But it was Dash Domi who called him on the date the bid was due to let him know that MFP was on its way to submit a bid.

The summer brought lots of golf games, including the September game with Dash Domi, Wanda Liczyk, and Tom Jakobek. There was another MFP golf date on September 23, 1999, one of three golf days for Jim Andrew that same workweek. There were other miscellaneous favours. Dash Domi picked up a tab when Jim Andrew and a third party had drinks after work, even though he had not even had a drink with them. He also gave Mr. Andrew an autographed Tie Domi hockey jersey.

Dash Domi’s favours to Jim Andrew reached a new level when Mr. Domi learned from other City staff that Mr. Andrew was thinking of applying for the job of Commissioner of Corporate Services. Mr. Domi offered to arrange a meeting with his friend Paul Godfrey, the extremely well connected former Chairman of Metro Toronto and key adviser and close friend to the Mayor. Mr. Domi had met him at a party hosted by his brother, Tie. As it turned out, Mr. Andrew had briefly met Mr. Godfrey once before. Wanda Liczyk had introduced the two at a Tie Domi dinner. In any case, Mr. Andrew accepted the offer, and the meeting took place at the King

Edward Hotel in November 1999. Why would he, with his level of seniority and all his public service experience, let a rookie supplier like Dash Domi convince him that he should be talking to Paul Godfrey, who was not a City employee, about anything to do with the City, let alone a commissioner's job? He said it was because he wanted to find out who was applying for the position. No matter. In retrospect, he thought he should not have accepted. But at the time, Mr. Domi had made a significant deposit in the favour bank by trying to help a City decision-maker advance his career interests. Whether the meeting actually helped Jim Andrew's career or not, he was indebted. Dash Domi picked up the tab.

The festive season of 1999 brought gifts, including Mr. Domi's gift to Mr. Andrew of an \$800 gold Cartier pen. Even Mr. Andrew knew this was too much and he returned it. (Mr. Domi seems to have kept the pen, even though MFP paid for it.) But Mr. Andrew's spasm of good judgment didn't last long. In January, he was once again swanning about in the MFP corporate box, eating, drinking, and watching the Leafs, courtesy of Dash Domi.

Dash Domi's strategic hospitality and favours had the desired effect. Jim Andrew was sold on the merits of MFP. At the nadir of his bad judgment, he joined Wanda Liczyk in the MFP testimonial published in MFP's annual report in the summer of 2000.

Proof that Dash Domi had targeted a particularly compliant beneficiary of his largesse lies in how often Jim Andrew was a target for other suppliers. When it came to corporate handouts, the phrase "No thank you, I shouldn't" seemed not to be in his vocabulary.

Another supplier flew Jim Andrew to the Masters golf tournament in Georgia and paid for his ticket to the tournament, accommodation, and food. He missed a day and a half of work, which he didn't deduct from his vacation, and he didn't ask his superior for permission because he thought it would be refused.

Yet another supplier flew Mr. Andrew to England and put him up for two nights in exchange for a brief meeting at their London offices. Mr. Andrew had a vacation planned in Scotland immediately after the meeting, which meant that the supplier conveniently covered the cost of his travel across the Atlantic. He didn't get approval or tell his boss about it. Still another supplier flew Mr. Andrew to New York in December 2000, although he did get approval for that one.

These were just the big spenders. Between 1998 and 2001, Jim Andrew averaged at least one outing a month courtesy of a supplier—not counting MFP. The events varied: hockey games, golf days, a ski day, and Christmas parties. Sprinkled liberally in between were lunches, dinners, and cocktails.

The message he sent by accepting all this corporate entertainment is clear and troubling: Jim Andrew, a public servant, was for sale.

I. THE ATTITUDE AT THE TOP TRICKLES DOWN

Jim Andrew's lax ethical standards for corporate entertainment set a tone that trickled down in his division. Lana Viinamae, who reported to Jim Andrew, accepted invitations to corporate-sponsored entertainment events. The invitations came through Jim Andrew, or Ms. Viinamae accepted them with his approval.

Ms. Viinamae observed that "there was a lot [of entertaining] going on" throughout IT. Vendors regularly took City staff to lunch, encouraged by senior managers. Lunches were supplemented with hockey, basketball, or concert tickets. The newly amalgamated City had big IT needs, and suppliers were competing to shower IT staff with treats.

MFP was certainly one of the vendors actively working down through the City's organizational chart. Like Ms. Liczyk and Mr. Andrew, Ms. Viinamae was hosted by Dash Domi, either by direct invitation or through Jim Andrew. Of the three, though, she was entertained least, and the level of her entertainment didn't rise to an inappropriate level, as it did with her boss, Jim Andrew, and with Wanda Liczyk. The opportunity to show her gratitude came when Ms. Viinamae joined Mr. Andrew and Ms. Liczyk in touting for MFP in its annual report.

Still further down in the chain of command, Kathryn Bulko followed the lead set by her superiors. She accepted invitations to corporate boxes and vendor lunches. She played golf on corporate tabs and enjoyed corporate hospitality suites. Echoing Jim Andrew's excuse, she said she saw this as part of her job: "building relationships and networking." Astonishingly, despite having been with the City for 10 years, including as a manager, Kathryn Bulko admitted she didn't know there was any code of conduct

that governed her behaviour. She had absolutely no idea about it. When I asked her what she thought a code of conduct might encompass, she talked about dressing appropriately and coming in to work on time.

The ethical imperatives of public service should have precluded accepting favours from suppliers, but compromised independence had become part of the culture in the division. Led from the top by Jim Andrew, and indirectly influenced by Wanda Liczyk, IT had fallen into ethical decay.

It was about to change. In 2001, the City took steps to implement a conflict of interest policy that had been passed by City Council in August 2000. Predictably, the new Executive Director of IT, James Ridge, encountered a backlash.

Kathryn Bulko described the change as “quite a culture shock.” Hollow arguments to maintain the status quo were eagerly, even angrily offered up. Vendor-sponsored events, it was said, were important networking opportunities where information could be shared with IT peers. But vendors who want the City’s business would surely provide information about their products in a meeting room during business hours if asked to do so. In reality, IT staff had become addicted to a rich diet of corporate largesse. The ethical propriety appropriate for public servants looked like thin gruel by comparison.

J. BUYING INFLUENCE IS NO BARGAIN

Key decision-makers at the City were almost pathetically vulnerable to sales tactics in the guise of entertainment and favours. A strong ethical culture in the public service should have been the first line of defence against those tactics. The existing culture offered no resistance.

Companies are in business to make a profit. Nevertheless, an ethical approach is good for business. Many companies recognize this and set ethical standards for employees and their activities in company policy.

MFP company policy contained general statements about the importance of ethical behaviour. It also set some vague limits on gift giving: “Highly expensive favours designed to inappropriately influence individuals are not permitted.” But MFP appears to have done little to cultivate an ethical atmosphere. Regardless of the policy, MFP did nothing to rein in Dash Domi when it came to spending money on courting public servants, thus

demonstrating no functional appreciation of how different it is to do business with the public sector.

In the private sector, the extent to which employees can be wined and dined in the course of their duties is a matter of corporate policy. But public servants spending taxpayers' money are discharging a public trust. The public is obliged to trust them. Obtaining the best value for the taxpayer is the only legitimate consideration in public sector spending decisions and the public servant's personal interests must play no role whatsoever. About one third of MFP's lease portfolio consisted of the Canadian public sector. Did management at MFP understand the different sales ethics that apply to the public sector?

Irene Payne said MFP was "sensitive" to bestowing on public officials various entertainment and/or gifts because of perception. From that, it might seem as though she recognized the principle that personal interests should be irrelevant to public servants when they are spending the taxpayers' money, and therefore, entertainment and gifts should be likewise irrelevant. However, Ms. Payne made a distinction between entertainment and gifts. She suggested that entertainment was fine, and her idea of entertainment was broad. For example, she invited Wanda Liczyk on that trip to Hawaii, part of an incentive trip for MFP sales personnel. Unconvincingly, she said she would have expected Ms. Liczyk to pay her own way. Clearly, she entirely failed to recognize the essential characteristic common to gifts and entertainment: both can be methods of exerting inappropriate influence over a public servant who is obliged to make procurement decisions based purely on the best value for the taxpayer.

MFP President Peter Wolfrain seemed to think that public sector clients were to be treated just like private sector clients when it came to gifts and entertainment. This was a crucial blind spot at the very top of MFP's corporate hierarchy.

As an example of a sharp contrast with MFP's hazy prohibition on "highly expensive favours," Dell's code of conduct sets out the standards for dealing with government officials in no uncertain terms:

Complex and various rules govern the giving of gifts to governmental employees, whether at the federal, provincial or local levels. What may be permissible in dealings with commercial customers may be illegal in deal-

ings with the government. In some circumstances, the giving of a business courtesy to a government official may even constitute a crime, subjecting both the company and the individual to severe penalties. For these reasons, the giving of any business courtesy to any government employee is prohibited under all circumstances. Exceptions to this policy may be made only by the Business Ethics Committee, in consultation with the Legal Team.

The views and actions of Ms. Payne and Mr. Wolfrain reveal that MFP virtually ignored the special duty imposed on public servants or the special constraints that should apply to marketing to them. Dash Domi was never told that public sector clients must be treated any differently from private sector clients when it came to entertainment and gifts. On the contrary, as we have seen, he was specifically instructed to develop relationships with key City staff and was given an unlimited expense account with which to do it.

And MFP was lax in its rules about expense accounts. Ms. Payne admitted that the appropriateness of expenses was not a function of the approval process. In her words, MFP was “trusting the judgment of the individual,” and presumed that the receipts submitted were for legitimate purposes. Mike Flanagan, who assumed responsibility for reviewing expenses after Ms. Payne left MFP in December 1999, admitted that the review was “ cursory.” Dash Domi knew of no instance when an expense report was questioned. His certainly never were.

This lack of fiscal control is difficult to understand in a company as large as MFP. In a startling understatement, Irene Payne acknowledged that MFP was “kind of lax in that area.” In this environment, Dash Domi was left to his own creative devices. From the very beginning at MFP, he lied and cheated on his expense accounts. He made anyone looking over his shoulder think he was making fantastically quick inroads into the City.

He ascribed expenses to whomever he was thinking about at the time. He wrote “City of Toronto” on receipts, randomly plugging in names of City officials, if he had discussed the City with whomever he was entertaining. In his view, as long as he had a business-related thought in his mind at the time, it was fine to write it off. He even submitted a receipt for the \$1,163.14 bill he ran up celebrating his own birthday at Harbour Sixty Steakhouse.

We have already seen how Sandy Pessione helped Dash Domi with his expense reports by simply guessing or making up names when there were no receipts. He did the same for Vince Nigro. Mr. Nigro was no less creative in fiddling his MFP expenses. By his own admission, he developed a pattern of submitting phony expenses claims charged to two accounts: the City of Toronto and the Toronto East General Hospital. Incredibly, he would often submit expenses for the City of Toronto account using the logic that the meal took place inside City limits—even if he had been dining with his family.

He knew what he was doing was wrong. Like Dash Domi, he too acknowledged that the names on his expenses bore little relationship to the people he was actually entertaining. “I feel bad about this,” he would tell the inquiry. His remorse was not credible. After all, this was the same Vince Nigro who said he was offended to learn that Dash Domi put his name on entertainment receipts when he hadn’t been there. Dash Domi claimed expenses for entertaining Vince Nigro 38 times between 1999 and 2000, but Mr. Nigro said he was only present for about six of those occasions. So he said Mr. Domi “expensed him” when he shouldn’t have, but in very short order after arriving at MFP, he was doing exactly the same thing. But he also turned to Mr. Domi for guidance on the expense policy:

I had discussions with Dash Domi regarding the expense accounts. My impression that the status of expense accounts in the company was “spend, spend, spend”. This was in part based on my discussions with Mr. Domi. I would give my expense account to Mr. Flanagan and he would sign it. At some point, I was told that I wasn’t expensing enough. Mike Flanagan made an off-the-cuff remark that I was cheap.

He also testified, “There was pressure to expense...It was liberal and seen as a bit of a perk. I took advantage of it.”

Mr. Nigro did indeed take advantage. Just three weeks after joining MFP, he expensed a lunch costing more than \$400 to “Tom Jakobek, TEGH [Toronto East General Hospital].” This was a family get-together with some relatives and his four children. He invited Mr. Jakobek and his children, but they didn’t show up. Mr. Nigro expensed the lunch anyway. Three days before that family lunch, he entertained prospective clients at a strip club, running up a \$1,500 bill. He called Dash Domi from the strip

club and asked him to join them. Mr. Domi said it was so loud in the club that conversation was impossible. Obviously, they weren't discussing business. In the end, Mr. Domi had to pick up most of the tab because of a problem with Mr. Nigro's credit card.

MFP's laissez-faire policy had no spending limits. No one had to stick to a budget for expenses. Sales representatives were simply expected to use their judgment about how much to spend and what to spend it on, depending on the account. It was Dash Domi's judgment that an \$800 gold Cartier pen was an appropriate gift for Jim Andrew. As noted above, the gift made Mr. Andrew uncomfortable enough to prompt him to return it. Dash Domi also charged to MFP, under the City of Toronto account, a pair of \$700 gold cufflinks. These were actually a gift for his friend Rob Godfrey, who had nothing to do with the City. But, as Mr. Domi explained, he was thinking about business when he bought them. At last, in the inquiry witness box, MFP President Peter Wolfrain acknowledged that these gifts were excessive and ought not to have been permitted. Mike Flanagan of MFP agreed:

It would not have been appropriate for Mr. Domi to purchase the pen and give it to Mr. Andrew, even if he paid for it personally and did not put this item on his expense report.

I think that it shows poor judgment to offer a gift of that order to a customer. It is just too expensive and too meaningful an item to offer to somebody in a situation where it is important to maintain a sense of propriety. If it was a \$35 pen, I think the order of magnitude is such that it is not cause for concern. \$500 to \$700 is too much to spend on a personal gift for a customer, unless there is some other aspect to the relationship where gifts are exchanged of comparable value. Giving such an expensive gift makes it look like the person giving the gift is trying to influence the recipient. I cannot imagine a situation where a customer routinely accepts items of that value from vendors. Even if Mr. Domi did not receive any training on the appropriateness of expenditures that he made on his expense account, and even if he had never seen the Policy Manual at MFP, I would still expect him to understand that the gift was likely to be inappropriate. If Mr. Domi offered that gift very early on in his time at MFP to a customer, and the customer returned it with a comment that it was not appropriate to have offered such a gift, and if Mr. Domi didn't do it again, I think that would be an understandable situation.

Nevertheless, though Mike Flanagan agreed that neither the pen nor the cufflinks were appropriate business expenses, Mr. Domi was reimbursed for them without question. Clearly, MFP was lacking a system of checks and balances.

Dash Domi's entertainment was no less lavish than his gifts. On three occasions, he chartered planes to fly City people to hockey games outside of Toronto. MFP footed the bill for two of the three charters, paying about \$5,600 for one and about \$6,400 for the other. Irene Payne approved both expenditures. Mr. Wolfraim conceded that these pushed the envelope.

The MFP cash also flowed when it came to charity events. For the Mayor Mel Lastman charity golf tournaments in 1999, 2000, and 2001, MFP donated \$10,000, \$10,000, and \$12,000 respectively. These donations gave MFP a spot at the Mayor's table and the opportunity to put the company name on the golf carts. MFP gave \$15,000 in each of 1999 and 2000 for the Mayor's Ball for the Arts and \$6,500 in 2000 for the "Moose in the City" initiative. The business purpose of these large donations was clear. MFP was trying to buy access and profile inside the City. MFP had a policy of not supporting any political organization; yet it contributed \$2,500 to Mel Lastman's 2000 mayoralty election campaign.

Perhaps the most disquieting aspect of MFP's corporate culture when it came to public sector sales was the strong expectation that sales personnel *had* to spend money on tempting customers with corporate boxes, dinners, and other treats. Put bluntly, if they were not spending on potential customers, they were not doing their jobs. Irene Payne testified that she would have been concerned if she had seen that a salesperson had spent little on promotional expenses in a given year. Dash Domi got the message. With uncharacteristic clarity in his testimony at the inquiry, he frankly said, "I spent a lot of money building relationships. I viewed entertainment expenses as my tool."

The corporate ethos at MFP appeared to encourage salespeople to get results by doing exactly what sellers to the public sector should not be doing: bestowing favours on public servants to induce them to buy from them or keep on buying from them. MFP prided itself on being a "relationship" company. But there is no box on any government tender form that refers to the quality of the relationship between the prospective seller and the government.

That these public servants were spending the taxpayers' money, not their own, certainly didn't discourage MFP from its relationship-driven sales strategy. But the public servants should have seen it for what it was. They should have rejected the offers and overtures and made it clear that they were not going to be influenced that way. Sadly, they didn't.

No company seeking public sector business should use the tactics MFP employed. They don't need to. It is clearly possible to do very profitable business with the public sector while following appropriate rules. Governments will continue to buy goods and services in vast quantities. Companies that focus exclusively on delivering the best value for the taxpayer will be good corporate citizens. They will also enrich their own bottom line.

Dell and MFP both won major contracts at the City; Dell principally for computer hardware and MFP for leasing services for that hardware and some software. MFP went after a contract through lavish entertainment and other favours. Dell achieved its multimillion-dollar sales goals while buying nothing more glamorous than the occasional modest lunch. All of the Dell people combined spent just over \$600 entertaining City staff before winning the City's business, and roughly \$3,300 thereafter, including a golf day. Dash Domi alone spent an estimated \$60,000–\$70,000 on behalf of MFP.

Part of that total was for charter flights to see hockey games. One of those trips was to become quite well known.

VI. HOCKEY NIGHT IN PHILADELPHIA

IN THE EARLY EVENING OF MAY 2, 1999, six passengers gathered in a private hangar at Toronto's Pearson International Airport and boarded a small jet belonging to Skycharter Ltd. The captain and co-pilot noted the name and citizenship of each passenger and signed the flight manifest. Soon the jet was airborne for the short hop to Philadelphia.

As the plane landed and taxied to a halt, a limousine was already waiting to take the men to the First Union Center for game six of the first round of the Stanley Cup playoffs. They stopped for dinner at a steakhouse on the way.

It promised to be an electrifying game. The Philadelphia Flyers were playing the Toronto Maple Leafs, and the Leafs were one win away from advancing to the second round of the playoffs. They had not been so close in five years. Much-publicized bad blood between the two teams, especially between popular Leafs enforcer Tie Domi and Sandy McCarthy of the Flyers, heightened the tension.

The host of the evening had even more reason to eagerly look forward to the game. He was Tie Domi's older brother. Dash Domi had made the arrangements for the trip. It would all be paid for by his employer, MFP.

Their seats were in two sets, and once inside the arena, they split off into two groups to take their places and wait for the face-off. The game lived up to its promise. In the heart-stopping final minute of play, the

Leafs scored and won the game. Dash Domi made his way toward the Leafs dressing room to congratulate his brother. The others couldn't find him, so they called him on a cellphone to arrange to meet. Once reunited, the six jubilant Torontonians got back into the limousine for the ride to the airport, where the private jet was warmed up and waiting to fly them home.

The Leafs won, but Dash Domi scored that evening, too. The City of Toronto was his account at MFP. The City had recently bought millions of dollars worth of computers. Rumour on the street had it that the City was considering financing those acquisitions by way of leasing. For months, Mr. Domi had been cultivating close relationships with potentially influential people at the City. One of them was a politician, and Mr. Domi had persuaded him to come along on this clubby, exclusive boys' night out. Who was Mr. Domi's prize political catch that night? The chair of the Budget Committee and veteran City Councillor Tom Jakobek, a Leafs fan who had his own gold seats at the Air Canada Centre.

Tom Jakobek was among friends that night. His friend Harold Peerenboom, then chair of the Toronto Harbour Commission, was also on the flight. Mr. Peerenboom's son Gregg came with him. Mr. Jakobek had known the elder Peerenboom for only a couple of years but they were fast friends. Their families had already travelled together several times, and Mr. Jakobek had taught Gregg Peerenboom to water-ski. Long-time friend Vince Nigro was also there. He had only just finished working as an aide to Mayor Mel Lastman and had helped Councillor Jakobek with a couple of his campaigns. Another Harbour Commission member, businessman and political fundraiser Jim Ginou, was also in the party. The sixth passenger was, of course, Dash Domi. When Mr. Domi filed his expense account with MFP for reimbursement, on the back of the receipt in his handwriting was his claim for "Ont. Gov. & Tom J., City of T.O., Vince." "Tom J.," he said, meant Tom Jakobek.

Councillor Jakobek knew at least four of the passengers very well. Yet later he would adamantly, repeatedly, and publicly deny that he was on that flight to Philadelphia. Some of his fellow passengers would either swear he wasn't there or wouldn't be able to remember his presence.

A. “THEY HAVEN’T GOT ANYTHING”

On December 18, 2002, the flight manifest showing that Tom Jakobek was on the flight to Philadelphia was entered into evidence at the inquiry.

That evening, Tom Jakobek was on his way to a parent-teacher meeting when he returned a telephone call from Peter Small of the *Toronto Star*. In the course of their conversation, he told Mr. Small that he hadn’t gone to Philadelphia with Dash Domi. The *Star* ran the story, including Mr. Jakobek’s denial, the next day, December 19.

Also on December 19, MFP President Peter Wolfraim was the first to testify about the Philadelphia trip. He conceded that the trip pushed the entertainment envelope “pretty hard.” MFP had encouraged Dash Domi to cultivate a relationship with Mr. Jakobek, and if he had succeeded in getting the Councillor to go on a trip with him, it might be expected that he would crow about it to Peter Wolfraim or to MFP Senior Vice-President Irene Payne. But Mr. Wolfraim had no recollection of Mr. Domi telling him about it. As MFP prepared for the inquiry, he had asked Mr. Domi about the trip repeatedly. Mr. Domi had told him he had left a voice-mail message for Tom Jakobek inviting him to the game, but Mr. Jakobek didn’t respond and didn’t show up.

Later, Irene Payne would likewise not remember hearing whether Mr. Jakobek went on the trip. She authorized the cost of the trip for Mr. Domi, but she doesn’t seem to have asked him who was going with him.

On January 16, 2003, Vince Nigro was the first of the Philadelphia flight passengers to testify about the trip. He was apparently suffering from selective amnesia. Throughout his testimony, he took the ruse of memory lapse to new heights. He seemed hardly able to remember the trip at all, and drew a complete blank on whether his friend Tom Jakobek was there. In another context during the inquiry, he actually said, “I don’t remember anything specific about anything in general.” The idea that he could forget such a significant trip was simply beyond belief, even for him.

The story of the Philadelphia trip continued to draw press attention throughout January 2003, and Mr. Jakobek continued to adamantly deny that he had gone on the trip. He also announced that he would run for Mayor of Toronto.

On January 24, an article by Royson James appeared in the *Toronto Star*. Referring to Mr. Jakobek’s insistence that he didn’t go on the Philadelphia

trip, Mr. James added that “others tell a different story.” The same day, Mr. Jakobek’s lawyer at the time started preparing a letter to the *Star* demanding a retraction if the paper could not corroborate the claim that “others tell a different story.” The letter went on to say that Mr. Jakobek would say “under oath” that he had not been on that flight. The *Star* received the letter on January 27.

Meanwhile, the *Star*’s Linda Diebel had interviewed Tom Jakobek. Mr. Jakobek agreed to let her tape the interview. On Saturday, January 25, the *Toronto Star* featured Ms. Diebel’s profile of him on the front page. Mr. Jakobek had bragged to her that the inquiry couldn’t prove he was on that plane. “They haven’t got anything,” he boasted.

That wasn’t entirely accurate. The inquiry had the flight manifest. Mr. Jakobek’s name was on it, and that information had already been made public. Given his adamant and repeated denial, however, I was keeping an open mind. Perhaps Skycharter had made some kind of administrative error.

On January 28, Dash Domi began testifying about the Philadelphia trip, but his recall of the details was apparently so poor that “I can’t remember” became his constant refrain. He was variously “fairly certain” or “certain” that Mr. Jakobek didn’t go to Philadelphia. Despite his now-routine show of feeble memory, his lack of certainty on this issue was a surprise. Less than two weeks before, while questioning Vince Nigro at the hearing, Mr. Domi’s lawyer had communicated his client’s certainty on the point: “Mr. Domi is going to testify that Mr. Jakobek was not on the Philadelphia trip.” Dash Domi’s uncertainty was also contrary to what he had told Peter Wolfrain when he asked about it, namely that Mr. Jakobek didn’t respond to his invitation to the Philadelphia trip and didn’t show up.

Mr. Domi’s memory lapse was also puzzling for other reasons. He said that all of his brother’s games were important to him. Moreover, he acknowledged that this particular Philadelphia game, in the midst of play-off fever and something of a grudge match for his brother, had been crucial for the Maple Leafs and very significant for the fans. They had long been denied the hope that their beloved team would have a shot at the Stanley Cup. He had never before chartered a plane to the United States, let alone to see his brother play in a playoff game. Despite all this, he also claimed that the Philadelphia game wasn’t memorable for him. When questioned closely and repeatedly on his sworn evidence, he continued to waver

between levels of certainty in his recollection of whether Tom Jakobek was there that night. Unbeknownst to him, events were about to unfold that would dispel any doubt.

B. THE TRUTH COMES OUT

Since August 2002, commission counsel had been trying to interview Tom Jakobek for the inquiry. In response to the first request, he essentially said that he had no information that might be helpful to the inquiry, but if he received specific questions in writing, he would respond to them. This was an odd answer, suggesting he wanted tight control over the release of his information. Nonetheless, he was sent written questions, and in his response, he continued to say he had nothing material to add. The back-and-forth exchange continued.

Then the inquiry obtained Mr. Jakobek's cellphone records, which I had subpoenaed. What we found was troubling. Tom Jakobek had called Dash Domi the afternoon of the trip. And there were eight calls from Philadelphia on his cellphone on the evening of the hockey game, including two to his own home. It was his phone that had been used, twice, to find Dash Domi after the game. Contrary to his boast to Linda Diebel, the inquiry did have something that would prove he was on that trip, after all.

With his numerous denials in the press, Tom Jakobek had publicly propped up the accounts Dash Domi and Vince Nigro had given under oath. When he told Linda Diebel "They haven't got anything," was he sending them a message through the press to stick to their stories? Was he sending this same message to others who were on that plane who might still have to testify? With the cellphone records, we now knew that Mr. Jakobek was a strategic liar.

Mr. Jakobek was sent a copy of his subpoenaed cellphone records. After months of trying, an interview with commission counsel took place, at last, on March 25, 2003. On May 14, Tom Jakobek appeared in the witness box for the first time.

Commission counsel Ron Manes took Mr. Jakobek through a brief review of his background and career in politics. Then he put the question:

Q: Mr. Jakobek, did you tell the press that you were not on the charter flight to—Philadelphia Flyers game May 2nd, 1999?

A: Yes.

Q: Do you—was that true?

A: No, it wasn't. I—I just would like to say that I deeply regret having said that and having said something that was not true to the press.

It was a bombshell. Mr. Jakobek seemed contrite. He repeatedly said that he deeply regretted the lie. He kept saying that he took full responsibility for what he had done. Yet he had a new story at the ready to justify his actions. He had first told the lie when he returned a call from Peter Small, the *Toronto Star* reporter. But since he had been on his way to the parent-teacher meeting and had other things on his mind, he had returned the call not realizing that he was calling a reporter. Mr. Small was “throwing out trips to Montreal, trips to Ottawa, trips to Philadelphia, all sorts of expenses, and I went into a denial mode.” Some of what Mr. Small was saying wasn't true, Mr. Jakobek said, and he had been caught off guard. On the spur of the moment, he made a blanket denial of all of those trips. Much later, as part of a larger 2003 end-of-year retrospective, Mr. Small would write in the *Toronto Star* that he had asked Mr. Jakobek about only the Philadelphia flight, adding that Mr. Jakobek appeared “in command” during their conversation. When this was put to Mr. Jakobek during his recall testimony, he said Mr. Small had his recollection and he had his.

The veteran politician had chosen to deny everything, and he couldn't explain why he had done so. But once he had told Mr. Small he wasn't on the plane, he said, “There was no way out for me, in my opinion at the time, politically.” He hadn't yet announced it at the time, but he was considering running for mayor and public perception was important. So he had gone on lying to the press, and he deeply regretted that, too. But he said he always planned to make a clean breast of it at the inquiry because it was the appropriate place to tell the truth, as opposed to explaining himself in the press before he testified.

That was preposterous. Serial lying to the press for months, followed by recanting at a public inquiry, is a transparently bankrupt political strategy, and a veteran politician like Tom Jakobek would know that. “It has never, ever, ever, been my intent to mislead...this inquiry,” he said. That was another lie, as it turned out.

What of the passengers on the Philadelphia flight who hadn't testified yet? Harold Peerenboom originally told the inquiry's investigator that Mr. Jakobek wasn't on the plane or at the game. However, the day before he was to be interviewed by commission counsel, his lawyer spoke to Mr. Jakobek's lawyer, who let him know that Mr. Jakobek intended to testify that he was indeed on the plane. So Mr. Peerenboom retracted his previous statement. In an affidavit, he explained why he had told our investigator that his friend Tom Jakobek wasn't on the trip to Philadelphia. Now he wouldn't dispute the fact that Mr. Jakobek was there. Once Mr. Jakobek came clean, it was no longer necessary for Mr. Peerenboom to testify or for commission counsel to interview the others.

C. "IT HAS NEVER, EVER, EVER, BEEN MY INTENT TO MISLEAD . . . THIS INQUIRY"

While Mr. Jakobek was still in the witness box, the *Toronto Star* printed an excerpt of his former lawyer's letter demanding a retraction over the Royson James article, including the part that said Mr. Jakobek intended to testify under oath that he had not been on the Philadelphia trip. He was caught in a lie again. He had failed to mention the letter when he testified that he always intended to tell the truth when he finally appeared before the inquiry, and he had lied to his own lawyer about the whole matter. (By the time he appeared at the inquiry, he had a new lawyer.)

Now forced to concede the existence of the letter and confront its content, he was squirming and stammering. Was it his idea to send the letter? Had he authorized it? Did he approve it? Did he see it before it went out? Did he have a copy? He danced as fast as he could—deflecting, contorting, backtracking, bending himself into a pretzel to talk his way out of it when he could no longer deny prior knowledge of the letter. Initially he tried to blame his lawyer for the letter, but conceded in the end that he had told him to write it, and that he had seen and approved a draft before it went out. Why would someone of Tom Jakobek's intelligence tell his lawyer that he would testify that he wasn't on the flight if he always intended to admit that he was? His answer made no sense. The only true

answer is that he lied to his lawyer and fully intended to lie to me. But he got caught.

Recovering from his spasm of contrition over lying about being there, Mr. Jakobek now gave his account of the Philadelphia trip.

He had actually accepted the invitation to Philadelphia from his friend Harold Peerenboom, not from Dash Domi, he said. On his way to the airport, he had stopped to pick up Mr. Peerenboom. (This contradicted Vince Nigro's claim that it was he who picked up Mr. Peerenboom. He later contradicted Vince Nigro's evidence about who sat with Mr. Peerenboom at the game—they both claimed they did.) Mr. Peerenboom was talking on his cellphone during the drive—to Dash Domi. Mr. Jakobek asked his friend if Mr. Domi was joining them on the trip, and Mr. Peerenboom said yes, he had invited him. Mr. Jakobek further embroidered the tale with colourful asides about trips he had taken with Mr. Peerenboom in the past and how one of them would pay and they would settle up later. So, naturally, he asked his friend what he owed for his share. In the end, he said, he reluctantly agreed to give Mr. Peerenboom his front row gold Leafs tickets for a later playoff game. He added embellishments about his regret at giving up those centre ice tickets, especially now that he knew that MFP, not Harold Peerenboom, had paid for the flight. He had given his good friend his treasured playoff seats for nothing.

But Mr. Jakobek had left a gaping hole in his embroidery. If he thought Harold Peerenboom had paid for the trip, not MFP or Dash Domi, why lie about it in the first place? Why lie about going to a hockey game with a good friend? His convoluted and largely incoherent answers boiled down to his contention that he only learned that MFP was the host when the story hit the press, and by then he had lied once and had (with deep regret) gone on lying. But that tale would catch him in yet another lie.

On the next inquiry day, Mr. Jakobek's counsel told the inquiry that he had "received a communication" and wanted to correct the erroneous impression Mr. Jakobek might have left with the inquiry that Harold Peerenboom had paid for the trip. In fact, Mr. Jakobek had only wanted to say that he had assumed Mr. Peerenboom had paid. And in fact, the gold hockey tickets Mr. Jakobek gave Mr. Peerenboom had nothing to do with the Philadelphia trip—Mr. Peerenboom had paid for them. Clearly, the absurd assertion that he thought Harold Peerenboom paid for the

Philadelphia trip had been another strategic lie, calculated to minimize his association with Dash Domi.

Before either Dash Domi or Tom Jakobek testified, Mr. Jakobek's new lawyer, who represented him at the inquiry, called Mr. Domi's lawyer and said his client intended to testify that he was not on the plane. So Mr. Jakobek was also lying to his second lawyer. Now that Tom Jakobek had finally and unexpectedly admitted to lying, what about Dash Domi's sworn testimony that he was certain, or fairly certain, that Mr. Jakobek wasn't there? Despite the apparent tip-off to Mr. Domi's lawyer, Mr. Jakobek said, incredibly, that he couldn't imagine why Mr. Domi would have said that. Yet another lie.

Dash Domi was recalled to testify and asked to explain himself. Now he swore that he still couldn't remember Mr. Jakobek's presence on the plane, but he accepted that if Mr. Jakobek said he was there, then he was there. His lack of memory was no more plausible this time. The Skycharter plane wasn't a jumbo jet. It was a small private aircraft Dash Domi himself had chartered. He had selected the passengers. It was simply not plausible that he would forget the presence of such a high-profile passenger on that flight, particularly since Mr. Jakobek had been in his sights as a key to winning the City's leasing business. He hadn't mentioned the tip-off from Mr. Jakobek's new lawyer in his earlier testimony, instead giving the impression that he was drawing on his own memory, albeit flawed. Now he claimed that the tip-off from Mr. Jakobek's lawyer, coupled with Mr. Jakobek's denials in the press, had convinced him Mr. Jakobek wasn't there.

D. CAUGHT IN A WEB OF LIES

Tom Jakobek lied repeatedly about the Philadelphia trip, and went on lying even after he admitted the central lie that he wasn't there. Dash Domi supported the lie. Why? Both said they weren't friends. Mr. Jakobek effectively said that Mr. Domi was just a pesky salesman he had to indulge because politicians can't just tell people to "go jump in the lake." But merely going to a hockey game together wouldn't necessarily make them close associates, and going to great lengths to cover it up only generated suspicion. Did they attempt to cover it up because admitting to it might lead to uncovering other facts that would demonstrate a closer association with more serious

implications? If there were such facts yet to be uncovered, they would have every reason to want to distance themselves from each other by lying about Mr. Jakobek's presence on that plane.

Demanding a retraction from the *Toronto Star* for telling the truth, lying to five reporters from several different newspapers, lying to his own lawyers, taunting the inquiry ("They haven't got anything"), and concocting new lies as each lie was uncovered all exposed Mr. Jakobek as an audaciously slippery operator who thought he could outmanoeuvre the press, forensic accountants, the police, lawyers, and a judicial inquiry.

Mr. Jakobek had wanted me to believe that he kept on lying to the press until he could, at last, tell the truth at the inquiry. The subsequent serial lying had been forced upon him by his first, deeply regretted lie, told as an inexplicable emotional response to being caught off guard by a reporter. The totality of Mr. Jakobek's conduct was hardly that of a man caught up in circumstances that had spiralled out of control but who always intended to unburden his conscience eventually. Indeed, that was certainly not the case, as we have seen. His actions revealed his strategy: stall, suppress, lie, and gamble that you won't get caught. Talk your way out of it if you do get caught.

But he was caught, and he couldn't talk his way out of it. In fact, the Philadelphia story, and all Tom Jakobek's lies about it, would point the inquiry to a much bigger web of deceit that reached back to the earliest investigation into the City's dealings with MFP.

E. EARLIER STRANDS IN THE WEB OF LIES

Back in the fall of 2001, when the relationship between the City and MFP was unravelling, the City brought in the forensic accounting firm KPMG Investigation and Security Inc. to conduct a review of the City's leasing contracts with MFP. KPMG's investigators interviewed a number of current and former City employees and councillors, including Tom Jakobek. While declaring his desire to co-operate, Mr. Jakobek was unwilling to meet with them. When they granted his request for written questions, he didn't live up to his end of the bargain. He simply didn't respond to their questions about his contact with representatives of MFP.

KPMG did interview Jim Andrew. According to Mr. Andrew, Tom

Jakobek called him on the day before his KPMG interview and told him he was “about to make the biggest mistake of [his] life” in talking to the investigators. Mr. Andrew was surprised that Mr. Jakobek knew about the interview, which had been scheduled only two or three days earlier. Mr. Jakobek advised him not to go. Mr. Andrew’s lawyer had advised him to attend, but Mr. Jakobek said that must be a “ten cent on the dollar lawyer.” Mr. Andrew was concerned and called his lawyer to tell her about Mr. Jakobek’s advice. She again told him that he should keep the appointment, and he did.

The following month, the two men had dinner together. During the meal, Jim Andrew volunteered that Tom Jakobek’s name hadn’t come up in the interview, and they didn’t discuss the matter further. In late spring or early summer of 2002, they had dinner together again. This time, Mr. Jakobek told Mr. Andrew he loved him like a brother, but he shouldn’t have gone to the KPMG interview.

As mentioned, commission counsel started trying to interview Mr. Jakobek in August 2002. Mr. Jakobek responded to our written request for an interview by saying that he had reviewed his KPMG response and had no additional information he could add because of his “non-involvement in these matters.” We sent him another letter in early September. Mr. Jakobek replied that he was “not aware of any relationship with MFP and myself.”

On the very day Mr. Jakobek wrote that letter saying he was not aware of any relationship between himself and MFP, Dash Domi, who was still working at MFP, called him three times. He had already called him four times that month and would call him twice more before the month was even half over. Frequent telephone contact between them had been going on for some time, and Mr. Jakobek was confronted with evidence of it in the witness box. How could he have been “not aware of any relationship with MFP” and himself in light of this frequent telephone contact with Mr. Domi? Mr. Jakobek complained that the questions in commission counsel’s letter had not been specific. He had not been sure what was being asked of him and didn’t want to guess. In the end, he conceded that he had wanted to know exactly what the inquiry knew before saying anything specific about his relationship with MFP.

The first day of hearings for the inquiry was set for September 30, 2002. Before the hearings got under way, I adjourned them for an OPP investiga-

tion, which will be discussed in detail in the next chapter. Mr. Domi and Mr. Jakobek both spoke to the OPP officers and both of them minimized the true nature of their relationship. Mr. Domi told them that he knew Mr. Jakobek “very little” and that he was neither a friend nor an acquaintance. Mr. Jakobek acknowledged that he knew MFP “existed,” but that was about it.

Thus, Tom Jakobek set the pattern for deception about his involvement with MFP long before the Philadelphia story came to light. It was in place from the very beginning, when the first questions were raised about MFP. From the very beginning, he lied, prevaricated, stalled, obfuscated, and lied some more, all of which was a strategy to obstruct any investigation of his dealings with MFP. When the Philadelphia story came out, he lied to his own lawyers, lied to the press (and, by extension, to the people of Toronto who he hoped would elect him mayor), goaded the inquiry in the press, and made his intention to lie at the inquiry clear to others who were to testify before he did. Then he came to the inquiry and lied under oath.

One way or another, all of the strands of the web of deceit, first revealed by the Philadelphia story, would lead back to the City’s computer leasing deal with MFP. Tom Jakobek and Dash Domi both concealed their true relationship from the police and lied to the inquiry about the extent of their association with each other. Why would they risk lying under oath about a supposedly benign, if extravagant, junket to Philadelphia? They didn’t lie in concert because they liked each other. It is unlikely that Mr. Domi would have lied just because Mr. Jakobek asked him to.

Mr. Jakobek stalled the inquiry while he went to the Divisional Court in an unsuccessful bid to avoid being recalled to testify about other matters that had come to light after the Philadelphia story. The Divisional Court concluded that he had brought his application to avoid testifying before me. Once he did testify again, he continued to prove an inept but persistent liar.

When people elect a councillor, or a mayor as Tom Jakobek hoped to be at the time, they want that person to be trustworthy. They don’t expect that person to lie under oath. Responsible parents teach their children not to lie. They tell the fable of the boy who cried wolf: get caught lying, and no one will believe you when you tell the truth. Tom Jakobek and Dash Domi were both like the boy who cried wolf. By their own prolific lying, they themselves cast doubt and suspicion on everything they said, unless it was supported by more credible sources.

The link between Dash Domi and Tom Jakobek exposed by the Philadelphia trip proved that Mr. Jakobek had been lying about his relationship with MFP from the beginning. His frantic, devious efforts to conceal that link failed, and ultimately trained the spotlight on other things he may have wished to hide. Following the strands in his web of lies around the Philadelphia trip uncovered a larger and more convoluted web of deceit. This larger web entangled other events involving Tom Jakobek and Dash Domi, and Tom Jakobek and his family. And his name would come up in yet another story involving the computer leasing RFQ.

VII. THE WORD ON THE STREET

MENTION LEASING, AND FEW WOULD FIND their pulses racing. But mention a multimillion-dollar, endlessly profitable deal with the largest city in Canada, and the excitement begins in the leasing world. In early 1999, that was just what happened. MFP's relatively small million-dollar computer leasing deal with the City of Toronto for the councillors' computers had foreshadowed it, but now there were rumours of a much bigger deal.

By January or February of 1999, the word was on the street that the City would be issuing a major tender for leasing to meet its far-reaching, Y2K-driven hardware and software needs.

A major deal coming down the pipeline inevitably intensifies competition among the market players with a shot at getting the business, and the City's computer leasing deal was no exception. But competitive advantage in the public sector bidding context is elusive. The tender process offers no certain way to gauge one's position in the pack. Bidders don't really know whether they had an advantage until the winner is announced. By then, it is obviously too late to modify the strategy. For some bidders, this uncertainty presents a temptation to bend the rules to try to get a competitive edge.

In the lead-up to the day a decision is made on a major tender, bidders work hard to portray themselves as suppliers without equal. Some will jockey for position with the supposed decision-makers on the assumption

that if their company is not known to those people, they may not be in the running. Many will devote countless hours to honing and polishing their proposals. Considering the investment of time and resources that goes into a major tender proposal and the human factor in the evaluation process, one major question is on the bidders' minds: What are the decision-makers thinking?

Not knowing the strategies of their competitors, some bidders may think that only one way to get the inside track remains: to influence the decision-makers. Clearly, some bidders do assume that influence can be obtained and that it will give them an edge in a public sector bid. To that end, they spend time, effort, and money on developing relationships with the decision-makers. In public sector procurement, the road to influencing the decision-makers is very narrow and clearly marked. But in the heat of competition, aggressive bidders may try to create a passing lane on a road where none should exist.

Once a bidder has decided that influence is the way to speed past the competition, who can help find a way to get it? One possibility is to hire a lobbyist. In early 1999, in the race for the City's lucrative computer leasing business, that is just what two bidders did. MFP and Dell Financial Services both decided to hire one. In a strange twist of fate, they both turned to the same one: the high-profile lobbyist Jeff Lyons.

A. DELL FINANCIAL SERVICES AND DELL COMPUTER CORPORATION

Dell Financial Services (DFS) was formed when Dell Computer Corporation's American headquarters decided to establish a joint venture with a leasing company as a logical fit with its successful computer business. Dell Computer Corporation issued a tender in the U.S. and Newcourt Credit Group Inc. was the successful bidder. DFS was launched in the U.S. in 1997. Within four months of the American launch, Gord Barrett of Newcourt Credit took the reins of Dell Financial Services Canada as General Manager, though he reported to Newcourt. Actually, Mr. Barrett himself described the reporting structure as confusing, since at some time he also had a direct reporting relationship to DFS Global in the U.S. In any

case, DFS was now ready to offer Canadian customers a way to finance their acquisitions of Dell computers.

In 1999, Newcourt Credit Group Inc. was described in a DFS bid document as the second-largest non-bank lender in North America. In November 1999, CIT Group Inc. bought Newcourt and became DFS's new parent.

In the U.S., DFS was a joint venture, 70 per cent owned by Dell Computer Corporation and 30 per cent owned by Newcourt. In Canada, DFS was 100 per cent owned by Newcourt. Yet curiously, the letter attached to the DFS bid on the City's leasing RFQ said that DFS was "partially owned" by Dell.

Dell referred business to DFS, for which it was paid finder's fees. DFS submitted quarterly performance reviews to Dell and got support and direction from Dell. On occasion, Dell worked with other leasing companies, for example MFP. DFS could theoretically finance equipment from manufacturers other than Dell if a business solution proposed by Dell included non-Dell equipment, but in general, DFS financed Dell products.

The DFS offices were in the same North York building as those of Dell. The two companies had a cost-sharing arrangement and shared printers and other resources and services. Technically, they were separate entities, but the practical separation between them was far from obvious.

By 1999, Dell had a very profitable and successful relationship with the City of Toronto. When DFS started working on the City's computer leasing bid, its sales representative, Scott Marentette, conferred with Bruce Mortensen, the account executive at Dell. Mr. Mortensen had had extensive dealings with the City on hardware and accompanied Mr. Marentette to meetings with City staff to help promote DFS's leasing services. Dell and DFS held a joint golf day, which some City staff attended. Dell and DFS positioned a "single point of contact, single point of accountability" as a primary benefit of the integrated services available from the vendor, Dell, and the lessor, DFS.

Did blurring the distinction make business sense? It seems to have given DFS some instant credibility and name recognition, but it also confused a lot of people. Dash Domi, for example, never understood the difference between the two companies. He said, "I don't know about Dell Financial, I just considered Dell, Dell." He was not alone. Even their lobbyist, Jeff Lyons, didn't seem to know the difference between them. At the time he was

acting for DFS, it was 100 per cent owned by Newcourt, yet he thought DFS was either a sister company, or a subsidiary, or some sort of adjunct of Dell. In a retainer letter with MFP, he said that he acted for Dell Computer Corporation, “which includes Dell Financial Services.”

That distinction was not cleared up until the inquiry. Even there, Dell’s lawyer found herself repeatedly correcting witnesses and lawyers who confused the two entities. In the meantime, in 2003, Dell Computer Corporation had become Dell Inc. Dell was and is one of the biggest names in computer hardware. Dell Financial Services was comparatively new and unknown. It made perfect sense for DFS to position itself alongside the goodwill attached to the Dell label. But if the names were chosen to confuse, they succeeded; if not, they did anyway. Jeff Lyons would later agree that it wouldn’t take a rocket scientist to figure out that it was a selling point for DFS.

B. DFS BUYS THE JEFF LYONS PACKAGE

This is what Jeff Lyons said about his role as a lobbyist:

When I’m representing people, you get me. I’m a package and my package is to win for my clients, and what I try to do is to get the best position out there for them to help them win.

DFS didn’t routinely use lobbyists to help get government business. In fact, Gord Barrett told the inquiry that the company had never hired a lobbyist or consultant before, and he believed retaining Mr. Lyons would be a “waste of money.” It was Dave Kelly of Dell who recommended to Mr. Barrett that DFS hire Mr. Lyons.

At the time, Mr. Lyons (then counsel at the law firm Morrison Brown Sosnovitch) was on a six-month contract with Dell at a fee of \$7,500 per month. Mr. Barrett didn’t know anything about Mr. Lyons’s abilities or the quality of his service to Dell. He didn’t feel that he had been directed to hire the lobbyist, exactly, but he had been asked, and he considered it advisable to follow Dell’s lead. DFS was the service provider and he wanted to “please Dell.” Mr. Barrett wanted to show Dell that DFS was willing to do “anything and everything” they could to win the City’s business:

There was always pressure by the salespeople at Dell for DFS to be competitive. It was continual and they were under pressure as well. So, when they asked us to... help them out and participate... with them in the hiring of Mr. Lyons, we obviously agreed because we did not want to be second-guessed after the fact....

[It was] a decision we made as a service provider to Dell... who asked us to do that for them....

Mr. Lyons agreed to work for DFS for a retainer of \$3,000 per month. He saw his DFS contract as “an adjunct” to his work for Dell, although he maintained two separate files and he had separate contracts with the two companies.

The contract with Dell included the requirement that Mr. Lyons comply with government lobbyist registration policies and government policies governing procurement activities and gifts to government employees. The permissible bounds of lobbying activity are meant to dovetail with the conflict of interest policies that apply to public servants. But as mentioned, Mr. Lyons believed that most City personnel didn’t pay attention to the conflict of interest policies, and he himself didn’t really know them. This was hardly an appropriate attitude toward policies directly affecting the permissible bounds of his lobbying activity. At the inquiry, to my astonishment, he likened civil servants to lobbyists and seemed not to appreciate the significant difference between them. According to him, civil servants lobby politicians in secret, so he should be allowed to do so too: “Well, what’s sauce for the goose is sauce for the gander,” he said. And he argued that his private sector clients should be treated the same way as City staff when it came to access to members of Council.

Lobbyists occasionally negotiate a contingency fee, also sometimes called a success fee. Essentially, a success fee is a promise of an additional fee or bonus if the lobbyist achieves the desired outcome for the client. In the Province of Ontario, under the *Lobbyists Registration Act*, lobbyists are required to report whether they are being paid such a fee. Success fees are far from common, however, and during the Good Government phase of the inquiry, the provincial Lobbyist Registrar said that only about 5 per cent of registered lobbyists declare contingency or success fees.

Success fees are generally the subject of negotiation in advance. Mr. Lyons proposed a success fee during his negotiations with Dell, but the

company refused to entertain the idea and specifically deleted it from his proposal. There was no advance discussion of a success fee when DFS hired Mr. Lyons, but the subject would come up later.

Rob Simone, the National Sales Director for DFS, was the senior DFS executive working on getting the computer leasing deal with the City. Mr. Simone had never before submitted a bid to the City of Toronto. From the start, he knew that Mr. Lyons had been hired in his capacity as a lobbyist, not as a lawyer. He also knew that Mr. Lyons was not a computer expert and didn't know much about leasing. Mr. Simone saw the lobbyist's role as helping DFS gain "access to key decision-makers" at the City, and to convince them of the value of the services provided by DFS.

Scott Marentette, who worked under Mr. Simone, was the sales representative responsible for going after the City's leasing business. Mr. Marentette said it was the biggest public sector deal in his line of business that year. "Everyone was focused on it," he said, and everyone knew they were going to have to bid low to win. In terms of responsibility, he was Dash Domi's equivalent at DFS, except that he actually understood leasing and worked on the financial terms of the bid. He was not involved in hiring Mr. Lyons or in setting the terms of his retainer, only learning after Mr. Lyons had been hired that the lobbyist would be working on the computer leasing RFQ.

What was Jeff Lyons expected to do for DFS? It was clear to DFS employees Gord Barrett, Robert Simone, and Scott Marentette, and clear to Jeff Lyons himself, that his role as their lobbyist was to help them win the computer leasing contract with the City. A professional cultivator, he was expected to identify the decision-makers on the RFQ, arrange meetings with them for DFS, and actively persuade them that DFS was the best choice. As Gord Barrett put it, Mr. Lyons would put DFS's "best foot forward as it relates to the City."

Relative to some of the other bidders on the RFQ, DFS was a new company, with little knowledge of City processes and no contacts with influential public servants. City officials didn't know DFS, either. DFS had to make an impression.

Jeff Lyons laid out his strategy for Scott Marentette. They would hit as many people as they could who might have anything to do with the decision. Mr. Lyons would assess what DFS had to do to win and solve

problems. Making sure they got to the right people was part of the problem solving. They needed a road map, and it was Mr. Lyons's job to guide DFS along the road to competitive advantage.

Mr. Lyons's retainer letter with DFS didn't turn up until after he had finished his testimony at the inquiry. It was found in a document file at his former law firm. He had said under oath that he had destroyed that file. It was not his law firm's policy to destroy legal files, he had said, but in his lobbying work, it was his personal, informal policy to destroy old files owing to limited filing cabinet space. He deliberately misled the inquiry. He clearly had no such policy.

Mr. Lyons's agreement with DFS was dated March 10, 1999, to become effective March 15. Effective that same day, Mr. Lyons also had an agreement with MFP, DFS's prime competitor for the City's computer leasing business.

C. MR. LYONS AND THE MOLE

It was not easy to get from Mr. Lyons all of his documents relevant to the inquiry. We issued a summons. In response, he delivered some documents (mostly related to MFP), but nothing related to DFS. In the end, we subpoenaed his former law firm and obtained files and boxes of documents from them. The long and winding story of those boxes is recounted in the *Inquiry Process* volume of this report. In the end, his documents provided penetrating insight into an influential lobbyist at work. One very revealing example was a memo to file about his work for DFS, written by Mr. Lyons on April 1, 1999, shown below with his wording:

I spoke later in the day on March 29, 1999 to a senior official in IT...

I should speak to Tom Jakobek about leasing, but he says the main problems are with the treasury people and, in particular, Wanda Liczyk.

We he talked to her about leasing, she says if they provide the money to the leasing company the City can do better because they can borrow it at a cheaper dollars.

However, he states she doesn't understand valued added services...

Who was "he" in Mr. Lyons's memo? Did "he" mean a senior official in IT or Tom Jakobek? This was debated at the inquiry, but "he" was a senior

official in IT. Only about two weeks into his retainer with DFS, Jeff Lyons was deep in discussion with a senior IT official at the City on his new client's behalf.

It was clear that Jeff Lyons had a mole inside the City, and the mole was giving him inside information about what other City officials were thinking on the leasing question. Obviously, the specifications in a leasing tender document wouldn't include that information, but Mr. Lyons was able to get it for his client with the willing assistance of a City employee. The strategic value of this information is obvious: DFS would know whose views had to be changed.

Who was the mole? It had to be someone who already had a close and comfortable relationship with Mr. Lyons. It turned out to be someone whose close relationship with him was revealed in the Dell story. In fact, Mr. Lyons met with the mole both before and after he wrote this memo to file, and they spoke on the phone many times. It had to be someone who was familiar with Wanda Liczyk's views on leasing, and it was. It was a senior official in IT, and it turned out to be the most senior IT official. It was Jim Andrew.

There is loyalty, of a kind, rooted in self-interest, among those who trade in secrets. Sources must not be revealed. Mr. Lyons and Mr. Andrew remained loyal to each other, even at the price of credibility. Mr. Lyons maintained that he couldn't remember who gave him the information, but there is no possible way that he, a trader in information for whom relationships were critical, would have forgotten the identity of such a good source. So that was a lie. Mr. Andrew denied that he was the mole. But he lied to the inquiry about other things, and he lied about this.

Mr. Andrew agreed that he gave Mr. Lyons information on what the City was doing and what City staff intended to do. He agreed that he had more contact with Mr. Lyons than with any other lobbyist at the City. Mr. Lyons gave him information about the internal workings of City Hall which he couldn't otherwise have known. Mr. Lyons called him his "primary" contact in the IT department and agreed that he provided valuable intelligence.

Their association went beyond trading City Hall secrets. It was Jim Andrew who had suggested to an acquaintance at Dell that he should hire Jeff Lyons. Jim Andrew had taken a vacation day to attend Mr. Lyons's "Brother Jeff" charity golf tournament. Jim Andrew, a public servant, had

even asked Mr. Lyons, a lobbyist, to get him football tickets. At the inquiry he conceded that this request showed poor judgment on his part, that it created a perception of bias, and that it constituted a conflict of interest.

Jim Andrew was the mole and what he did was wrong. He should not have given information to a lobbyist that he wouldn't have given directly to the lobbyist's client, a potential supplier. And he most certainly should not have given this type of information to a potential supplier.

D. MR. LYONS GETS DFS A MEETING AT THE CITY

Mr. Lyons quickly armed DFS with the information gathered from Jim Andrew. DFS now had reason to believe that Wanda Liczyk was opposed to leasing. With that knowledge, they had their strategic direction and a competitive advantage. They knew where they had to concentrate their efforts. Scott Marentette left a voice-mail message for Jeff Lyons: "I just want to give you a brief, quick rebuttal on Wanda's initial kibosh on leasing."

Mr. Lyons arranged a meeting for DFS with senior City officials for April 23, 1999. Bruce Mortensen from Dell went along to support DFS, the two companies once again presenting a blurred, united front. The presence of the Dell representative gave DFS added credibility, since Dell had already won an \$18 million contract to supply the City with 11,318 computers. The purpose of this meeting was to talk about how to finance those computers, and obviously to advocate the benefits of leasing. Jim Andrew was there, and so was Wanda Liczyk. Ms. Liczyk said she was there "mainly due to the request of Jeff Lyons."

DFS put to good use the information from Jeff Lyons and Jim Andrew in preparing for this meeting. They had a number of documents highlighting the advantages of leasing, including a lengthy financial presentation. DFS was ready to address any objections Wanda Liczyk might raise. Whether the meeting affected her outlook or not, the opportunity to put the information in front of her was a strategic advantage Jeff Lyons had secretly obtained from his mole, Jim Andrew. DFS made the most of it.

E. ONE MORE POOH-BAH TO GO: A “BIZARRE” MEETING

Jeff Lyons believed that DFS had to get to the key decision-makers, or “the pooh-bahs,” as he called them. DFS had already made contact with top City officials, but there was one more pooh-bah in his strategic plan.

Computers are essential in every corner of the City’s far-flung operations. They are worth tens of millions of dollars, and the pace of change in technology means that more acquisitions are necessary every few years to replace obsolete equipment. Naturally, a major computer purchase would require a large capital outlay and would therefore occupy a prominent spot on City Council’s agenda.

On the other hand, some people see computers as nothing more than office supplies. Wanda Liczyk, for example, put it this way:

The cost has decreased so much in the last 10 to 15 years that, in my mind, it was approaching something like a pen or pencil but it had a life longer than one year. My approach was to consider desktops as a short-lived commodity like any other office supply, with the exception that the life of a computer is obviously more than a pen.

Given that technology has to be upgraded or replaced every few years, it was an administrative burden to keep going back to Council for approval. One of the potential benefits of leasing was that the cost of further acquisitions would move from the capital budget to the operating budget, which meant that Council approval for repeated expenditures wouldn’t be needed. These acquisitions would then have the same status, albeit on a much larger scale, as routine replenishment of the supply of pencils, and City Council’s agenda would be relieved of one large, repetitive decision item.

That aspect of leasing may have sounded attractive to City staff. In her memo to file about the April 23 meeting with City staff, Jeff Lyons’s assistant, Sue Cross, noted, “Wanda mentioned that she would like to have IT taken off the political agenda as was done in the former City of North York. She feels that desktops are like any other office supply and should not have to be monitored by Council.” Ms. Liczyk didn’t think she had put it quite that way. She said she recalled talking about her limited exposure to leasing, and about

how North York had funded desktop computer acquisitions, with Council approval, through the operating budget as opposed to the capital budget.

In any case, even if senior City staff supported leasing, there would be another hurdle. Moving an item from the capital budget to the operating budget would require Council approval. According to Mr. Lyons, Wanda Liczyk told him that on the issue of purchasing as opposed to leasing, they had “better get the political level on side.”

Getting the political level “on side” would require a champion in the form of an influential councillor. Jeff Lyons knew just the pooh-bah for the job: Councillor Tom Jakobek, member of the Policy and Finance Committee and chair of the Budget Committee.

Jeff Lyons and Tom Jakobek had been close friends for nearly 20 years. Mr. Lyons raised money for Mr. Jakobek’s City Council races, and over the years he did other favours for Mr. Jakobek, including getting him tickets for events. He had even helped Mr. Jakobek’s wife with various job applications. In a personal letter, he warmly described their good friendship. Mr. Lyons, along with former Metro Chairman Paul Godfrey, had organized a stag party before Mr. Jakobek’s 1985 wedding.

Despite the long history of their close friendship, Tom Jakobek took pains to downplay his relationship with Jeff Lyons. At the inquiry, he gave Mr. Godfrey sole credit for organizing his stag, saying that Mr. Lyons was only invited to the stag, and the wedding, because of his position at the TTC at the time. Documents discovered after Mr. Jakobek’s initial testimony would show that Mr. Lyons was instrumental in organizing every aspect of the stag from beginning to end.

On May 25, 1999, Jeff Lyons took Scott Marentette of DFS to meet Councillor Jakobek. Mr. Marentette would later describe the meeting as “bizarre.” This time, the lobbyist extraordinaire hadn’t orchestrated the meeting as smoothly as he might have done. According to Mr. Marentette, when he arrived at the Councillor’s office with Mr. Lyons, Mr. Jakobek appeared perplexed about the purpose of the meeting. At some point, Mr. Lyons and Mr. Jakobek moved to the other end of the room for a whispered exchange. Throughout the meeting, Mr. Marentette thought Mr. Jakobek just listened politely, and the meeting was ultimately not very productive.

In a memo to file about the meeting, Mr. Lyons would write: “Afterwards, he indicated that Dash Domi was going around City Hall and

telling the individuals that I was supporting them and he says he was confused.” When he testified about it, Mr. Lyons said he could no longer remember whether “he” referred to Tom Jakobek or Scott Marentette. The context suggests it refers to Mr. Marentette, because if Mr. Jakobek was confused, why would Mr. Lyons put that down in a memo to file?

When Scott Marentette returned to his office from the meeting, he told Rob Simone that Mr. Jakobek seemed to think Mr. Lyons was acting for MFP. The two of them met with Gord Barrett to talk about it. According to Rob Simone, Mr. Barrett was upset. Mr. Barrett said that he was actually irritated by the amount of time being spent on one deal, and he considered Mr. Marentette’s suspicions mere speculation.

But even before that May 25 meeting, there had been rumours. Mr. Lyons was asked point blank: Was he working for MFP? Mr. Lyons said he wasn’t, but Mr. Marentette suspected that wasn’t true, and he had told Rob Simone that he thought Mr. Lyons was working “both sides of this transaction”—that is, working for both DFS and MFP. Mr. Lyons would be privy to DFS’s pricing strategy for the bid, which could have been a big boon to MFP if Mr. Marentette’s suspicions were correct. He said it was just a feeling, he had heard rumours, and his suspicions grew after the awkward meeting with Tom Jakobek. He was right. Mr. Lyons was indeed acting for MFP, and MFP was going to bid on the same tender.

Despite suspicions about Jeff Lyons’s conflict, DFS decided to stay the course with him. Mr. Lyons had denied he was acting for MFP, and besides, Rob Simone said they didn’t want to upset Dell, where Mr. Lyons “had a very tight relationship” with many senior people. It was wise not to make waves. Also, the bids on the RFQ were due on June 11, and, as Mr. Simone said, since “Jeff had contacts with everybody, we didn’t want to upset him either, just before this tender was due.”

Armed with the intelligence Mr. Lyons had gathered for it, DFS proceeded to prepare its RFQ bid. Right up to the final moments, DFS benefited from Mr. Lyons’s strategic access to internal City processes—but not enough. DFS lost to MFP.

It would have been a big win, and Scott Marentette was disappointed. He wanted to find out how DFS’s bid had placed and asked Jeff Lyons to find out, if he could. According to him, Jeff Lyons gave him a spreadsheet showing details of all the bids received. It was clearly an internal City doc-

ument. Mr. Marentette showed it to Rob Simone. Both of them were shown a document at the inquiry, and both said that it looked similar to the one Mr. Lyons gave them. Mr. Simone recalled that the document he saw was marked “confidential.” Mr. Lyons was also shown the document but claimed that he had never seen it, adding that he wouldn’t allow such a document to be received by his office.

Not long after DFS learned it had lost the bid, Jeff Lyons’s retainer expired and Rob Simone could see no reason to renew it. He called Mr. Lyons to tell him so, and confirmed it in writing on October 15, terminating his services “effective immediately.” By then, Mr. Lyons had been hired and fired by MFP—and rehired on September 10.

F. MFP BUYS THE JEFFERY LYONS PACKAGE—AND SENDS IT BACK

1. HE’S IN

Like DFS, MFP didn’t routinely hire lobbyists to help get public sector business. Irene Payne, MFP’s Senior Vice-President of Sales and Marketing, didn’t feel “totally comfortable working with lobbyists.” She believed that if you have a “strong sales force, you should be able to get in to see whoever you have to see.” Besides, she felt that MFP had been successful as a company without using lobbyists.

It would turn out to be somewhat ironic, but it was Dave Kelly of Dell who helped change her mind. Mr. Kelly told her that Jeff Lyons was well connected. He could open doors for his clients, and Mr. Lyons had helped Dell win a large contract with the Ontario government. Ms. Payne knew that Dell had recently won a large contract with the City. She also learned from Mr. Kelly that Mr. Lyons had arranged meetings between Dell and officials at the City of Toronto, and had been instrumental in building relationships between the company and the City. It couldn’t hurt MFP to retain someone who appeared to have this much influence.

Irene Payne had ambitious plans for MFP. She came to believe that Mr. Lyons’s relationships with individuals at the City and the Province could help her meet her objectives for the company, and decided to hire Mr. Lyons for a limited time. MFP President Peter Wolfrain concurred. He

acknowledged that Mr. Lyons was “known to have the ability to open doors [and] introduce us to people,” and so it seemed “worth the effort.”

What exactly did MFP hire Jeff Lyons to do? That was to become somewhat problematic. In any case, Mr. Lyons was retained to work for MFP for three months, from March 15 to June 15, 1999. The agreed-upon fee was \$7,500 per month.

MFP faced many competitors for the City’s leasing business. According to Peter Wolfram, the biggest competition was DFS. DFS had decided it needed an edge, and it had hired Jeff Lyons to get it. Both MFP and DFS were talking to Mr. Lyons earlier, but, judging by the correspondence, he started on retainer with both companies on the same day: March 15, 1999.

2. HE’S OUT

Mr. Lyons had not been secretive with MFP about his business relationship with Dell, but he said he might not have told MFP initially that he was also acting for DFS on the leasing bid. For confidentiality reasons, he said, he had felt under no obligation to discuss that with MFP. On March 11, however, before he started on retainer with MFP, Mr. Lyons wrote to Irene Payne: “I have also disclosed to you that we act for Dell Computer Corporation, which includes Dell Financial Services.” Irene Payne received that letter but claimed not to have remembered seeing the part about DFS. Nor did she recall that Mr. Lyons ever told her he was acting for DFS.

Irene Payne’s letter to Jeff Lyons setting out the terms of his engagement said that Mr. Lyons was being retained for services at the “provincial and municipal” levels of government. The computer leasing deal was not explicitly mentioned. Mr. Lyons would later say that he understood “municipal” to mean the City’s school board. Irene Payne would also testify that she didn’t think Mr. Lyons would be doing anything for MFP on the computer leasing bid. Ms. Payne knew that Mr. Lyons was working for Dell, and she had no problem with that. But although Dell and DFS were separate companies, the line between them was blurred. Mr. Lyons was working for Dell. He was also working for DFS and MFP, who were both bidding on the same tender. As Mr. Wolfram later said, there was “sort of an unresolved conflict built into this.”

In May 1999, Dash Domi learned that Jeff Lyons was working for DFS. He took the information to his boss, Irene Payne. “It just did not make sense to me,” Mr. Domi said. Mr. Lyons was working for MFP’s rival, “bidding on the same business.” It was May 25, the same day that Mr. Lyons had taken Scott Marentette to meet Tom Jakobek. Had Mr. Domi found out about this? We don’t know. Mr. Domi couldn’t remember how he found out that Jeff Lyons was working for DFS.

An irate Irene Payne called Jeff Lyons to confirm what Dash Domi had told her. The next day, she asked John Rollock to draft a letter to Mr. Lyons for her signature. Mr. Rollock didn’t mince words, and about 40 minutes later, he had a draft. This letter combines his draft with her subsequent changes.

I wish to express my total disappointment with your current actions in representing Dell Financial Ltd. as a consultant and lobbyist with the City of Toronto, specifically, but more generally at either the provincial or municipal level of government. You have already confirmed this to me, in spite of the fact that you agreed contractually to represent MFP Financial Services at the municipal and provincial levels of government. . . .

We therefore consider your decision to provide consulting and lobbying services to our competitor, Dell Financial Services, on a major technology financing deal with the City of Toronto, to be a breach of contract with MFP Financial Services Ltd. We take this matter very seriously, and are prepared to take whatever actions we deem necessary to prevent any financial harm that may accrue to us from your actions. We also consider that a professional of your standing within the legal community of Ontario would consider your actions inappropriate and beneath the standards of the Law Society of Ontario.

I am requesting your withdrawal from representing Dell Financial Services, effective immediately. I would also like to discuss this matter urgently with you.

Mr. Lyons wrote back the next day. The comments in MFP’s letter were “surprising” and “erroneous,” he said. He attached the March 1999 letter in which he had disclosed his dealings with DFS. But he also accepted Ms. Payne’s suggestion that, under the circumstances, his retainer with MFP should end. The business relationship between MFP and Mr. Lyons was, apparently, over.

Curiously, however, there was evidence of continuing communication between Jeff Lyons and MFP throughout the spring and summer of 1999. There were several cellphone calls from Dash Domi, Mr. Lyons played golf with MFP personnel, and there were entries in his assistant's notes to call MFP. Dash Domi submitted a receipt for reimbursement for a dinner on which he inscribed "Jeff L." Both Mr. Lyons and Mr. Domi denied that they had dinner together on that date, and we have seen that Mr. Domi had an unconventional approach to expense claims. In any event, they were keeping in touch.

3. DIVIDED LOYALTY

Jeff Lyons claimed not to have known at the time that MFP (according to Mr. Marentette, DFS's biggest competitor) was going to bid on the RFQ. Nor did he know that MFP had supplied the leasing services for the councillors' computers. Yet he was aware that the conflict of interest was a concern, even as he accepted retainers from both companies. He said he contacted Dell to confirm that it had no objections to his acting for MFP, but he couldn't remember which person he spoke to. Why would he contact Dell, not DFS, the client that was MFP's direct competition? Did he really not appreciate that the two companies were separate entities? Even if he somehow didn't know it at the time he signed on with both DFS and MFP, he most certainly knew it a few weeks later.

At two DFS meetings, the one on April 23 with City staff and the one on May 25 with Tom Jakobek, there had been discussion about the interrelationship and distinction between Dell Computer and DFS. Jeff Lyons unconvincingly claimed that when he set up these meetings, he still didn't know MFP and DFS were bidding on the same tender.

The two clients certainly saw it as a conflict of interest. The conflict had bubbled to the surface at MFP and DFS at virtually the same time, and they were equally perturbed at the prospect of paying a lobbyist who was also working for the competition. According to Mr. Simone, Mr. Lyons had already attended five or six internal DFS "value propositions," where DFS's business advantages for clients were discussed. Quite reasonably, no one at DFS believed Mr. Lyons could compartmentalize this business intelligence when he was promoting MFP. Irene Payne clearly felt the same way regarding information he might learn about MFP—and she fired him.

Even if Mr. Lyons initially believed that he had no conflict of interest because he wasn't acting for MFP specifically on the RFQ, there was at least one point where he must have realized that he was on the horns of a dilemma. In a memo to the DFS file, he had recorded some unflattering rumours about his other client, MFP. It was not clear whether he heard them from Tom Jakobek or Scott Marentette. Either way, what was he to do—encourage DFS to use the information against his own client, MFP? Or withhold the information and deprive his own client DFS of the use of important strategic information about MFP?

G. MEANWHILE, THE DRAFT RFQ GOES OUT OF BOUNDS

While the various soon-to-be bidders were formulating their pre-bidding strategies and City staff were pulling together the RFQ, a draft of the document made a quick, electronic journey.

Jim Andrew attached the draft RFQ to an e-mail and sent it to Tom Jakobek. Councillor Jakobek had asked for it. It was an unusual request, and no other councillor, including Tom Jakobek, had asked him to do such a thing before. He knew that councillors didn't involve themselves in the tendering process. As an experienced public servant, Jim Andrew would never have sent an RFQ to a councillor unless the councillor specifically asked for it. But he complied, without question, and without informing his superior about the request. In retrospect, he considered that an error in judgment. It was.

Tom Jakobek denied that he had asked for the draft RFQ, and he denied that he even saw it. To support that claim, he offered the widely known fact that he was not computer literate at the time—he couldn't have figured out how to turn a computer on, let alone navigate the complexities of e-mails and attachments, he said. But he had staff who could.

All members of City Council had an e-mail address. E-mail sent to the functioning public e-mail address of an elected official is unlikely to vanish, unread by anyone. In fact, precisely because Mr. Jakobek didn't know how to use e-mail, his staff had a very efficient system of printing out his e-mails and giving him paper copies. So, while it was probably true that Tom

Jakobek didn't see Jim Andrew's e-mail on a computer screen, it is not credible that he didn't see the draft RFQ in paper form. Mr. Jakobek's dishonesty underscored his awareness that he should not have been asking for the draft RFQ. It also discredited his own earlier assertions that he didn't get involved in the tendering process except when a tender went to committee, and that he was not involved in this particular tender.

What does it matter if a City councillor saw a draft RFQ? Why was it so strange that the draft of this particular RFQ was sent to Councillor Jakobek's office?

Sadly, we don't have to look as far back as the Pacific Scandal of the 1870s that toppled the government of Sir John A. Macdonald to see public outrage erupting from the volatile mixture of politics and public procurement. But despite the lessons available from the frequent spectacle of yet another political career in ruins, it seems there are always people who are willing to gamble they won't get caught. Why? For the politicians who gamble in this way, the potential payoff is often not as simple as accumulating personal wealth. It may have more to do with demonstrating power, or something to do with what they need the money for: friends, extended family, trips, re-election, and so on. If a politician can control the procurement process, guaranteed success in public tenders can be exchanged for graft.

The Toronto taxpayer has a right to expect both elected officials and City staff to adhere to the highest standards in conducting public business. To that end, elected officials can set general procurement policy, and debate particular procurements in public in committee or the Council Chamber. But that is all. They must never intervene in active, ongoing tenders or other procurements. To remain above reproach, they should rely exclusively on the professional staff who work within approved procurement policies and processes. For their part, to earn and maintain the public's trust, staff must spend the taxpayers' money where it will buy the best goods and services at the best price, without political pressure of any kind. Staff must have the sole motive of serving the public interest. Perhaps the taxpayers will not agree with all of their decisions, but they have a right to expect that each decision will be made for the right reasons.

Tom Jakobek's furtive request to see the draft RFQ crossed the line. He was inserting himself into a particular tender while it was ongoing. He knew it was unusual for a councillor to ask for a draft tender document. He knew

he as a councillor should not be involved in or influence the tender, other than when it went to committee and Council for a decision. That is why he adamantly denied asking for or seeing the draft RFQ. Also, asking for the draft RFQ would reveal his interest in the fortunes of the eventual winner, MFP. Mr. Jakobek received the draft RFQ a little over two weeks after the Philadelphia trip—the one he and Dash Domi tried so hard to conceal. Denying he asked for the document was yet another failed attempt to distance himself from MFP.

What did Tom Jakobek do with the draft RFQ? Certainly, he couldn't have used it for legitimate City government purposes. Otherwise, why deny he had it? Did he give it to Dash Domi? It would certainly have been helpful to Mr. Domi and his employer, MFP. But the draft RFQ was a confidential internal City document that could give a prospective bidder an unfair competitive advantage. Leaking the document to Mr. Domi would have been wrong. The draft RFQ was not found in Dash Domi's possession, but another confidential draft tender document, likewise for a highly lucrative leasing contract, was.

In early 2000, Tom Jakobek asked for a copy of the draft RFP for a vehicle fleet leasing tender. This time, he asked Wanda Liczyk. Just as Jim Andrew had done, she complied. Later, long after the RFP had been issued, Mr. Jakobek would make a motion in Council that was of potential benefit to MFP, just as he had done on the computer leasing RFQ.

A photocopy of this confidential draft vehicle leasing RFP turned up in Dash Domi's files at MFP. On it were handwritten notations by Len Brittain, Director of Treasury and Financial Services, written before he gave it to Wanda Liczyk, who gave it to Mr. Jakobek. Once again, Mr. Jakobek denied asking for or receiving the confidential document. He was lying. Mr. Domi denied any knowledge of the document, even though it was in his own files. He denied that some additional handwriting on it was his, but a forensic handwriting expert examined the document and concluded with virtual certainty that it was. Only then did Mr. Domi admit that it was his handwriting and that he had been in possession of the draft vehicle leasing RFP.

Mr. Jakobek was not the only one who had a relationship with Dash Domi that crossed professional boundaries. So did Wanda Liczyk. Mr. Jakobek suggested that it was she who gave the draft vehicle leasing RFP to Mr. Domi. She didn't. He did.

H. CRUNCH TIME: THE CITY RELEASES THE RFQ

May 31, 1999, was the big day. The City released the computer leasing RFQ. The turnaround time was short: the deadline for bids was June 11. After months of jockeying for position in the influence race, the principal bidders had to do more than wine, dine, and lobby the decision-makers. It was time to crunch the numbers and put together viable proposals.

The RFQ said the City needed 9,000 computers in 1999, 4,000 more sometime later, plus associated servers, peripherals, and software. It asked for quotes on a 36-month lease and for flexibility in hardware and software upgrades and configuration changes.

The document had many shortcomings, as we shall see. For the moment, suffice it to say that it was vague in some important respects:

- It was not as clear as it could have been that the City already owned much of the equipment, bought from Dell as already described, and the deal would therefore involve a sale and leaseback.
- It did say that 9,000 computers were to be leased in 1999, but it was not at all clear when the next 4,000 were to go on lease.
- The total anticipated value of the leasing deal was not stated.
- It said that major software acquisitions would come later, and would become part of the leasing arrangements, but no dollar value or dates were given.

These shortcomings made it difficult for bidders to come up with realistic bids, but there were two other shortcomings that would hurt only the City.

Bidders were asked to commit to a lease rate that wouldn't change for 90 days after the RFQ closed, or September 11. That was not unusual. Sometimes in an RFQ, the period for holding to a rate is even shorter. In the circumstances, however, the rate-holding period was hopelessly optimistic. The bids had to be thoroughly analyzed before choosing a recommended winner. It was summer, and it would have been sensible to expect delays in the evaluation because of vacations. Then the deal had to go before the Policy and Finance Committee, and then to Council for

debate and approval. After the committee meeting, there was only one Council meeting, in late July, before the summer recess. If Council didn't approve the deal in July, there wouldn't be a session where it could be debated and approved until late September. That would already pass the 90-day rate-holding period. Then, a complicated master lease agreement would have to be drafted, negotiated, and signed. And then, most important, all the thousands of computers would have to be put on lease.

It was unrealistic to suppose that 90 days would be long enough to do all that, so it was almost inevitable that the City would end up signing a deal with a lease rate different from the winner's quote. In effect, as City staff pored over the bids, compared prices and cobbled together multiple drafts of the report to committee, they were wasting their time. In all likelihood, they were comparing numbers that would never apply.

There was a second costly shortcoming in the RFQ. The City failed to insist that future increases in the quoted lease rates be tied to an objective indicator such as a bank or bond rate. Since it was unlikely that the deal would be concluded inside the 90-day rate guarantee window, the omission rendered the City vulnerable on the most important factor in the leasing deal: the cost.

In response to questions from potential bidders, the City issued an addendum to the RFQ on June 7, 1999. The addendum gave the details of the type of equipment to be leased and the total expected costs by type. The grand total was \$43,150,000. That figure would turn out to be meaningless. The addendum didn't correct any of the other shortcomings in the RFQ.

I. THE MOLE DIGS SOME MORE

Around noon on May 31, 1999, the day the RFQ was issued, Mr. Lyons called Councillor Jakobek. They spoke for three and a half minutes. Neither Mr. Lyons nor Mr. Jakobek could shed any light on the reason for this call, but the broader context suggests it may have been related to the RFQ.

The bids were due on June 11. On June 7, Mr. Lyons met with Scott Marentette and Rob Simone of DFS, along with Bruce Mortensen and Dave Kelly of Dell. They wanted to know who was going to evaluate the bids. Mr. Lyons had found out that the evaluation committee would be

chosen by Wanda Liczyk and she had assigned Len Brittain to head it up. (That was not entirely accurate, as it turned out. Wanda Liczyk would ask Len Brittain to conduct the financial evaluation, but he would delegate the task.) They wanted to know who would write the report and make recommendations, and Mr. Lyons told them it would be “Treasury, as IT has all it wants.” DFS also wanted to know how the criteria in the RFQ would be weighted. Mr. Lyons said that the decision would boil down to “cost per thousand and it is essentially pricing!” Mr. Lyons had a lot more information about what IT wanted and didn’t want. All of it was confidential, and all of it of great interest to every bidder. DFS managed to get this confidential information four days before its response to the RFQ was due.

Once again, Jim Andrew denied leaking the confidential information. Once again, Mr. Lyons couldn’t remember who in IT leaked it to him. And once again, he lied. It was clearly his trusty mole, Jim Andrew.

J. TEN OR FIFTEEN MINUTES WITH MR. LYONS

Some time between May 25, when Jeff Lyons took Scott Marentette to meet Tom Jakobek, and the June 11 RFQ submission deadline, Mr. Marentette invited Mr. Lyons to a strategy meeting at the DFS offices in North York. He and Rob Simone wanted to talk to him about a number of issues that needed to be settled before DFS responded to the RFQ. Mr. Marentette called it “crunch time,” the “11th hour.” When Mr. Lyons arrived, the three of them moved into a small, nameless meeting room.

What happened next resulted in a criminal investigation by the OPP, temporarily brought the inquiry to a halt, and exploded onto the front page of the *Toronto Star* with a headline screaming, “Bribery Allegation Probed in Computer Contract.”

1. FLASH FORWARD: A RIVAL LOBBYIST HEARS A JEFF LYONS STORY

About 18 months after that short meeting, Scott Marentette had left DFS and was working at another company. One day in early December 2000, he met an old school friend for drinks or lunch. The friend brought along a

lobbyist, Frank Carnevale, who wanted to pitch his services to Mr. Marentette's new employer. At some point, Mr. Marentette told what Frank Carnevale considered a "war story." It was about a meeting Mr. Marentette had once had with one of Mr. Carnevale's competitors: Jeff Lyons.

Many months later, as fate would have it, Frank Carnevale met Rob Simone, who by then had also left DFS. Mr. Carnevale asked Mr. Simone to tell him "the story," and Mr. Simone did.

Again as fate would have it, either the same day or within a few days, Mr. Carnevale passed by City Hall, as he often did as a lobbyist who gathers intelligence. There, coincidentally, he ran into Jack Lakey, a reporter for the *Toronto Star*. Over coffee, he told Mr. Lakey the story about the conversation at that meeting back in 1999. One way or another, Mr. Lakey would end up speaking to Rob Simone.

Meanwhile, the inquiry had learned of the conversation, too. We contacted the OPP and brought it to their attention. Then, on the first day of hearings, September 30, 2002, I adjourned them. The OPP had requested that I do so during the critical initial stage of their investigation.

On October 3, 2002, the sensational headline referred to above appeared on the front page of the *Star*.

So what happened at this meeting?

2. THE MEETING, AS TOLD BY ROB SIMONE

After some "idle chitchat" about how things were going, Mr. Lyons turned to Mr. Simone and asked him something "a little odd": "Rob, what is this deal worth to you?"

Mr. Simone didn't understand what he meant. He assumed Mr. Lyons wanted to know how big the leasing contract would be, so he replied that it was worth \$150 million.

"No, that's not what I meant," said Mr. Lyons. "What's it, sort of, worth to you?"

"What do you mean?" Mr. Simone asked.

"Well, Tom says it's worth one hundred and fifty grand," Mr. Lyons told him.

Mr. Simone still didn't understand. "Well, what do you mean," he asked again, "like a payment of \$150,000?"

Mr. Lyons “basically agreed.” That didn’t make sense to Mr. Simone. Did he mean that if DFS made such a payment, Mr. Simone could bid whatever he wanted, yet go on to negotiate a deal with the City?

“No, no,” said Mr. Lyons. “You have to be low.”

That made even less sense to Mr. Simone, and he said so. He thought DFS would be lucky to earn \$400,000 to \$500,000 in profit on the three-year lease contract.

Mr. Lyons retorted, “Well, you know, MFP would pay one hundred and fifty grand. Others would pay one hundred and fifty grand.”

“No, it’s impossible,” Mr. Simone told him. Surely he meant that if they paid this money, they could bid whatever they wanted. Mr. Lyons said no, they would have to be the lowest bidder. “Then why—why do I have to pay this one hundred and fifty grand, if low wins?” Mr. Simone wanted to know.

Mr. Lyons didn’t respond, and that was the end of the conversation. The meeting may have only lasted 10 to 15 minutes.

Mr. Simone had not asked, “Tom who?” He assumed Mr. Lyons meant Councillor Tom Jakobek. Councillor Jakobek was the only “Tom” Mr. Simone knew of who had met with Mr. Lyons in connection with the RFQ.

After Mr. Lyons left, Mr. Simone was angry and “vented” to Mr. Marentette. He asked Mr. Marentette who he thought “Tom” was, and Mr. Marentette agreed it had to be Tom Jakobek. They agreed Mr. Lyons was trying to leverage more money out of DFS. Mr. Simone said, “I think we kind of chalked it up to Jeff trying to basically shake us down for some money before this tender closed.”

Mr. Simone and Mr. Marentette reported the conversation to their boss, Gord Barrett. He wanted to fire Mr. Lyons immediately, but cooler heads prevailed. After all, the deadline for bids was only days away.

3. THE MEETING, AS TOLD BY SCOTT MARENTETTE

Scott Marentette, who was in the same room at the same time, remembered that Jeff Lyons asked for a sum of money, but he couldn’t remember the figure. He didn’t remember that Mr. Lyons mentioned “Tom.” He had felt uncomfortable. He, too, used the term “shakedown” and said he thought Mr. Lyons was asking for more money for himself.

As “just the sales guy,” he was in no position to agree to pay Mr. Lyons more money. And he had been angry. Mr. Lyons seemed to be applying pressure “at a critical time in our process” of preparing for the RFQ bid.

4. THE MEETING, AS TOLD BY JEFF LYONS

Mr. Lyons was apparently astonished when, after the April 23 meeting with City staff, it dawned on him how much the computer leasing RFQ could be worth—potentially as much as \$150 million. Now his \$3,000-per-month retainer from DFS seemed skimpy. He started thinking that he deserved a success fee if DFS won the RFQ, somewhere in the neighbourhood of \$100,000 to \$200,000.

Accordingly, he asked Rob Simone during this meeting how much he thought the contract was worth, and he might have added something like “I think if I’m successful, I should receive a fee of \$150,000” or “If we get this bid, my fee will be \$150,000.” Mr. Simone gave him a look, as if to say “What’s this all about?” or “What the heck is going on here?” Seeing his reaction, Mr. Lyons said to himself, “Why did I even bring this up?” At that moment, he realized that he should have been talking to Gord Barrett, Mr. Simone’s boss.

He never talked to Mr. Barrett about it subsequently because, according to Mr. Lyons, Mr. Barrett wasn’t showing any interest in the RFQ bid.

5. THE OPP INVESTIGATES

Tom Jakobek denied any knowledge of or involvement in any alleged wrongdoing. The OPP asked him directly about his relationship with Mr. Lyons. Mr. Jakobek said he had known Mr. Lyons for over 20 years, in effect as a lobbyist, but that every councillor knew him. That response was intended to mislead. He disavowed a close friendship of more than two decades’ standing.

As was his legal right, Mr. Lyons invoked his right to silence in the criminal investigation and didn’t speak to the police.

The police investigated the conversation that took place at that meeting, laid no charges, and closed their file.

6. THE INQUIRY SIFTS THROUGH THE EVIDENCE

Police investigations are conducted in private. The inquiry had powers different from those of the police, and was able to compel people to speak publicly about the conversation. The inquiry's investigation of the same conversation therefore took place in public hearings, under the blazing light of intense media focus.

All counsel for parties with standing were given transcripts of the recorded statements made to the OPP investigators about the conversation, by, among others, Mr. Simone, Mr. Marentette, Mr. Barrett, Mr. Carnevale, and Mr. Jakobek.

During the public hearings, lawyer after lawyer put Rob Simone and Scott Marentette through a rigorous examination of their evidence concerning that strange and troubling conversation with Mr. Lyons. Frank Carnevale and Gord Barrett also testified. Some of the lawyers questioned the witnesses with precision and courtesy, but others harried them mercilessly. Mr. Simone, Mr. Marentette, and Mr. Carnevale were subjected to an aggressive and combative cross-examination by Mr. Lyons's counsel. For days, the details of the conversation were ripped apart, dissected, and rolled over and over until every nuance of every word had been intensely scrutinized for the smallest morsel of possible meaning. In another context, the cross-examination would have seemed brutal. In this context, given the repercussions for Mr. Lyons's career and reputation, I allowed greater leeway than I might otherwise have done.

7. WHO WAS TELLING THE TRUTH?

Rob Simone was an honest and fair witness who withstood a particularly scathing cross-examination by Mr. Lyons's lawyer. He needlessly apologized for not being "used to this sort of cross-examination" and explained that he was not accustomed to thinking in precise chronological order about the details of events so far in the past.

Under prolonged and intense questioning, he was a highly suggestible witness, answering "Sure" and "Correct" literally hundreds of times. It was sometimes difficult to tell whether he was agreeing because he didn't understand the questions or because he just wanted to get it over with as quickly as possible. His recollection of the essential facts was strong, though, and he

was ultimately not shaken on the critical points of the conversation. He was no longer in the leasing business and stood to gain nothing from his testimony. His memory of the events was also better than Mr. Marentette's or Mr. Lyons's.

Scott Marentette didn't relish being in the witness box. Unlike Rob Simone, he was still working in the leasing business—and for a company doing business with the City. His current employer didn't even want to be identified. Clearly, he knew more than he was admitting, but he was also very fair to Mr. Lyons. He tried very hard to stick to his own recollection, unclouded by everything else he'd heard and read in the intervening years. He tried to keep speculation and other people's views out of his evidence. He may have been reticent, but he was also believable, and he stood up for how he had felt at the time of the events.

Mr. Lyons's testimony has to be considered in the light of the DFS documents he falsely claimed he had destroyed, but which were later found.

Both Mr. Simone and Mr. Marentette testified before Mr. Lyons's DFS file had been located and entered into evidence. The contents included the letter to Dell where he proposed a success fee for himself—the proposal Dell rejected. There was his memo to file concerning the meeting with Scott Marentette and Tom Jakobek, and the one describing the June 7, 1999, meeting with Mr. Simone, Mr. Marentette, Mr. Kelly, and Mr. Mortensen. There were also records of his meetings and conversations with his main DFS contact, Mr. Marentette. If Mr. Lyons hadn't lied about the existence of these documents, it is possible that they would have refreshed Mr. Simone's and Mr. Marentette's memories and more light could have been shed on the content, much of which concerned Mr. Lyons's working relationship with DFS, and Mr. Marentette in particular.

Nevertheless, it was possible to draw some conclusions from what Mr. Lyons didn't say. For instance, when confronted with Mr. Simone's evidence, he didn't say that he couldn't for the life of him imagine what he had said at that meeting to make anyone think he was asking for a bribe on behalf of Tom Jakobek. Instead, the conversation was so banal to him that he didn't even clearly remember how he had asked for \$150,000, or whether he had used the words "success fee." This came from someone who has been described as a smooth operator, a kingpin, the most influential guy around, a power broker, and a rainmaker.

Compared with Mr. Simone and Mr. Marentette, Mr. Lyons didn't fare well as a witness. His story dribbled out, giving the impression that he was making up the answers as the hearings went along. With respect to the supposed success fee, much of what he said simply didn't ring true. His responses were self-serving and raised more questions than they answered. Moreover, he lied about his DFS documents and he lied about Jim Andrew being his mole.

8. A SHAKEDOWN?

Was it a last-minute shakedown for extra cash for himself, a success fee? Possibly. Mr. Marentette said that's what he assumed, even though he didn't recall Mr. Lyons ever once using the phrase "success fee," either at that meeting or during any other conversation before or after that meeting. If Mr. Lyons was indeed seeking a success fee, he was taking advantage of DFS's vulnerable position, on the eve of the tender, to enrich himself.

Suppose he did ask for extra fees for himself. Why would an experienced and smooth lobbyist, a fundraiser extraordinaire, friend to movers and shakers at every level of government, make the rookie mistake of asking for money from two people who were in no position to give it to him? Why not ask Gord Barrett, with whom he had negotiated the original retainer? He'd seen Mr. Barrett at other meetings. Why did he not ask him then, or, having realized his mistake as he claimed, call him later if he felt he was entitled to a bonus? Why back off simply because of the look on Rob Simone's face? Why would he ask himself why he had ever brought it up? These were his clients. Mr. Lyons was an extremely experienced lobbyist. By his own admission, there was not one other individual at City Hall who had more influence than he did between 1997 and 2000. He can also be very charming, as he demonstrated numerous times with counsel at the hearings. If his clients didn't seem to understand what he was asking, why would he not take the time to explain it to them?

The timing of the request makes no sense either. Mr. Lyons had asked Dell for a success fee at the very outset of his relationship with them. They had refused. Why then would he wait until the 11th hour to try to get one from DFS, which he saw as an "adjunct" of Dell? Why would he think he'd have any more luck with DFS than he had had with Dell, especially as he

himself saw DFS as a “small orphan” and, among Dell, MFP, and DFS, the one that needed protecting?

For a few weeks before this meeting, he had apparently been thinking that this was a big contract and that he’d been a bit foolish not to have worked out a success fee. He was thinking his fee should have been between \$100,000 and \$200,000. If Mr. Lyons thought he should get a success fee, why did he wait until Scott Marentette set up a meeting with him instead of setting up a meeting himself specifically to discuss it? Why not go directly to Gord Barrett, who had retained him in the first place?

What rationale did he use, at that point, to conclude that a \$43 million contract should attract a success fee of \$100,000 to \$200,000? He said he based the \$150,000 figure on the complexity and size of the contract. But he knew from the meeting with Mr. Simone and Mr. Marentette that DFS was going in “skinny,” meaning that, even if successful, DFS wouldn’t reap much profit. Rob Simone thought it wouldn’t be more than \$400,000 to \$500,000 over three years. Why would Mr. Lyons think they would be able to come up with \$150,000 at the last minute, and why would he think he deserved anything more than his retainer? If he thought he was entitled to a fee, why not engage in some negotiation with his clients rather than present them with an all-or-nothing amount and then immediately back off?

Mr. Lyons was a powerful lobbyist with 40 years’ experience in the political arena. Success fees, though, were not a standard part of his practice at that time. At the most, he may have negotiated a success fee only one time before he asked for this one, and that was for an amount far less than he was requesting here. Further, as mentioned earlier in this chapter, we heard from the provincial Lobbyist Registrar, during the Good Government phase of the inquiry, that only about 5 per cent of registered lobbyists declared contingency or success fees. So if it was not common for him to negotiate a success fee, and not all that common for other lobbyists either, why would he disparage these two gentlemen for not seeming to understand the concept of success fees, especially as he never used those words?

From a value perspective, did Jeff Lyons deserve a success fee if DFS had won? Did he deserve a success fee of \$150,000? He said that the DFS account wasn’t a “big issue” in his office and they weren’t tenaciously pursuing it. In that case, what did he do for DFS that he thought had earned him \$150,000?

Mr. Lyons worked for DFS for about six months and was paid \$18,000. The activities he acknowledged—namely, an initial meeting with Mr. Barrett for about 45 minutes, a meeting with Ms. Liczyk and colleagues for about an hour, five meetings with Mr. Marentette that lasted about half an hour each, a meeting with Mr. Jakobek and Mr. Marentette that lasted about half an hour, approximately eight short telephone calls, some memos to file, and intelligence and strategizing—come to a total of about five and a half hours. Is that worth a bonus of \$150,000 on top of the retainer?

9. A SHAKEDOWN BY PROXY?

At the meeting with Mr. Simone and Mr. Marentette, Mr. Lyons undoubtedly said, “Tom” said the deal was worth \$150,000. And he meant Councillor Tom Jakobek. This casts the whole conversation in a much more disturbing light. If Mr. Lyons was truly asking for extra fees on his own behalf, why would he even refer to Mr. Jakobek? Since when does a City Councillor set the amount of a lobbyist’s success fee? And why would Mr. Lyons suggest that MFP and others would pay \$150,000? How would he know?

Does “Tom” set the price because “Tom” is a powerful councillor who can ask for illicit payments in return for a successful tender bid? Tom Jakobek was the chair of the Budget Committee. The deal would go through the Policy and Finance Committee, of which he was a member. Mayor Lastman agreed that he was influential, and he was widely acknowledged as a politician who wielded power at City Hall. Mr. Lyons, with all his inside experience at City Hall, identified no other politician, up to and including the Mayor, whose support was critical to the success of this bid. If any politician was in a position to sell success for a secret commission, it was Tom Jakobek.

Was Jeff Lyons delivering the message for his close friend Tom Jakobek, to the effect that his support could be bought for \$150,000? That would certainly explain the reference to him; a reference that makes no sense if Mr. Lyons was simply negotiating his own bonus. And Mr. Jakobek’s relationship with Dash Domi might explain the reference to MFP being willing to pay.

It would be rather clumsy to baldly ask someone for an improper payment, especially if you don’t know your target well. There are many oblique ways to ask, and you’d want to leave enough ambiguity in the request to give

you an escape hatch if it was rebuffed—float the idea in a roundabout way, gauge the reaction, and back off if it doesn't look promising. But, obviously, ambiguity in a conversation doesn't necessarily imply impropriety or illegality, just because ambiguity is *de rigueur* in the course of initially asking for secret payments. And maybe Mr. Jakobek had no idea his name was going to be used in this fashion. On the other hand, when interviewed by the OPP, Mr. Jakobek had distanced himself from Mr. Lyons, and he persistently lied to the inquiry about many things.

Mr. Lyons lied to the inquiry about the existence of the DFS file, saying it was destroyed when it was not. Perhaps he was worried that the DFS file might contain a smoking gun.

A public inquiry is charged with uncovering the truth to the extent that it is possible to do so. Therefore, this inquiry could not neglect the responsibility to investigate plausible evidence of an illicit payment request during a multimillion-dollar government tender. Inquiry investigators and lawyers responded appropriately and discharged their responsibilities conscientiously.

The conversation that drew so much attention remained what it was at the beginning: a study in carefully constructed ambiguity. Ultimately, however, the premise that Jeff Lyons was soliciting an improper payment on behalf of himself and/or Tom Jakobek is plausible. It fit the facts and cannot be eliminated.

But the inquiry was not over. The big issue that came out of a small meeting was to lead further into the tangled web of Tom Jakobek's deceit.

K. ALL IS FORGIVEN AT MFP—JEFF LYONS IS BACK

It is easy to imagine that Irene Payne must have felt embarrassed. It was she who had hired Jeff Lyons, and it turned out that he had also been lobbying for DFS, which MFP saw as its biggest competitor for the City's leasing business. She had been angry, and had taken immediate action to terminate his services. But the falling-out was not to last long. About three months after Irene Payne fired him, it seemed all was forgiven. Jeff Lyons was rehired.

After MFP had won the RFQ, Mr. Lyons met Irene Payne again over a friendly, late-summer round of golf, along with Hal Shaw, a senior MFP

sales representative who worked on provincial accounts. They had a long talk and discussed MFP's business objectives. In September, Irene Payne sent Mr. Lyons a note. Compared with her angry letter to him in May, its tone was remarkably different, and she included a gift, a small globe for his desk:

It was really nice to see you again at the Premier's Golf Charity and I appreciate your time to meet with Hal Shaw and myself last week....

I know your assistance will definitely help MFP achieve its business objectives and I am pleased that we sorted out all the details.

Jeff, I look forward to a mutually, beneficial work relationship with you for a long time.

Please enjoy the small token I have sent your way.

Irene Payne was pragmatic about the change in her attitude. Her harsh words to Mr. Lyons in the letter in May were, she said, a bit hasty, prompted partly by nervousness about working with a lobbyist in the first place. "Obviously, we were pretty upset," she said, when it became clear that Mr. Lyons was working for DFS. But, she also said, "the fact is, you get on with life.... If he could have assisted us in another opportunity, so be it."

Mr. Lyons continued with MFP from September 1999 until January 2002, working on various projects at the three levels of government. Some of those projects would come up in this inquiry, including the deal for the photocopier leasing.

When eyebrows were first raised at the City about the contracts with MFP mid-2001, and four words in a staff report on photocopiers made councillors start asking questions, Peter Wolfrain turned to Jeff Lyons to gather intelligence at City Hall. Mr. Lyons gave MFP verbal updates and said he "had a number of chats" with Mr. Wolfrain about the gathering storm, which also touched on MFP's woes in Waterloo and Windsor.

We have now seen the story of the computer leasing RFQ from the perspective of two of the leasing companies vying for the City's business. What was happening inside the City? How did the City decide what it needed to buy, and how to pay for it?

VIII. HOW THE CITY MADE ITS SHOPPING LIST

MOST OF US HAVE TO GO OUT TO SHOP, or at least visit a vendor's website to buy things. Governments shopping for millions of dollars' worth of goods and services do not have to do that. They make a shopping list and interested sellers bid on it. That is how the City of Toronto went shopping for computer leasing services in 1999.

For major purchases, the job of writing out the shopping list fell to Purchasing (Purchasing and Materials Management Division). Any department needing goods or services decided what it needed, and Purchasing wrote out the shopping list and went to market. For two reasons, however, the job of writing a shopping list for computer leasing services was much more complicated than simply jotting down grocery items missing from the cupboard.

First, buying leasing services is complicated. Second, Purchasing was shopping with the taxpayers' money. The acquisition of millions of dollars' worth of IT leasing services must get for the City what it needs, but the process of getting it must also be carried out in a fair and transparent way that gives the taxpayers value for money. That was Purchasing's critically important task.

Lou Pagano, the Director of Purchasing, described his division as a "gatekeeper" whose job it was to make sure the City's purchasing guidelines, policies, and bylaws were followed and that the City got the best

price and value for the taxpayers' money. In 1998, under the Interim Purchasing Bylaw, departments could do their own shopping up to a limit of \$7,500. Above that limit, Purchasing took over some of the process, but not all of it.

When the shopping fell to Purchasing, its function was to design and operate a competitive bidding process that would be fair, transparent, and accessible. City policy and bylaws required Purchasing to issue "call documents," generally tenders—RFQs or RFPs. It was not Purchasing's job to judge the needs of departments requesting goods or services. Needs assessment was up to the requesting department, which would tell Purchasing what it wanted to buy and in what quantity. So although Purchasing wrote out the shopping list, it was taking dictation from the departments.

In this case, the dictation was given by IT. In the spring of 1999, IT staff had already started buying new computer equipment. They had also become convinced that leasing was the best way to upgrade the City's computer technology assets. Leasing was attractive because the department wouldn't need to keep going back to City Council to get approval for more capital expenditure when it came time to upgrade the equipment, and the cost could be spread out over a number of years. This, IT staff believed, would mean the ability to upgrade more frequently. That was why leasing services were on the shopping list.

A. NO LEASING EXPERTISE AND NO EXPERT CALLED IN

Lou Pagano became the Director of Purchasing in April 1998, the first person to hold the position after amalgamation. He brought to the job experience in municipal purchasing dating back to 1982, when he started working for the former City of Toronto. Reporting directly to CFO and Treasurer Wanda Liczyk, Mr. Pagano was responsible for managing and providing leadership and direction to Purchasing, preparing reports to Council and committees, and developing new and innovative methods of purchasing. In his testimony before the inquiry, Mr. Pagano agreed that leasing could be considered a new and innovative method of purchasing. It was certainly new to his division.

Lou Pagano agreed that it was his responsibility to ensure that his staff were trained in all aspects of purchasing, including relevant legislation and procedures, and he agreed that his staff should be trained in leasing. But in 1998, with the pressures of amalgamation and staff shortages, there was no time for training, and none of the Purchasing staff had any formal training in leasing or any real experience with buying leasing services.

Dave Beattie was the buyer assigned to the computer leasing acquisition. Although he had attended an MFP presentation by Rob Ashbourne in April 1998, he couldn't recall any details. He was assigned to work on the leasing RFQ, but he never received any training in leasing nor did he suggest to his superiors that he needed any. At the time of the inquiry, Purchasing staff still had not received any such training.

Faced with that situation, and given the amount of money involved, a prudent division head would surely consider bringing an expert on board before issuing a call document. Yet Lou Pagano didn't do that. According to Dave Beattie, the old City of Toronto had always used consultants for specialized purchasing work. Perhaps because of his long experience with purchasing, Mr. Pagano thought that this square-peg acquisition could be hammered into a familiar, round-hole purchasing process. Neither Mr. Pagano nor his staff appear to have thought about whether the existing purchasing protocols suited this acquisition, or what the City needed or wanted from it.

B. BREAKDOWN IN COMMUNICATION

There were new features to this acquisition, including the sale and leaseback. The City bought computers from Dell. It then sold the computers to MFP and leased them back from MFP: a sale and leaseback. Thus, the sale and leaseback included both acquisition and disposal. Technically, the City would be disposing of property, but the property would never really be gone. In any case, the actual sale of City property was not Purchasing's responsibility, except in the case of obsolete or surplus equipment. Moreover, the point of sale and leaseback is the financing and tax advantages, and it was not Purchasing's job to analyze those. Its job was to select the right purchasing method and then carry it out.

But when Purchasing made out the shopping list, it didn't understand the leasing transaction as IT envisaged it, including the fact that there was

a sale and leaseback component. Lou Pagano said that if Purchasing had understood there was a sale and leaseback, he would have recommended that IT obtain explicit approval from City Council. There were other very important things Purchasing didn't know: IT's idea was to get an open-ended deal with an exclusive leasing "vendor of record," with no limit on the amount of equipment, no pre-specified lease terms, and no competitive process for future lease rates. No one in IT ever told anyone in Purchasing that this was the extent of their plan. Had someone done so, Purchasing would have approached the draft procurement document very differently. The type of tender document issued, its contents, and the evaluation of the bids would likely have been very different.

Moreover, Purchasing had a duty to ensure the fairness of the competition. Not being told exactly what they are bidding on cannot be considered fair to bidders. Yet that is what happened, and the effects of the lack of communication between IT and Purchasing are discussed in the next chapter.

C. AN EXPLOSION OF PAPER: PURCHASING AFTER AMALGAMATION

For many months after amalgamation, life in Purchasing was stressful, difficult, and disorganized. For Lou Pagano, it was the most challenging time of his career. He was not appointed Director until the end of April 1998, four months after amalgamation. His full management team was not in place until July or August. The workload ballooned that year, but staff numbers shrank by more than 15 per cent. The magnitude of the workload is difficult to appreciate without comparing the numbers from during and after the transition period, along with the most recent figures, for 2004:

The difference in workload from 1998 to 2001 is startling, as illustrated by the change in the number of purchase orders and contracts compared with dollar value. In 1998, the City issued 27,584 purchase orders and contracts for a total value of about \$463 million. The workload decreased by almost half in 1999 but was still more than three and half times the "normal" workload of 2001, even though the dollar amount increased by less than half. In 2001, with the documents and policies standardized, it took

Performance Measures	1998	1999	2000	2001	2004
Number of RFQs, RFPs & tenders	1,540	1,222	1,649	1,776	1,991
Average number of bidders per RFQ and per tender	Not available	Not available	38	42	52
Number of purchase orders and contracts issued	27,584	14,979	7,106	4,060	3,175
Total value of purchase orders and contracts	\$462,510,273	\$701,791,680	\$1,099,916,619	\$1,003,155,802	\$873,202,077

only 4,060 documents to obtain goods and services of more than \$1 billion. By 2004, it took only 3,175 to obtain goods and services of a value almost twice that of 1998.

Why was this? Well, following amalgamation, the purchasing bylaws of each of the seven former municipalities continued to apply. Not only did policies and procedures vary among the former municipalities, they were also different from one department to the next in the same municipality. This meant that staff had to figure out which of the seven (or more) policies applied to any particular acquisition. Until there was a unified purchasing system, the City had to draw up shopping lists in seven different ways, which was hardly the model of efficiency and consolidation that amalgamation had promised. It was all the different purchasing systems operating at once that had led to the overwhelming number of documents Purchasing had to churn out in 1998.

So, in the wake of amalgamation, staff were under enormous pressure to generate an unprecedented number of purchasing documents, and to do it faster with fewer people. Meanwhile, Purchasing staff were scattered around the various locations left over from the amalgamating municipalities. Turnover was high as staff retired or left for other, less stressful municipalities.

Many of the remaining staff were competing for positions in the new City as staff numbers were cut.

To get all the former municipalities operating under the same purchasing procedures, City Council passed an Interim Purchasing Bylaw in March 1998. This was a temporary measure, which lasted for two years, until a final purchasing bylaw could be put in place, which has since happened.

D. RFP OR RFQ: WHO MADE THE DECISION?

In April 2003, Council approved the Auditor General's exhaustive and detailed Procurement Process Review report, which contained a host of observations and recommendations. By then, the City had already started making some very necessary changes, and it is continuing to do so as I write this report. In 1998/1999, however, at the critical time when the computer leasing RFQ was issued and evaluated, the situation was very different, and it was exacerbated by the amalgamation problems already described.

Dave Beattie, who had carried out the telephone bidding on the councillors' computer leasing deal back in December 1997, was assigned to prepare a call document. The document was supposed to describe the needs of the requesting department and include certain boilerplate text setting out the conditions for submitting a bid, such as rules about Canadian content, a fair wage policy for bidders, policies to protect the environment, deadlines for returning bids, and so on.

As noted, Purchasing had no role in determining the specific business needs of the requesting department. Purchasing staff didn't have the necessary expertise for that, which is understandable—they couldn't possibly evaluate the need for snowplows, park benches, computers, and everything else the City had to buy to serve its residents. It was up to the department that wanted the goods or services to provide all the necessary details for the call document and set out its needs and technical requirements so that prospective bidders would know exactly what they were bidding on. The buyer in Purchasing was only responsible for reviewing the material drafted by the requesting department to make sure it was not deficient or in breach of purchasing policies before taking it to market.

One decision that had to be made before going to market was what form the shopping list would take. For computer leasing, the City had two types to choose from: RFQs and RFPs.

RFQs were typically used when the City knew exactly the type and quantity of goods or services it wanted to buy. The RFQ provided a description of the items or services required and the bidders submitted prices based on that. The winner was generally the vendor with the lowest bid meeting all of the specifications and requirements in the RFQ. In other words, RFQs focused almost entirely on the lowest price for exactly the same thing.

RFPs, on the other hand, were used when a department required a solution to a particular problem that could be solved in any number of ways. The RFP established the criteria to be met by the proposed solution, and the proposals were evaluated against those criteria. A scoring sheet was used to evaluate the responses, and the contract was generally awarded according to the highest score. In other words, RFPs looked for the best solution to a given problem.

The choice between an RFQ and an RFP had to be made for the computer leasing business, but whose job was it to make that choice? Answering that question during the inquiry seemed like a shell game: every time a shell was lifted, the ball was somewhere else.

Dave Beattie said it was usually the requesting department, not Purchasing, that decided whether it would be an RFQ or an RFP. I asked him how the department would make that decision, since staff in the requesting department wouldn't necessarily have purchasing experience. Mr. Beattie said that was true, but at the time, it was "very evident" that IT staff knew exactly what they wanted: a 36-month lease. Later, Mr. Beattie said that if the requesting department didn't know which process was appropriate, it would be Purchasing's role to give instruction in even the most fundamental aspects of whether a request should proceed by way of RFQ or RFP.

Jim Andrew, Executive Director of IT, didn't think it was the requesting department's decision. He said the "choice of vehicle was the responsibility of the Purchasing Division." Mr. Andrew was out of the country at the end of the process but said he "always thought it would have been an RFP, just by the size," and that the switch to an RFQ was made at the request of Purchasing. He said he thought it was Brendan Power, a consultant working on the Y2K Project, who told him about the change.

Brendan Power also believed the RFQ-versus-RFP decision was Purchasing's responsibility. He claimed that Frank Spizarsky, Dave Beattie's boss, told him that for the leasing transaction IT was proposing, an RFQ was the way to go. Mr. Beattie couldn't say one way or the other whether Mr. Spizarsky gave Brendan Power that advice. Mr. Power's testimony was vague on what he told Mr. Spizarsky about IT's plans, and he couldn't recall whether he got into specifics about the leasing program. He "guessed" that he would have outlined what IT was attempting to do and asked for some direction on the call document, whereupon Mr. Spizarsky would have told him about the RFQ process. That seems like a bad guess, since Mr. Power had leasing experience and Mr. Spizarsky did not. And if he did get that advice from Mr. Spizarsky, why would he accept it without question? He had experience in leasing with the Province of Ontario, where this sort of acquisition would certainly have gone out as an RFP. (For medical reasons, Mr. Spizarsky was not a witness at the inquiry.)

So, if Purchasing and IT each thought it was the other's responsibility to make the decision, how was the decision made?

Having looked under all of the shells, it seems that the decision to go with an RFQ was indeed made by Purchasing, but only because IT gave it to understand that the acquisition would be a simple question of the best price for exactly the same thing. If Purchasing had been told the details of IT's plans, or had asked the right questions about them, it seems clear that an RFP would have been the appropriate choice. IT had a problem, and there could have been many ways to solve it, which points to an RFP not an RFQ. The tender included hardware, software, and complicated financial considerations like the sale and leaseback. It was not going to be a quote on quantities of identical paper clips. Again, that points to an RFP as the appropriate call document.

Even if the line of responsibility for the decision had been clearer, shopping for complicated goods and services would have required teamwork. The IT department kept Purchasing in the dark about what it was attempting to do, and Purchasing seems not to have asked or didn't understand. Certainly, Purchasing should have ensured that IT had thoroughly assessed the various procurement options available, but it was also up to IT, as the primary drafter of the tender document, to involve Purchasing early in the

drafting process. As it was, it appears that no one from IT sent the RFQ to Purchasing until about two business days before it was to be issued. The taxpayers deserve better from people who are shopping with their money.

E. ONE PROBLEM PURCHASING DIDN'T HAVE: CODE OF CONDUCT

Purchasing staff in the public sector have a lot of money to spend, and aggressive vendors seeking a competitive advantage might seek to curry favour with them. Needless to say, that is unacceptable. Public money must be spent only in the best interests of taxpayers, and not a penny must be spent in favour of a particular vendor simply because a sales representative got close to someone in Purchasing or entertained them at company expense. Codes of conduct for both public servants and private companies seeking to do business with government must make this very clear.

A unified conflict of interest policy or code of ethics for City staff didn't exist after amalgamation until August 2000. It was rolled out in the spring of 2001, and a copy of the policy was inserted in every employee's pay envelope. Until then, in the absence of a unified policy, staff were governed by the policies of their former municipalities.

In the midst of the disarray of amalgamation, the new City was fortunate that Lou Pagano was a man of integrity. He took a commendable, first-rate approach to conflict of interest issues. Under his direction, Purchasing staff were governed by a much higher standard in conflict of interest matters than any other City employees. In fact, if all City staff had been governed by Lou Pagano's ethical standards, the suggestions of conflict of interest that arose during this inquiry could never have been made. For example, Purchasing staff were not permitted to accept gifts or favours of any value whatsoever from suppliers—not trips, not golf games, not hockey tickets, not lunches, not boxes of chocolates, and not even the ubiquitous coffee mug. Once a year, usually around the Christmas season when he felt they were most vulnerable to gifts from suppliers, Mr. Pagano would distribute a memo reminding staff of the absolute prohibition on receiving gifts or favours of any kind. Staff were not discouraged from attending presentation/information sessions put on by suppliers, which could be a

valuable source of information, but they were required to clear it with their manager or with Mr. Pagano.

Purchasing staff were also required to abide by the codes of ethics of the Purchasing Management Association of Canada (PMAC) and the National Institute of Governmental Purchasing (NIGP). The NIGP code of ethics, in contrast to the City's conflict of interest policy and the PMAC standards, prohibits gifts of any kind—even of nominal value. It is a wise policy for purchasing staff, because even gifts of nominal value, well chosen to match the preferences of the recipient, can have influence far beyond their monetary worth.

Lou Pagano would discuss conflict of interest issues at meetings with his managers and would ask them to convey the substance of these discussions to staff. This is likewise a commendable practice. It takes persistence to maintain an ethical working environment. It is not enough to post policies on the wall and assume they will gain a life of their own. The policies must be brought to life repeatedly, in day-to-day discussions about how the department's work gets done. Only then will sound ethics become as deeply rooted in a department as they need to be.

IX. DRAFTING THE RFQ: A BAD BARGAIN STARTS WITH A BAD SHOPPING LIST

A MAJOR ACQUISITION LIKE LEASING SERVICES for the City's IT needs called for a team effort—close communication and co-ordination between IT and Finance, each bringing to the team unique and crucial expertise. Were they working as a team when the City went to market in the spring of 1999? In a word, no.

The leasing transaction had both Finance and IT elements. It was a means of paying for computer equipment and software, an alternative to buying, so it was a Finance matter. But it was also a way of acquiring and upgrading needed hardware and software over time, and the need originated in IT. Thus, from the very start, both Finance and IT staff should have been involved, working together, with each looking at the transaction from a particular perspective. That didn't happen. IT was determined to take the lead on the project, and didn't clearly communicate the intention behind the leasing program. Finance, meanwhile, abdicated its responsibility and was content to see its role as secondary. IT's job was to protect the City's financial interests, but it didn't do that. IT had its information silo, and Finance was building up a store of questions that wouldn't be asked until it was too

late. Looking at the acquisition process as a whole, this fatal error was clear from the first step: drafting the RFQ.

A. BRENDAN POWER AT THE HELM OF A RUDDERLESS SHIP

In April 1999, Jim Andrew asked Lana Viinamae to lend him Brendan Power so that he could be IT's lead on the computer leasing acquisition process. Mr. Andrew had known Mr. Power for more than 25 years. They worked together for years in the Ontario government; indeed, Mr. Power had been Mr. Andrew's boss. They also played golf together from time to time. They didn't socialize other than that, but Mr. Andrew considered him a friend. Mr. Andrew never assessed Mr. Power's knowledge of leasing or his experience with drafting this type of tender. He made certain assumptions about Mr. Power's experience. Later, Mr. Andrew would concede that good judgment demanded heightened due diligence where friendship was involved. He never sat down with Mr. Power and asked him exactly what he knew about leasing and tendering. He had talked to him about leasing while he was still with the provincial government, and from those long-ago conversations, he felt quite comfortable that Brendan Power could handle a project of this size. He was wrong.

After he left the Ontario government in 1997, Brendan Power, through Brendan Power and Associates (where he was the only employee), offered his services to third parties as a consultant in business, leasing, or IT-related matters. Sometime in 1997, he heard through Jim Andrew about a consulting opportunity at what was then Metropolitan Toronto. By this point, Metro was hiring consultants only from larger entities, so Brendan Power signed on with EDS of Canada Ltd. Lana Viinamae interviewed him, and he was hired to be the project manager for implementing a human resources information system. While on that project, Lana Viinamae asked him to join the Y2K initiative, and, still an outside consultant, he became Metro's representative on the Y2K Committee. After Ms. Viinamae became Director of the Y2K Project office, she asked Mr. Power to be the project manager for External Partners and Agreements, still as an outside consultant, reporting directly to her. His job had two broad components, neither of which prepared him for the leasing RFQ:

- He and his team were to conduct an inventory of all existing City contracts with outside suppliers that had technology aspects to them. The purpose was to review these contracts for Y2K compliance and change them as necessary.
- He and his team were to make sure that all new agreements between the City and outside suppliers were Y2K-compliant. That included making sure that all tenders, RFQs, and RFPs issued, and all contracts with the successful bidders that followed them, properly addressed any Y2K issues.

As a Y2K project manager, Mr. Power made it his business to know City government, the relationship between committees and Council, and how staff reported to Council. He knew that Council relied on information from staff, and he understood the importance of giving Council complete information.

Just as all roads lead to Rome, all fingers pointed to Brendan Power with respect to the leasing RFQ. He had a role in the discussion regarding whether the call document should be an RFQ rather than an RFP, he drafted much of the RFQ, he consulted with Nadir Rabadi on the appropriate financial analysis, he revised the report to the Policy and Finance Committee, he negotiated the lease terms with Rob Wilkinson, he was the central figure in the computer refresh and leasing programs, he instructed the City's outside counsel on legal issues—and the list goes on. By the time he testified, Mr. Power appeared to have very little recollection of what he had been thinking at those critical times.

He was considered knowledgeable, experienced, and reliable, but when it came to the RFQ project, he demonstrated little of any of these qualities. The City staff involved in these transactions all assumed that Mr. Power would take charge, that Mr. Power would perform the necessary due diligence, and that Mr. Power would see to it that Council was fully informed about the recommended acquisitions. How could so many people have been so wrong? He must have given a very different impression in the office than he gave when he was in the witness box.

The best thing that can be said, perhaps, is that he wasted none of the time of busy staff at City Hall by pestering them with questions as he moved the RFQ through reporting to the Policy and Finance Committee, negotiating with MFP, and rolling out equipment.

From 1993 to 1999, Mr. Power had been Manager of Corporate Contracting Services in the Ontario government's Management Board Secretariat. During that time, he worked on about 20 RFPs, only two of which involved leasing. He drafted some RFPs and assigned others to the team reporting to him. Mr. Power was part of a team involved in drafting the RFP that MFP won to become the Province's leasing vendor of record in 1992. The program was re-tendered in 1996, and GE Capital won the leasing business. Between 1992 and 1996, Mr. Power met often with MFP representatives, primarily with Irene Payne and occasionally with Rob Wilkinson. Brendan Power considered Mr. Wilkinson a leasing expert. MFP employee Sandy Pessione had also worked for Mr. Power when they were both at the Province.

Mr. Power's only other experience with IT leasing was during two years in the early 1980s when he was the manager of the Queen's Park computer centre, where he had some involvement in purchasing and leasing computers. Thus, he had some limited experience in leasing hardware, but the Province would always retain leasing experts to help with this work.

Nevertheless, when he left the provincial government in 1997, Mr. Power marketed himself as a consultant in "business or leasing or IT-related matters." But looking back on the events of 1999, he said he didn't consider himself an IT leasing expert. "I would not put myself in the expert category," he would say at the inquiry.

Armed with some experience, but admittedly not an expert, Mr. Power became the lead person on the acquisition, including drafting the RFQ. And he was virtually unsupervised by senior IT staff. We still don't know whether Mr. Power reported to Jim Andrew or Lana Viinamae when it came to his involvement in the RFQ. It appears that he really reported to no one.

So it was left to Brendan Power. Neither Jim Andrew nor Lana Viinamae read the RFQ before it was issued to the public. Mr. Andrew thought his involvement was unnecessary. Once again, as with the earlier computer hardware RFP, he took the utterly illogical and indefensible position that, if he provided the appropriate senior management hands-on oversight, there might be a perception of undue influence. Because he was in a senior position, Mr. Andrew explained, Mr. Power and others below him might feel bound to accept his changes. Even if one were to accept this bizarre rationalization for not adequately supervising staff, it seems odd to take this

position vis-à-vis Mr. Power, who had, at one time, been Mr. Andrew's boss. Now that the tables were turned, surely Mr. Andrew couldn't presume that someone in Mr. Power's position would be intimidated or unduly influenced by him.

As the RFQ was being finalized in the last week of May 1999, Mr. Andrew was on vacation in Britain. That was the occasion when he had already planned a trip to Scotland to see a sporting event, but took the opportunity to have a supplier pay a large part of his travel expenses in exchange for a brief meeting in London. Mr. Andrew would later say that he was eager to be in the U.K. for that game, whoever was paying for it, and the fact that it took place during the critical finalization of the draft RFQ didn't justify passing up that opportunity. In retrospect, he thought this was bad judgment on his part.

Mr. Andrew detached himself from precisely the role he, as a senior manager, should have been discharging: reviewing the work of his staff with more experienced eyes and directing changes where necessary. He handed off a multimillion-dollar RFQ to a consultant whose qualifications he didn't properly vet, and walked away.

It was difficult to get yes-or-no answers out of Lana Viinamae, but it seems she assumed that Jim Andrew was supervising Mr. Power's work on the RFQ. In any case, she could see no reason why he wouldn't. In her view, it was absolutely necessary for the RFQ to be carefully reviewed by the head of IT to ensure that its requirements were included in the document. Apparently, only Jim Andrew had the odd view that senior management supervision somehow constituted undue influence.

Lana Viinamae likewise failed to make sure that the RFQ protected the City's interests, although her accountability was much less than that of Jim Andrew, and, in fairness to her, she had been very busy with Y2K matters at this time. While Mr. Andrew was on vacation during that last week of May, Ms. Viinamae was the Acting Executive Director of IT. In his absence, she didn't review the draft RFQ. She received a copy by e-mail but didn't read it. She said Mr. Andrew hadn't explicitly asked her to, so she wasn't aware that she was supposed to read it. This showed unexpected lack of initiative for a senior City manager. She filled Jim Andrew's shoes in name but didn't do the job. Incidentally, she coveted the job and was demonstrably angry when she didn't get it.

Mr. Andrew also saw the RFQ only much later, after it became controversial. His hindsight observations about what would have concerned him had he been doing his job properly were predictable—and useless: It should have been an RFP, not an RFQ. The sale and leaseback element should have been made clear, listing the specific assets. It should have said that the successful bidder would be the City's vendor of record. It should have listed all of the equipment the City would need over the three-year term. A generic method for calculating quarterly lease rates should have been built in. A method for calculating future lease rates should have been built in. The City should have reserved the right to reject any bid that didn't meet all the criteria. And, if the City wasn't satisfied with the lease rate after the 90-day guarantee period, it should have had the right to go to the next-lowest bidder or re-tender. It was a long list, but he missed one very important point: The RFQ should have been clear about how much the deal was really worth.

What were Finance staff doing in the meantime? Two divisions from Finance, Purchasing and Materials Management Division and Treasury and Financial Services, had some limited involvement in drafting the RFQ. They made some minor revisions and suggestions (ignored by Mr. Power). Otherwise, they took a hands-off approach. This was unfortunate. Not only did Finance staff not ensure that the RFQ reflected the City's financial interests, but they also failed to understand the scope of the leasing deal IT was contemplating. The drafting of the RFQ would have been the first opportunity for staff from Finance and IT to sit down together and discuss what they expected leasing in general to accomplish. Had they done so, they could have drafted a full and complete RFQ and, in the process, laid the groundwork for staff co-operation in the oversight of the leasing program.

B. STARTING WITH THE WRONG TEMPLATE: KARIM KASSAM'S DRAFT RFP

Early in the inquiry's investigations, an RFP dated April 30, 1999, clearly a draft, turned up among the documents produced to the inquiry by MFP. It came from Dash Domi's files and looked as though it might have been an early draft of the computer leasing RFQ. Several witnesses were asked about it, but no one knew where it came from. Eventually, it came out that City

staff didn't write this draft RFP. A private IT consultant, Karim Kassam, who had done work for MFP and hoped to market his services to the City, gave the draft to Jim Andrew. That happened on April 29, 1999, when Mr. Kassam went to see Mr. Andrew with Dash Domi. A few days later, Mr. Andrew gave it to Brendan Power to use as a template.

With penetrating hindsight, five years later, Mr. Andrew said, "I took the document Mr. Kassam offered me and passed it along to Mr. Power without the slightest heads-up. It's not good judgment when I think about it now."

C. A STRANGE REQUEST FROM TOM JAKOBEK

On May 17, 1999, a little over two weeks after Tom Jakobek's controversial trip to Philadelphia with Dash Domi, Jim Andrew e-mailed Tom Jakobek the draft RFQ at his request. The request was highly unusual. In Mr. Andrew's experience, councillors had never been interested in the mechanics of a tendering process before, and to the extent that they thought about tendering, it was after staff had finished drafting and evaluating the tender document.

Nevertheless, Mr. Andrew didn't tell his boss, Joan Anderton, about the unprecedented request. If he had, perhaps she would have questioned it or seen it as inappropriate. Perhaps Councillor Jakobek would have been asked why he wanted to see it. In any case, the extraordinary request should have gone on record. Lack of control over the security of the draft RFQ was yet another preventable error.

D. THE CATALOGUE OF ERRORS

1. THE WRONG DOCUMENT IN THE FIRST PLACE

There are several reasons why an RFP would have been more appropriate than an RFQ, as already mentioned. The right document with the right information would have resulted in realistic responses. And ultimately, Council would have known what it was being asked to approve.

Dave Beattie was the Buyer in Purchasing principally involved in the RFQ. Like the others involved in the process, he had no training or experi-

ence in leasing, no understanding of the City's needs, and no appreciation of whether his Purchasing forms and protocols fit those needs or not. The mild-mannered Mr. Beattie rolled out the RFQ as though it called for the purchase of a quantity of road salt. He did nothing different for this acquisition. He focused on the mechanics of a competitive and fair bidding process without understanding the acquisition itself. Mr. Beattie had been a buyer at the old City since 1985. He left this job in September of 1999.

2. THE BIDDERS DIDN'T KNOW WHAT THEY WERE BIDDING ON

The RFQ was riddled with specific mistakes, but there was one overarching problem: the City didn't make clear what it was buying. How can bidders be expected to come up with bids on financing something when they don't know what that something really is?

Dave Beattie knew that it was unusual for an RFQ not to give a specific dollar volume for the acquisitions. That information was missing, but, contrary to his usual practice, he didn't bother to get this information from IT. So when the RFQ hit the street, the bidders were effectively asked to bid on financing something without being told how much the product was likely to cost. Mr. Beattie didn't know the City planned a \$43.15 million transaction until the puzzled bidders asked.

The City finally revealed the amount in an addendum to the RFQ on June 7, 1999. Even before then, though, Brendan Power should certainly have noticed this significant omission.

3. ONLY A CRYPTIC CLUE TO THE SALE AND LEASEBACK

IT planned for the leasing program to go back in time, so to speak, taking in the hardware and software already acquired as part of the Y2K program. It would be sold to the successful bidder, who would lease it back to the City: a sale and leaseback. But the City didn't have an inventory or even a plan for how to execute the sale and leaseback portion of the transaction.

The RFQ contained only the merest hint that a sale and leaseback was involved. That was in a table listing the City's hardware and software configurations, which said: "City hardware and software configurations (typical new configurations) already purchased or to be purchased in 1999."

That was it. From two words in a table, “already purchased,” potential bidders were expected to divine that there was a sale and leaseback component to be figured into the bid. Not surprisingly, not all bidders got the clue. MFP did, because it already knew about it before the RFQ was made public, and DFS did, because it knew many of the computers in question had come from Dell. Compaq did, but mentioned the City’s “limited information” on the sale and leaseback.

Dave Beattie didn’t notice the cryptic clue to future acquisitions. He should have, because in his view, it was inappropriate for an RFQ to contemplate future agreements.

4. ONE HAND DIDN’T KNOW WHAT THE OTHER WAS DOING

What the City was buying wasn’t clear in the RFQ because it wasn’t even clear between the City departments involved in drafting the shopping list. Finance staff thought that the RFQ was a one-off transaction, applicable only to the hardware and software acquired in 1999. In their minds, the purpose of the RFQ was to seek a one-time lessor for a one-time lease of \$43.15 million worth of hardware and software. They didn’t see leasing as a way to finance all future IT acquisitions as a matter of policy.

IT staff were operating under an entirely different assumption. They expected that all future hardware and software acquisitions would be leased as a matter of policy. The acquisitions would still have to be properly budgeted, but once that financial hurdle had been cleared, all hardware and software would be leased. The leasing program was not limited to \$43.15 million, or indeed to any other amount. It was intended to be an ongoing way of acquiring hardware and software.

5. AN EXCLUSIVE RELATIONSHIP

Since Finance staff thought that the RFQ was for a one-time transaction, they obviously didn’t think the City was looking for a vendor of record. IT staff believed that the purpose of the RFQ was to acquire a vendor of record for leasing, which would have all of the City’s leasing business for a three-year term. But the RFQ didn’t specify that the City was seeking vendor of record or exclusive vendor of record status for the successful bidder.

This was, of course, the heart of the problem for the leasing RFQ. IT had one idea about the future of the relationship and Finance had another. Had they communicated, even about this one issue, it is quite possible that it would have forestalled the problems that followed. The report to the Policy and Finance Committee would have been clear about IT's plans, the sale and leaseback would have been explained and its tax implications would have been taken into account, and the subsequent logistical problems would have been avoided. The leasing program might have been properly administered, including monitoring of the lease rate factors, with adequate financial analysis and oversight.

None of that happened, yet IT would go on to administer the leases as if Council had approved MFP as the vendor of record. It would also ignore the Council-approved limit of \$43.15 million.

6. THE 90-DAY RATE GUARANTEE: CUTTING IT TOO CLOSE

The RFQ closed on June 11, 1999. The 90-day period for which bidders guaranteed their rates would therefore expire on September 11. Most of the 90-day window was during peak summer vacation time, when many decision-makers would be away. Yet no one discussed this serious logistical problem in advance.

Even worse, the 90-day window was not 90 working days. A contract of this magnitude required committee and Council approval, as everyone involved knew. Council would meet at the end of June, at the end of July, and then not until the end of September. Therefore, to get a final decision within 90 days, all of the City's internal analysis would have to be done, written up, reported to the Policy and Finance Committee, and submitted to Council with enough time allowed to give councillors a chance to read a complicated financial report before the July meeting. And those with experience at City Hall know that the last meeting of the summer means a long agenda for Council, with all kinds of items added at the last minute.

Council did vote on the deal in late July, as it turned out, but when the RFQ was drafted, there was no guarantee they would. Even so, late July left only August and a bit of September to negotiate and execute a complicated multimillion-dollar leasing contract for thousands of computers spread out across the City, and to get all the computers leased. It was hopelessly unrealistic.

7. NO MANDATORY REQUIREMENTS, NO DISQUALIFICATION

The RFQ didn't specify any mandatory requirements for bidders, so naturally it didn't state that any bids not meeting the mandatory requirements would be disqualified, either. The RFQ asked the bidders to describe the mechanism for changing the lease rate but didn't say there would be consequences for not doing so.

MFP was vague in its response to this section, and it is reasonable to suppose that it would have complied if this element had been a mandatory requirement, with non-compliance being clear grounds for disqualification.

8. EXPERT ADVICE: TOO LITTLE, TOO LATE

Brendan Power knew IT wanted to select a vendor of record to lease hardware and software. He knew the RFQ contemplated a sale and leaseback. He believed that about \$65 million of assets were involved. He was aware that a refresh strategy was required. Yet, knowing all of this, and knowing from prior experience that the Province always retained experts to help on leasing transactions, Mr. Power didn't think it necessary for the City to retain outside leasing experts to help draft the RFQ and evaluate the responses.

Mr. Power also knew that he could seek legal advice from City lawyers, and from outside legal counsel specifically retained to assist with Y2K-related matters. Yet he didn't involve either external or internal legal counsel in the drafting process because he didn't think they would have improved the document. In his view, most of the RFQ was boilerplate that he assumed had been approved by the Legal Services Division.

Mr. Power claimed he did recommend to Ms. Viinamae and Mr. Andrew that the City hire outside experts in law, leasing, and asset management. But that was only after Council had already approved the report, when he thought expertise was needed to manage the contracts between the City and MFP. While expert advice would have assisted the City as it administered the leases, Mr. Power should have recognized the need for advice much earlier. Mark Fecenko, the outside counsel Mr. Power should have consulted early, had written a book on the subject. In it, he noted the importance of involving legal counsel early in the procurement process, before the call document is final, so that the deal contemplated will be accu-

rately reflected in the eventual agreement with the successful vendor. By the time Mr. Power sought advice, it was too little, and much too late.

9. THE PROVINCIAL AUDITOR'S REPORT: A HISTORY LESSON IGNORED

An ironic feature in this catalogue of errors is that the mistakes had been made before—by the provincial government. A full account of those missteps was set out in the Provincial Auditor's report, which was publicly available. Unfortunately, no one at the City read it.

In 1998, well before the City began working on its own computer leasing RFQ, the Provincial Auditor criticized the computer leases entered into by the provincial government. Mr. Power said he knew about the Auditor's report, and knew that it criticized the way the Province had set up certain leases. In fact, he knew more than that: he had worked at the Province on the very computer leases with MFP that the Auditor criticized. Yet he didn't read the report and knew nothing of the details. For his part, Mr. Andrew knew there were "issues" with the Province's leases, but he didn't follow up with Mr. Power.

According to the Provincial Auditor, the Province had made many of the same mistakes that the City was about to make, such as signing a contract without a complete analysis of requirements (leading to adjustments that meant added cost), extending leases without making sure the rates would remain competitive, not getting early legal advice to protect the government's interests, adding to the deal without a proper competitive process, and leasing for five years assets that had a useful life of three years, thus having to pay a premium to upgrade during the term of the lease—and thus ensuring continued dependence on the leasing company without any assurance that its prices would remain competitive.

It is outside the scope of this inquiry to determine whether the Provincial Auditor was correct in his serious criticisms of the Province's leasing program. However, had the City, embarking on a similar program, paid attention to the Auditor's report, it might have raised some critical questions. This illustrates that not only is communication within departments of a government important, but it is also important and potentially useful to be aware of the experience of other levels of government.

E. WHO WAS TO BLAME?

There is enough blame to go around, but Brendan Power, as the person responsible for drafting the RFQ, must bear the brunt of the blame for the woefully inadequate RFQ. He admitted after the fact that he was no leasing expert, but at the time, he certainly gave the impression that he was knowledgeable in that area. Since he knew himself to be unqualified for the task, he should have said so and should have made it clear that expert advice was necessary early on.

Jim Andrew, as the head of the department driving the RFQ, abdicated his responsibility entirely; first in assigning Brendan Power to lead the RFQ process without questioning his fitness for the task, then in failing to supervise him in any way. His notion that he should not influence his subordinates, if that's what he truly believed, was just plain bizarre; but it seems more like an excuse for sheer laziness. It was certainly abandonment of his managerial responsibilities. His hindsight list of what was wrong with the RFQ, five years after the fact, only served to demonstrate that he had indeed been in a position to prevent the disaster that followed, yet he had done nothing. His hindsight acknowledgment of his bad judgment, such as assigning Brendan Power without due diligence, going on vacation (largely at supplier expense) at the critical time, and giving Brendan Power an MFP-friendly consultant's template to work from, didn't help.

Lana Viinamae, though under pressure with the Y2K Project, also received the draft RFQ. Brendan Power sent it to her by e-mail on May 18, and outlined the business decisions that had to be made before it was finalized, including the lease term, the value of the leased equipment, the question of whether decisions to replace equipment and "refresh" the lease would be made centrally or by each department, and the number of times refreshes would be allowed during the lease. Mr. Power said he did discuss these decisions with Ms. Viinamae at some point after that e-mail, but he drew a blank on the outcome of the conversation. Lana Viinamae said she didn't read the May 18 draft, nor did she discuss it with Mr. Power.

Ms. Viinamae's lack of interest in the RFQ is surprising, given that, as Director of the Y2K Project office, she had a great interest in the equipment to be leased by the City. She should have reviewed the drafts of the RFQ that were sent to her specifically for review, or if she was not going to review

them, then she should have made sure that others knew they should not be looking to her for input. Her involvement in leasing in May and June 1999 may have been minimal, but given that she was the acting head of the division during part of that time, I would have expected her to at least review the RFQ and get advice if she didn't understand it. Ms. Viinamae wanted Mr. Andrew's job when he left. When she had it in an acting capacity, she should have demonstrated the leadership qualities required of such a position, and should have taken more interest in the May 26 draft of the RFQ.

Purchasing had a quite limited role in drafting RFQs generally, understandably leaving the part that required specific expertise to the client department. As it is primarily a service/process-oriented division, its staff couldn't possibly be experts in everything the City purchases and no one would expect that of them. Nonetheless, with only a few thoughtful questions, either Lou Pagano or Dave Beattie might have been alerted to some of the problems that affected the City's financial exposure. Certainly, I would have expected them to be alert to whether the call document should be an RFQ or an RFP, and to speak up if they didn't agree with the plan.

Other Finance staff could also have been more on the ball. Nadir Rabadi did make a number of helpful suggestions on the draft RFQ. For example, he recommended that bidders be asked for 60-month lease rates in addition to the 36-month and 48-month rates in the draft. If the City had had that figure from all of the bidders, it would have been able to evaluate whether MFP was the lowest bidder under a five-year lease. Since the City did eventually change the lease term to 60 months, MFP effectively got that business without competition because the bidders were not asked for those rates.

But Mr. Rabadi's suggestion never made it into the final RFQ. Don Altman and Len Brittain, who supervised Mr. Rabadi, didn't pay much attention to this RFQ; they were relying on Brendan Power. Their confidence in him, while misplaced, is understandable. Mr. Power was (wrongly) touted as a leasing expert. Nevertheless, had they considered some of Mr. Rabadi's thoughtful suggestions carefully or had they asked a few more questions of IT staff about the hazy components of the draft, they would have been alerted to at least some of the problems.

The drafting of the RFQ was the foundation of further problems that would plague the City's leasing program. At every turn in the drafting process, key participants failed to protect the City's interests. But the City had its shopping list, however flawed, and it was going to market.

X. MFP’S RESPONSE TO THE RFQ

A. WHAT WAS THE DEAL REALLY WORTH?

WINNING THE CITY’S LEASING BUSINESS would be a feather in any company’s cap. MFP wanted that prize, and it was prepared to be aggressive, in pricing and relationship building, to get it.

The City’s RFQ of May 31, 1999, was far from clear about some of its important features, including the big one: How much was the deal worth? Even senior people at MFP had various interpretations of its central feature, and so did other bidders such as DFS and Bombardier.

Rob Wilkinson of MFP could see that the real size of the deal was very unclear. The value of the assets listed in the Estimated Leasing Volumes chart totalled \$43.15 million. But reading the whole document revealed to him that this figure covered only the assets to be leased in 1999. The bidders had questions, and the City issued an addendum on June 7, but that didn’t make the ultimate size of the deal any clearer because the RFQ still retained a clause on “major software acquisitions,” which read:

The City may from time to time negotiate separate corporate license agreements for major software acquisitions and expects the Respondents to incorporate these costs into a lease agreement.

The vagueness of the ultimate value didn't bother Rob Wilkinson. It left the door open. He turned his attention to crunching the numbers for the 1999 component: "The rest of it was going to be whatever it was going to be. We knew it was [a] large account."

Under Usage Assumptions in the RFQ, he saw that about 9,000 desktops would be installed in 1999, and it was "anticipated that another 4,000 desktops will be installed during the term of an agreement resulting from this RFQ." He interpreted that to mean that 4,000 desktops would be installed after the 1999 calendar year.

Other MFP executives were reading the RFQ, too. Mike Flanagan, Senior Vice-President of Sales and Trading, also thought the three-year lease could be much more than \$43.15 million and would include more than the hardware. Servers and software might be added, and the software licences alone could amount to \$10 million or more. Brian Stevens, Vice-President of Debt Placement and Treasurer for MFP, thought \$43 million was "sort of a start." There would be 13,000 PCs all together, and a "whole whack" of software of undetermined value. Sandy Pessione thought the total could be more than \$80 million, adding up the estimated leasing volume of \$43 million, the planned major software acquisition of \$10 million, and another 4,000 desktops, plus the servers, network gear, and other devices. It was a "major deal." MFP's President, Peter Wolfrain, put the estimate between \$75 million and \$100 million. Later, he would say that "it looks as if we don't understand the deal very well, at least in hindsight."

MFP was not the only bidder thinking the real deal could be for \$80 million to \$100 million. Dan O'Neil of Bombardier agreed that any reasonable person who read the document would expect the business to be significantly more than \$43 million. Scott Marentette of DFS thought it could range from \$40 million to \$100 million; his boss, Rob Simone, estimated that it could be worth up to \$150 million.

B. EXACTLY WHAT WOULD BE LEASED?

Another source of ambiguity in the RFQ had to do with the sale and lease-back arrangements. The City had already bought some of the 9,000 Dell desktops mentioned in the RFQ. How many? How old were they? What were the specifications? Were there other older computers? The RFQ didn't say.

Sandy Pessione of MFP said the City should have spelled out the sale and leaseback component in the RFQ and asked for specific rates on the desktops the City already owned.

Both Robert Simone and Scott Marentette thought a sale and leaseback was part of the transaction, largely because it involved the Dell computers the City had already bought. But because they didn't know exactly how much of the total would be the new Dell equipment, they included a caveat in their response to the RFQ: "All lease rates exclude sales-lease back equipment. Sale-lease back rates will be negotiated based on the age of the equipment and due-diligence." On the other hand, Dan O'Neil of Bombardier was unaware of any reference in the RFQ to a sale and leaseback. And Compaq knew, but it asked the City to provide more detail about the equipment before it would provide a lease rate.

C. HOW MANY WINNERS WOULD SHARE THE PRIZE?

Yet another aspect of the RFQ that was open to interpretation was whether more than one vendor would get a piece of the leasing business. Mr. Pessione thought the City was looking for only one. Rob Wilkinson read it differently, as did Peter Wolfram. It was only after MFP was awarded the bid and Mr. Wilkinson began to work on the deal with City staff that he realized that MFP was the "single chosen one."

The other bidders also came to different conclusions. Scott Marentette of DFS thought there would be a single vendor, but Dan O'Neil of Bombardier believed there would be more than one.

D. ENCOURAGING SIGNS AT THE CITY: THE PITCH TO MFP'S INVESTMENT COMMITTEE

Rob Wilkinson put together a memo and a "yellow sheet" showing the proposed pricing on the bid for MFP's investment committee meeting on June 10. The memo described the opportunity: an RFQ for 9,000 Dell desktops, 175 servers, and 200 notebooks.

Historically the City had bought computer equipment instead of leasing, but Rob Wilkinson reminded his colleagues of MFP's \$1 million leasing deal for the councillors' computers at the end of December 1997. MFP had since made further inroads with the City, he told them. The memo went on to say that MFP had been the driving force for the last six months in convincing the City to lease. They had developed "very strong relations" with Councillor and Budget Chief Tom Jakobek, CFO and Treasurer Wanda Liczyk, and Jim Andrew, the Executive Director of IT, whom they identified as the key decision-makers "for this project and many other opportunities within the City."

Rob Ashbourne, Dash Domi, and other MFP people had been meeting these important City decision-makers for months. The City trio had been enjoying Dash Domi's lavish hospitality while MFP was trying to persuade them that leasing with MFP was the way to go. Irene Payne thought that if MFP's bid was competitive, the company had done enough to convince these City officials that MFP was the right choice.

Rob Wilkinson would later say he was embellishing somewhat when he said MFP had developed "very strong relations" with Tom Jakobek, Wanda Liczyk, and Jim Andrew. And it was the same with his comment that MFP had been the "driving force" in convincing the City to lease. He didn't talk to Irene Payne or Dash Domi about it before he wrote the memo—he was embroidering it because he sensed they were very eager to win the bid. He wanted his memo to reflect their enthusiasm, and he wanted to convince MFP's investment committee to invest in the deal. He succeeded.

Peter Wolfrain was convinced. As President of MFP and a member of the investment committee, he was ready to bid to win, and he was encouraged by the "strong relationships" with the decision-makers at the City. He would later agree that the achievement of landing a deal with the fifth-largest City in North America would be good for future marketing, too.

The strategy Rob Wilkinson laid out was to emphasize the importance of vendor independence and MFP's value-added services. He also pointed to the "known opportunities" presented by the City's 1999 and 2000 budget constraints: "Once the deal has been awarded we are confident in the opportunities to enhance our deal." One known opportunity was the sale and leaseback of another 4,000 desktops, but there were other possibilities. IT leasing would be attractive to the City because of its budget

constraints, but the same might apply to other assets, such as the City's vehicle fleet. As MFP's Mike Flanagan acknowledged, the objective was to get a substantial toehold so that the company could benefit from more opportunities at the City.

E. SQUEEZING FROM BOTH ENDS: THE PRICING STRATEGY

Sandy Pessione and Rob Wilkinson were the primary authors of MFP's response to the RFQ. Mr. Pessione drafted the response and Mr. Wilkinson provided the numbers—the rates, the tables, and the purchase factors. Dash Domi hadn't been involved in the presentation to MFP's investment committee and didn't participate in any of the discussions about pricing.

Irene Payne acknowledged that price was the critical factor in winning the RFQ, as did Mike Flanagan. If MFP's rates were not the lowest or near the lowest, the forcefully cultivated relationships with City officials and MFP's value-added services wouldn't tip the balance in its favour.

Rob Wilkinson's yellow sheet, attached to his memo to the investment committee, set out the proposed pricing. It would be a 36-month lease totalling \$43,150,000, consisting of hardware at \$31,200,000 and software at \$11,450,000. The debt rate (the rate at which MFP expected to borrow money for the deal) was 6.5 per cent. Under "Net Cash Margin" was a negative amount: <\$1,451,106>.

The net cash margin number is the most significant figure. It represents the potential profit or loss, on paper. On paper, MFP stood to lose almost \$1.5 million. Businesses rarely intentionally lose money, so what was the strategy? Would the potential future opportunity make up for the "loss"? Perhaps, in part, but it would take a great deal of future opportunity to make up that shortfall. A closer look at the pricing reveals other possibilities.

1. THE FRONT END: THE LEASE RATES

As explained earlier in "Leasing 101," lease pricing has two components: the "front end," which is the lease rate, and the "back end" or "residual value," which is a value put on the equipment at the end of the lease term. To

balance risk, a leasing company can price its proposal attractively at either the front end or the back end, but usually it won't do both.

The RFQ asked bidders to give a monthly lease rate for the 90-day period after the closing of the RFQ, plus a mechanism for calculating any changes to the lease rate during the balance of the term:

The Respondents must provide the monthly lease rate per \$1,000 of cost which will be used in calculating lease payments. This lease rate must remain valid for a period of a minimum of 90 days from the closing of the RFQ. The Respondents must provide a mechanism for any changes to this lease rate during the term of the agreement. A complete description of this mechanism must be included as part of the Respondent's response.

As Rob Wilkinson read this part, he was pleased that it gave MFP "a little bit of latitude in terms of interpreting what was meant by the mechanism." He based the bid on a monthly lease rate for the 90-day period of \$25.30 or \$30.48 per \$1,000, depending on the item. The purchase option per \$1,000 of purchase price was 17 per cent.

As for the mechanism for changes to the lease rate after the 90-day period, the MFP response addressed it this way:

The lease rate factor shall be adjusted every calendar quarter, commencing October 1, 1999. MFP will provide the City with revised pricing grids which shall be amended to reflect changes in technology and the prevailing market conditions which includes the underlying base interest rate.

Mr. Wilkinson was responsible for that nebulous language. Unlike the competition, he decided not to quote a rate tied to any index or benchmark, such as a bond rate. That would increase the risk to MFP on future deals, but it was better for MFP to leave in an element of ambiguity. Mr. Wilkinson maintained in the witness box that he had believed it was better for the City, too. He said the City was "going to get the best price under those circumstances."

Most bidders seem to try to get some "wobble room" or flexibility, but some are prepared to tie their rate to something specific. For example, bidders such as Bombardier, IBM, Compaq, and DFS all specified in one way

or another in their bids that the Government of Canada Bond Rate would be used to calculate changes to the lease rate after the 90-day period and during the term of the agreement.

At the inquiry, Mr. Pessione said that the City might have asked MFP to be more specific on the price mechanism if it had found the terms deficient, or it could have disqualified MFP from the bid, but MFP was prepared to take that risk. Peter Wolfrain agreed that MFP's response did not really describe a mechanism to determine lease rates beyond the 90-day term. Like Mr. Pessione, he said that "if the City had a problem with it," it could "either have come back and asked us about it, or thrown us out along with everybody else that responded the same way." Years later, when City Auditor Jeff Griffiths was reviewing the City's contract with MFP, he concluded that MFP's rate-setting provision was vague.

2. THE BACK END: THE RESIDUAL VALUE

Rob Wilkinson knew that Irene Payne wanted to bid aggressively. He also knew that GE Capital had bid about 14 per cent equity on work for the governments of Ontario and British Columbia and that DFS had been pricing deals at 14 to 15 per cent.

MFP's front-end lease rates were significantly lower than those offered by the other bidders. That aspect alone placed MFP at the front of the pack. MFP didn't usually quote aggressively on both ends of a lease, but it was worried that if GE's bid was 14 per cent for equity and 17 per cent for the purchase option, it could outbid MFP. As Mr. Wilkinson said, GE could "potentially get more aggressive so we were trying to cover it at both ends." He agreed that it was unusual and risky, but MFP did squeeze the price at both ends. After talking it over with Ms. Payne, the two decided to try to get the investment committee to agree to offer 17 per cent equity and a 17 per cent residual value for the purchase option.

MFP had a grid of investment guidelines for its deals. The investment committee had to approve deals where the bid wasn't inside the grid. Mike Flanagan, a member of the committee, confirmed that Rob Wilkinson's pricing strategy was outside the grid, but for MFP to win, it had to go in with low lease rates and take on a relatively high level of risk. Irene Payne strongly believed that MFP should bid aggressively because of the substantial future opportunities with the City. There was a lot of competition for the business.

It wasn't quite as risky as it looked, however. On paper, it looked like MFP was prepared to lose money. In fact, MFP knew there could be money to be made on the deal during and at the end of the lease—through rewrites, early termination, additions to leased assets, changes in asset groupings, and end-of-term decisions such as extending the term of the contract or charging penalties for failure to locate and return all assets to the location and in the condition required.

For example, Rob Wilkinson estimated the residual value of the equipment at \$4,680,000. Leasing companies can sell the equipment at the end of the lease, and often sell it to the lessee. According to Mike Flanagan, MFP usually made a profit on that, and the “residual realization” was generally between 120 and 140 per cent of the book value.

MFP witnesses, including Rob Wilkinson and Mike Flanagan, admitted that the prospect was minimal that the company would lose money on the deal. In fact, based on typical customer behaviour, MFP was likely to make significant profits. Generally, customers didn't send all of the leased equipment back at the end of the lease; they kept most of it and paid additional rent. Eventually, customers would usually return some of the equipment and buy the rest. MFP would make money both ways. It would make good rates on the equipment the customer was hanging on to for a while and good money from selling the returned equipment. When he was working on the yellow sheet, Mr. Wilkinson knew from past experience that there was a high probability that the City would end up paying more rent on the equipment at the end of the lease term.

3. THE LITTLE EXTRAS: VALUE-ADDED SERVICES

Price was a critical factor, but the RFQ said that the City “is also interested in reducing administration and overhead costs associated with managing an Information Technology environment.” Value-added services would be considered in evaluating the responses, with the following stipulation:

However, Respondents must clearly and distinctly identify the value added cost as separate from the leasing costs and failure to do so may result in the quote being disqualified.

Respondents were asked to fill in prices for non-leasing services on a table that already showed some items, but they could add to that list:

If the table does not reference all the possible costs, Respondents should add any appropriate items. The City will not be responsible for any costs not specified in the quotes.

Unlike some other bidders, MFP offered a wide range of products it believed would be attractive to the City. Irene Payne thought MFP had the edge over its competitors with these value-added services, which included asset tracking. MFP would also dispose of obsolete equipment, which could be expensive for the customer because many landfill sites do not accept computers.

MFP proposed to charge nothing for asset management and equipment relocation costs. Both Mr. Wilkinson and Mr. Flanagan said that MFP traditionally absorbed these costs, and they were considered part of the rent on the equipment.

They also weren't going to charge for pickup and delivery of the leased equipment. That could be a big expense and was a common concern for MFP's customers. Rob Wilkinson and Mike Flanagan both said that the customer usually paid for it. It was another departure from MFP's usual practice, but it made their bid more attractive. Interestingly, this incentive didn't end up in the master lease agreement with the City that would set out exactly how the deal would work.

4. PAY WHEN YOU CAN

The RFQ asked bidders to "explain any optional payment arrangements available and the benefit of these options to the City." Rob Wilkinson drafted MFP's response this way:

The City may also delay a lease payment into the following fiscal year. There is a delay payment adjustment which would equal the difference between the future value of the payment being delayed to the time of payment at a rate equal to prime, less the amount of the payment being delayed.

MFP didn't usually offer delayed lease payments as an option. Mr. Wilkinson said this was another departure designed to make the bid more attractive.

F. “DEAR WANDA”

The tone of MFP’s covering letter was very different from that of the covering letters of the other vendors, and it was the subject of much discussion at the inquiry.

The letter opened with “Dear Wanda.” Dash Domi signed it. Peter Wolfraim said MFP usually did use first names in business correspondence. Sandy Pessione said that about half of MFP’s tender responses to the public sector used first names in the covering letter. By June 11, 1999 (the RFQ closing date), Mr. Domi had met Ms. Liczyk several times, so Irene Payne thought he was perhaps calling the CFO by her first name for that reason. Mr. Domi agreed with that, but he didn’t know of any common practice at MFP to use first names in business letters. In any case, he didn’t even write the letter, he said; Sandy Pessione did, and it was Sandy Pessione who wrote “Dear Wanda.”

Dash Domi signed the letter as “Regional Sales Manager.” Mr. Domi was a sales representative, not a regional sales manager. Irene Payne confirmed that and agreed that he should have represented himself accurately. Mr. Domi testified that he couldn’t see anything wrong with inflating his title, but conceded that if Ms. Payne considered the title wrong, he would be inclined to agree with her.

What’s the big deal? For one thing, no one thought for a second that Wanda Liczyk would be opening the bids herself. But whoever did open MFP’s envelope was bound to recognize the name of the City’s CFO and Treasurer. The RFQ made it clear that the bidders’ responses were to go to Dave Beattie. Mr. Beattie reported to Frank Spizarsky, who reported to Lou Pagano, who reported to Wanda Liczyk. Just in case the tender wouldn’t be evaluated on price alone, the familiar salutation could send a signal to lower-level staff not to dismiss the bid out of hand: the company’s representative was friendly with the boss.

On June 11, 1999, Dash Domi and Sandy Pessione raced from MFP’s Mississauga office to Toronto City Hall. When they got there, Mr. Pessione jumped out of the car and ran inside to the West Tower elevator. He reached the Purchasing Division on the 18th floor four minutes before the bidding closed and handed in MFP’s response.

XI. DECISION TIME

A. THE BIDS ARE OPENED AND READ—MAYBE

WHAT WAS DONE WAS DONE, and Purchasing was ready to go to market with the shopping list. Purchasing issued the RFQ by sending it to companies listed on the City's bidders' mailing list, posting it on the City's website, and publishing it in newspapers. As the bids came in, the date and time was stamped on the envelope. Normal practice after that would be for the buyer and a clerk from Purchasing to open the bids in public at City Hall. For an RFQ, where price is the only issue, the buyer would read out the quotes as the bids were opened. When a high number of bids was expected, the RFQ specified that the prices wouldn't be read out, but in practice, they would be read if time and circumstances permitted.

Dash Domi and Sandy Pessione both testified about what happened on June 11, 1999, the deadline for bids on the RFQ, which were to be opened the same day. They both said they remembered being there when the bids were opened. They both said they knew, after the bids were read aloud, that MFP had submitted the lowest prices for leasing the hardware and software.

Only Dash Domi and Sandy Pessione said that the prices were read aloud. No one from the City could give evidence that this was so, and there was no record. That lack of record-keeping was to create a mess when the exact time MFP knew it was the lowest bidder was called into question. Some of the mess was the result of the degree to which credibility was at

issue in this inquiry, but a simple mechanism for recording whether the bids were read aloud would have saved a lot of trouble.

The document itself was internally inconsistent: the first page of the RFQ document said that, unless otherwise indicated, the bids would be opened in public and read aloud. But the second page said, “Due to the large number of anticipated bids and/or items for this quotation, prices will not be read aloud at the public opening.”

Were the bids read aloud or not?

If the bids were not read aloud, the bidders would only have found out the content of the bids when Council approved the winner. If the bids were indeed read aloud, then the MFP people knew they had a good chance, but that’s all. The lowest price would put MFP in the lead, but each bid response still had to be evaluated and reviewed according to other criteria. Until the Policy and Finance Committee made a recommendation and until City Council voted, MFP couldn’t be sure. Further, there was a section in the RFQ that made it clear that the lowest bid wouldn’t necessarily be the winner. It wouldn’t be over until it was over, but it seems that MFP began to prepare nonetheless.

Once the bids were opened and read (or not), Purchasing had very little involvement in the evaluation of the bids. Again, this was because the requesting department, in this case IT, and not Purchasing, had the specific expertise to determine whether a response met the business requirements set out in the RFQ. According to Lou Pagano, Purchasing would generally review the responses before sending them to the department, just to make sure each item in the call document had been addressed by the bidders. If there was an evident omission in a bid, it would be designated an “informal” bid and not considered. In this case, none of the bids was disqualified.

B. EVALUATION OF THE BIDS GETS SHORT SHRIFT

For the hopeful vendors, it was all over but the nail biting. The RFQ had hit the street, and they had lined up to respond. They had crunched their numbers, polished and honed, and promised no end of excellence and service.

But where the vendors' job ended, the City's began. Now careful attention, critical analysis, and thoughtful foresight were called for. Which configuration of options offered by the hopeful vendors would best serve the City's needs? The question had primarily financial dimensions to it, but it also had technological ones. Picking the right winner would require a seamless, multidisciplinary teamwork approach—the same approach called for in issuing the best possible RFQ.

The problem, of course, was that the responses went back to the same dysfunctional source that had sent out the poorly drafted RFQ a mere 11 days before. Nothing had changed in those 11 days. So, as could be expected, the analysis of the responses to the RFQ suffered from the same ill-defined roles and lack of communication that had beset the drafting of the RFQ itself.

There were many problems in the evaluation of the bids. First, the roles of the Treasury and Financial Services Division and IT were each unclear to the other. Second, the Treasury staff who conducted the analysis had little knowledge of or experience in leasing. Third, there was inadequate supervision and guidance of the financial analyst who conducted the evaluation of the bids. And there were serious questions as to whether MFP's response met the requirements of the RFQ and should therefore have been disqualified.

1. TREASURY ASKS THE WRONG QUESTION

Wanda Liczyk chose Len Brittain, Director of Treasury & Financial Services in the Finance Department, as the Finance lead on the computer leasing project. He was responsible for determining the best financial options for the City. She didn't, quite understandably, concern herself with how Mr. Brittain would manage the project. She had confidence in his financial and analytical abilities: "It was his call about how he would structure delivery of the project." Ms. Liczyk knew that Mr. Brittain would rely to some extent on Don Altman, the Manager of Financial Planning. She didn't have confidence in Mr. Altman, thinking he was "more of an academic, than he was an actual experienced Finance person." Len Brittain was a "finance guy." For his part, Don Altman avoided dealing with the demanding Ms. Liczyk and often asked Len Brittain to act as go-between in his dealings with her.

The problems with the analysis of the responses to the RFQ didn't stem from lack of ability in either Mr. Brittain or any of his staff. They worked hard and often put in long hours well beyond the call of duty. What they did, they did well. The problems arose because they asked the wrong questions. Mr. Brittain understood that Treasury's role was to analyze whether leasing or purchasing was the preferred method of acquiring computer hardware and software. As he explained, the lease-versus-buy analysis was based on taking the lowest price quoted by bidders and comparing it with the City's costs of funding the equipment through debentures. This was a reasonable starting point, but it wasn't enough. It would have been better if the evaluation criteria had been established in advance. But if that had been the case, it still wouldn't have been enough. As Lou Pagano pointed out, there is typically no scoring sheet for evaluating an RFQ, in contrast to an RFP. The winning bidder is generally the lowest bid that meets the specifications and requirements in the tender document. But this was not a typical RFQ. It was more like an RFP disguised as an RFQ.

Len Brittain delegated the financial analysis to Don Altman, who further delegated it to Nadir Rabadi. He asked Mr. Rabadi to do a specific, limited financial analysis. So Mr. Rabadi was the central witness to the overarching question of what financial and other analysis the City did before it issued the RFQ, the consideration of the competing responses to it, the preparation of several iterations of a draft report and recommendations to committee and Council, and the lease arrangements ultimately authorized by Council.

Nadir Rabadi tenaciously sought information from the various stakeholders in the RFQ process, information which he considered necessary and important to his function. He was a bit of a thorn in the side of other City staff, but if he hadn't been, one wonders if he could have produced something even as helpful as the limited analysis he did produce. He brought to his task considerable financial analysis skill, training, and experience. Regrettably, his skills and experience didn't include the field of IT leasing. The model he developed was new to the City, and although it got some consideration from staff involved in the RFQ process (which was neither comprehensive nor entirely timely), the model was not submitted to the scrutiny of the City's Legal Services Division or any acknowledged expert in IT leasing.

Mr. Rabadi appears to have been alert to potential problems in the analysis of the responses, and at least knew to ask questions. With some training or guidance, he could have asked more penetrating questions, or could even have broken down the communication barriers between Treasury and IT.

Given the limited lease-versus-buy analysis Mr. Rabadi was asked to perform, he didn't read each bidder's response in its entirety. He only examined certain clauses of the responses: the lease rates quoted per \$1,000, the end-of-lease-term purchase option per \$1,000, the present value of lease payments assuming the purchase option was not exercised, the present value of lease payments if the purchase option was exercised, and the implicit interest rate in each response. He did what he was asked to do: compare the cost of leasing with the cost of purchasing.

Bidders were asked to give lease rates that would be valid for 90 days from the closing of the RFQ. To take advantage of the quoted rate, the City would have to get all of the equipment on lease within the 90-day period. Staff in Treasury, Mr. Rabadi included, believed the City intended to acquire about \$43 million worth of computer equipment. If it was more than that, they didn't expect it to be much more. Indeed, Brendan Power told Mr. Rabadi that the City had, or would soon be receiving, \$23 million worth of computer equipment. Lana Viinamae told him that the remaining \$20 million worth would be delivered by September 1999. Mr. Rabadi also understood that if all of the equipment wasn't on lease before the 90 days were up, it would mean a new tender and another report to Council.

So, based on all that, Nadir Rabadi had four important assumptions for analysis:

- Reporting to the Policy and Finance Committee and Council would be done within the 90 days.
- Council would make a decision within the 90 days.
- The lease documentation would be done within the 90 days.
- All the \$43 million worth of assets would be put on one lease, within the 90 days.

By June 17, Nadir Rabadi finished his analysis of each of the six bids. MFP had the lowest lease rate, which would produce the lowest present

value. He e-mailed his calculations to Brendan Power the same day, explicitly asking him to verify the figures in the spreadsheet.

Was there anything wrong with what Nadir Rabadi did? The inquiry's leasing expert said Mr. Rabadi's work was sound. The problem was in the assumptions. If he had been given the right information, the recommendations going to Council would have been significantly different.

It was important to compare leasing computers with buying them, but that was not the only question that needed answering. A full analysis of the responses should have included all the costs and options that went with leasing, such as rewrites, changing equipment during the lease term, returning the equipment early, and end-of-lease options. It should also have included analysis of the cost of leasing software, beginning with asking whether software should be leased at all. But staff in Finance (whether it was the Treasury and Financial Services Division or Purchasing and Materials Management Division) had nothing to go on for a full analysis, given their sketchy understanding of what IT had in mind for the leasing transaction. Len Brittain repeatedly said that IT was leading the project and Treasury was merely helping by doing the lease-versus-buy analysis. Treasury staff, particularly Mr. Brittain, should have asked more questions. But IT staff must bear the brunt of the blame for the incomplete analysis.

2. IT LEAVES FINANCE TO GUESS

Lana Viinamae testified that she nothing to do with evaluating the responses to the RFQ. She considered Brendan Power the IT lead and the contact for the financial analysis of the RFQ responses. Jim Andrew said he deliberately stayed out of the evaluation, as he had stayed out of drafting the RFQ, so as not to unduly influence his staff. He did acknowledge that IT staff could have played a valuable role. IT had expertise in information technology that he didn't expect Finance to have. In hindsight, he thought the responses should not have been evaluated solely on price. Other factors should have been considered too, such as value-added services like asset management.

Four years after the fact, Jim Andrew's insights were apt, but far too late. Instead, the analysis of the bids was woefully incomplete.

Mr. Rabadi was right in that MFP offered by far the best three-year lease rate for the 90-day period. But would happen when the 90 days were up? How would future lease rates be set? Who would analyze the new lease rate factors? What was the likelihood that equipment would have to be replaced or upgraded during the lease term? What would that cost? How would the end-of-lease options be handled? All of these factors would certainly have a financial impact on the City, but they couldn't be analyzed without input from IT. Only IT staff could have evaluated the City's future hardware and software needs, the likelihood of having to upgrade technology, and the logistics for carrying out upgrades. Treasury staff could have done the calculating, but only if IT had fully revealed its plans. Jim Andrew, Brendan Power, and Lana Viinamae all failed to do so, to varying degrees. Had the questions been addressed before the RFQ was even issued, the evaluations would have yielded more meaningful comparisons.

C. SHOULD MFP HAVE BEEN OUT OF THE RUNNING?

MFP's response to one of the terms in the RFQ and whether its bid should have been disqualified because it was incomplete were debated at length.

The RFQ asked bidders to give a complete description of the mechanism for any changes to the lease rate during the term of the agreement. The response was supposed to give the City enough information to understand how lease rates would be calculated after the 90-day guarantee period expired. This is how MFP responded:

The lease rate factor shall be adjusted every calendar quarter, commencing October 1, 1999. MFP will provide the City with revised pricing grids which shall be amended to reflect changes in technology and the prevailing market conditions.

It was vague, to say the least. However, MFP President Peter Wolfrain said it was the mechanism MFP used for about 75 per cent of its business. In fact, in 2001 when City Council directed staff to tender the photocopier leases, MFP bid and won using identical wording in its response to the mechanism requirement. In the end, the City didn't follow through with

that contract because of the controversy over MFP's leases with the City of Waterloo, but the photocopier bid shows that MFP was still using that wording with the City two years later, which it certainly wouldn't have done if it thought the City had a problem with it. It also shows that the City no longer seemed to have any concern about the vagueness of MFP's mechanism. Certainly it wasn't because the mechanism wasn't vague; it was vague before and it was vague still. It must have been because MFP was a fixture by then, and the City was comfortable with its incumbent.

Be that as it may, a more preferable response would have been, for example, that of another bidder on this RFQ:

The lease rate, shown at a cost per thousand, is based upon the Government of Canada Bond rate plus 200 basis points. The cost per thousand is subject to fluctuations in the GOC Bond rate.

Should MFP have been disqualified for its vague response? And if so, who should have caught the problem? Why didn't anyone consult with Legal Services?

Nadir Rabadi noticed the vagueness, observing that MFP's terms could lead to disputes about future lease rate factors because there was "no specific formula." He was also uneasy about the prospect that MFP might change the lease rates during the term. He sent Len Brittain and Don Altman a copy of MFP's response with a note:

Len/Don

This is MFP's RFP [*sic*]. What does it mean? Variable interest rate over the lease or fixed for whatever we lease before October 1, 99 and thereafter changes. I would like to speak to them. But, can I?

Nadir.

Mr. Rabadi seemed not to realize that the tender document was an RFQ, not an RFP. Apparently he also didn't know the rules about who at the City could speak to a bidder after the bids were received, or when it was allowed.

The question of changing the lease rate during the term was resolved without Mr. Rabadi speaking to MFP, but the one about how future lease rate factors would be calculated, including MFP's hazy response to that part of the RFQ, was not. Nadir Rabadi didn't discuss it with Brendan Power,

and neither did Len Brittain or Don Altman. Nor did any of them discuss it, or MFP's possible disqualification because of it, with Brendan Power, Jim Andrew, Lana Viinamae, or anyone in the Purchasing Division.

In fact, it appears that Treasury staff were not particularly concerned. Lana Viinamae had told Mr. Rabadi that the equipment was expected by the middle of September, but she later told him some of it might not be on lease until October. Either Mr. Rabadi missed that later information, or he thought the quantity was too small to affect the analysis. Compounding the problem was that, according to Ms. Viinamae, she had absolutely no idea that there was only a 90-day window to take advantage of the rate, and therefore didn't understand the significance of Mr. Rabadi's questions about the date for getting the equipment on lease.

In the evaluation of the bids, as in the drafting of the RFQ, the roles of the various departments of the City were poorly defined. Len Brittain delegated the analysis of the bids and consequently had little involvement. Brendan Power, the IT lead, gave Nadir Rabadi's evaluation only a cursory look, without verifying the calculations as Mr. Rabadi asked.

Jim Andrew and Lana Viinamae both acknowledged that IT should have been involved and should have helped establish criteria for evaluating the bids. IT should have made its vision of leasing clear in the first place, but it was also up to IT to make sure Treasury knew those assumptions so that a proper analysis could be done. Brendan Power should have checked the figures to make sure they had taken all of those assumptions into account. Mr. Andrew said that a third-party expert should have been called in to assist in the bid evaluation, as was the practice in his former municipality of Metropolitan Toronto.

Another big problem was the lack of in-house expertise. Nadir Rabadi had no experience in any kind of IT leasing, and his boss, Don Altman, didn't have experience with tenders. There was also no supervision of Mr. Rabadi's work — Len Brittain was on vacation during much of the time, and Don Altman's vacation overlapped with the time Mr. Brittain was away.

Nadir Rabadi's analysis was based on the incorrect information he was given that all or almost of the equipment would be put on lease within the 90-day guarantee period. As a result, the financial analysis didn't take into account future acquisitions and the future lease rates of the bidders, even though bidders were required to specify them.

Although the City officials considered the MFP response “vague” regarding one of the most important provision in the RFQ, they didn’t give serious thought to disqualifying MFP’s bid.

Nadir Rabadi wanted clarification on MFP’s future lease rates but Purchasing didn’t think it was appropriate for him to contact the bidder. Lou Pagano said that it was the Purchasing Division’s responsibility to ensure that every bid addressed each item in the tender document. Incomplete bids were to be brought to the attention of himself, others involved in the evaluation, and Legal Services. Bids that lacked such information were to be disqualified. No one adequately considered that issue.

The result of all of these errors was a flawed report to the Policy and Finance Committee that didn’t present a clear picture of the deal.

D. REPORT TO THE POLICY AND FINANCE COMMITTEE

When Nadir Rabadi finished the lease-versus-buy analysis, it was time to draft the staff report to the Policy and Finance Committee (P&F). From there, the report would ultimately go to City Council.

Staff are available during committee and Council meetings to answer questions, but councillors primarily get their information from staff reports. If councillors are to make sound decisions in the best interests of the taxpayers, staff reports must be clear, accurate, impartial, and balanced. The staff report about the proposed leasing transaction with MFP had none of these qualities.

The report that went to P&F was ostensibly from Jim Andrew and Wanda Liczyk. They did review drafts of the report, but they were not the authors. Nevertheless, they must bear ultimate responsibility for its content.

About 10 people from Finance and IT actually had input into the report. Nadir Rabadi did the first draft. Later, Brendan Power significantly restructured it, and later still, Nadir Rabadi revised the report again to address concerns about the *Municipal Act* and to include a provision requiring reporting back to Council. Other City staff members, including Lana Viinamae, Len Brittain, Don Altman, and staff in Purchasing, also contributed to it. It was sometimes difficult to discern exactly who made which changes—no one person had “version control” over the document and no

one kept track of the changes. During the time version control was shifting between Nadir Rabadi and Brendan Power, some of the clarity of Mr. Rabadi's assumptions became lost in translation, as it were. Mr. Brittain and others acknowledged that, in hindsight, it was a mistake to have the report drafted with no one ultimately responsible for version control.

One of the City's lawyers painstakingly reconstructed the drafting progression in great detail. Not only did she compare each of the drafts, she also factored in all of the e-mails and other communications about the drafts. She did an amazingly thorough job, and the result was a very helpful document that ultimately made it possible to figure out what happened.

1. NADIR RABADI'S EARLY DRAFTS

Nadir Rabadi controlled the early drafts, with some input from Brendan Power, Jim Andrew, Lana Viinamae, Frank Spizarsky, Dave Beattie, and Wanda Liczyk. His first draft said that the purpose of the report was "to compare leasing to financing the computers through long-term debt and make recommendations on the appropriate financing strategy." He also wrote that the transaction was for "a total cost not exceeding \$43.15 million for three years," and that "equipment worth \$___ has already been received by the City." (In later versions, the dollar figure \$15.1 million was added, which was later replaced with "significant quantities.") Mr. Rabadi added that a cost-benefit analysis of exercising the purchase option was postponed until the end of the lease term.

The City had already received some equipment, and therefore someone should have realized that there would be a sale and leaseback component if the leasing option was selected. No one did. Nadir Rabadi thought the City would be getting a credit note from Dell for the computers it had already bought—in other words, he saw it as simply a change in the way the equipment would be financed, with no element of profit or loss.

A copy of this draft was sent to Frank Spizarsky and Dave Beattie in Purchasing. Mr. Spizarsky's proposed changes were minimal and had to do only with the purchasing process. Purchasing's role was simply to ensure that the client department (in this case, IT) followed procedure. Purchasing staff reviewed IT's recommendation to select MFP and verified that fair consideration had been given to the responses of all bidders. If MFP had

not been the lowest bidder, Purchasing would have looked for a valid explanation for why IT wasn't recommending the lowest bidder.

2. WANDA LICZYK MAKES NOTES

On June 30, 1999, Mr. Rabadi had revised his draft and had sent it to Wanda Liczyk. Ms. Liczyk made numerous handwritten comments in red ink on this draft:

- She deleted a reference to an assumption that leasing rates would remain at existing levels for future cycles and that leasing would result in overall lower charges to the operating budget as compared with 10-year debenture financing.
- She deleted a statement that the estimated life of the new equipment was three years for computers and five years for servers.
- She wanted a chart added to compare annual lease and debenture costs.
- She wanted a chart under the first recommendation that showed annual lease rental amounts.
- She added a reference to a plan to recover lease costs from operating user programs.

Mr. Rabadi incorporated Ms. Liczyk's changes, but for some reason that he was no longer able to recall, he didn't make the deletion in her first comment shown above, thus leaving in the assumption that lease rates would remain at existing levels in the future.

3. BRENDAN POWER IGNORES WANDA LICZYK'S NOTES

After July 5, 1999, Brendan Power took over primary control of the report from Nadir Rabadi, although Mr. Rabadi seems not to have been aware that this was happening, nor does he seem to have questioned it. Mr. Power made significant changes to Mr. Rabadi's draft, including deleting some of Wanda Liczyk's suggested changes. Among the important changes he made are:

- He deleted references to \$43.15 million.
- He removed all references to the Y2K Project and related budget.

- He deleted the recommendation to charge user operating programs for lease costs.
- He didn't include charts setting out annual cost of lease information.
- There was no reference to a three-year replacement cycle.
- There was no reference to future changes in lease rates.
- There was no reference to asset management advantages of leasing.
- There was no recommendation that purchase options would be reviewed at the end of the lease term.

Mr. Power thought he might have removed the reference to the \$43 million cap because, in IT's view, the leasing agreement was actually for more than that amount.

4. A FEW MORE CHANGES, THE GOLF COURSE BECKONS, AND WANDA LICZYK APPROVES A FAULTY REPORT

Likely on July 6, 1999, but possibly on July 7 or 8, Nadir Rabadi met with Wanda Liczyk to discuss the concern that the *Municipal Act* might not permit the use of 10-year debentures for assets with a useful life of less than 10 years. Afterward, Mr. Rabadi revised the report by completely rewriting the main section to match the term of the debenture to the useful life of the assets. He also reintroduced the words "for three years" into the first recommendation and added a fourth recommendation, at Ms. Liczyk's request, that the CFO and Treasurer and the Executive Director of IT report back to Council on new leasing proposals and the financial impact for the balance of the equipment and software.

On the morning of July 9, Nadir Rabadi faxed the final version of the report to Wanda Liczyk at home, and he and Jim Andrew later spoke with her by telephone to go over it. Ms. Liczyk was not at work that day because she was leaving to play in a golf tournament with a City colleague late in the morning. Ms. Liczyk recalled this conversation with Mr. Rabadi and Mr. Andrew in her affidavit:

I read the faxed report and was frustrated by my reading of it. I could not specifically remember the changes that I had requested in the June 30, 1999 draft report. I asked Jim to ask Nadir if my proposed changes had

been made. The response I received was 'yes'. At the time of the conversation, I still had not received my original review notes on the June 30, 1999 draft against the next draft. These notes were the 'changes' to which I was referring.

After that conversation, and with Ms. Liczyk's consent, Mr. Andrew signed the report for both Ms. Liczyk and himself. So without having actually seen the report, but comforted by the response that her proposed changes had been included, she gave approval for Mr. Andrew to sign for her and went off to play golf.

No one ever suggested that Wanda Liczyk didn't put in long hours. She felt entitled to the time off. But she herself said that she was frustrated in reading the report. When asked why she wouldn't simply stop the report process and make what she believed were the required changes so that she would no longer be frustrated with the report, Ms. Liczyk backpedaled. She said she was satisfied with the report and wouldn't have gone to play golf if she had not been.

It is possible to focus on some significant changes and who made them, but ultimately, it is the final version of the report to Policy and Finance Committee that matters. And that version was not clear, accurate, impartial, or balanced.

5. WHAT WAS IN THE REPORT?

The report concluded that leasing computer equipment and software was a better financial option for the City than buying them outright or issuing debentures for three to five years. The report made clear that the underlying analysis for this conclusion was based on equipment with a purchase value of \$43 million, for a three-year lease term, at the lease rates quoted in the RFQ responses, with a projected useful asset life of five years.

Other benefits of leasing noted in the report included the flexibility to adapt quickly to changing business needs, value-added services such as asset management, planned replacement and reporting, and reducing the administrative and overhead costs of managing an IT environment. The report also pointed out that leasing was the most prominent source of financing computer equipment in large private and public sector environments and that the Province had recently moved to leasing as the preferred method of acquiring IT equipment.

MFP, of course, was recommended as the successful lessor. The report noted that 19 firms were invited to submit bids for leasing equipment and software at a value of about \$43 million for 36 months, and that, of the six quotations received, MFP's represented the lowest overall cost to the city. It recommended that the City enter into a leasing contract with MFP for leasing computer equipment and related software for three years. At the end of the three years, the option to purchase some or all of the equipment would have to be analyzed and evaluated.

It also recommended that the relevant projects in the 1999–2003 capital budget be reduced by the cost of the equipment leased to reflect a conversion in financing strategy from capitalization to leasing, and that the lease payments be reallocated from debt charges to IT's gross operating budget in the 1999 operating budget.

Finally, it recommended that the CFO (Wanda Liczyk) and the Executive Director of IT Jim Andrew) report back to P&F periodically on new leasing proposals and the financial impact for the balance of the equipment and software.

6. WHAT WAS WRONG WITH THE REPORT?

P&F considered the report on July 20, 1999, and, with an amendment moved by Councillor Jakobek, Council approved it on July 27. What was Council asked to approve? In short, \$43 million of computer equipment on lease, for a three-year lease term, at the lease rates quoted by MFP. In light of how IT staff mismanaged the leasing program later, the report obviously lacked clarity in some important ways.

First of all, the report was not written in a way that a non-IT person could understand. This was a report for committee and Council, not IT people. It should have been written in plain English; instead, it was very hard to fathom. Even some of those who had had a hand in writing the report agreed that it could have been better worded.

a. No Reference to Vendor of Record

One significant omission from the report was the absence of any reference to a vendor of record. IT staff believed that, once Council approved the report, all IT acquisitions would be leased through MFP as a vendor of record. This

term was not found anywhere in the report. There was not even a discussion of the concept. Brendan Power couldn't explain why this was so.

b. What Did “Three Years” Mean?

The report didn't clearly explain what was meant by the recommendation to enter into a leasing contract with MFP for “three years.” That was to cause confusion between IT and Finance over what the three-year period really meant.

Both Brendan Power and Jim Andrew testified that they understood it to mean that the City would enter into a vendor of record relationship for three years, not that the length of the contracts would necessarily be three years. Under this interpretation, the length of the individual lease contracts was left to be decided, as long as they were entered into within the three-year period that MFP was the vendor of record for the City.

Yet witnesses from Finance—Wanda Liczyk, Nadir Rabadi, Don Altman, and Len Brittain—understood the report to be recommending a one-time commitment for a three-year term. That is the most reasonable interpretation of the language in the report. The RFQ itself, the evaluation of the responses, and Nadir Rabadi's lease-versus-buy analysis were all based on a three-year lease term. Moreover, the subsequent amendment made by Councillor Jakobek at the P&F meeting on July 20, which was supposed to provide the flexibility to extend the lease term longer than three years, only makes sense if the lease term was defined as three years.

c. The “Cap” Was Buried in the Report

Councillors are extremely busy people with an overwhelming amount of material to read in preparation for meetings. This is especially so in July, which is traditionally the last Council meeting of the summer. So there's even more to read. Councillors tend to read the pages that contain the recommendations and not necessarily all the background, although some councillors who are especially interested will read all of a particular report. But they shouldn't have to. They should be able to know what the deal is all about without having to go through a maze of hard-to-understand material.

The recommendations didn't mention limiting the amount to be leased with MFP to \$43.15 million. A plain reading of the entire report does seem

to point to that conclusion, but there were only three references to it, scattered around the report:

- Under the heading “Funding Sources, Financial Implications and Impact Statement,” there is a reference to leasing limited to approximately \$43 million.
- Under the heading “Tender Process,” there is a reference to the RFQ and the invitation to submit bids for equipment valued at \$43 million for 36 months.
- The financial analysis (in the confidential appendices to the report) was based on leasing \$43 million worth of equipment for 36 months. Because of the confidential nature of the appendices, they were available to members of Council only upon request.

This was the most glaring problem with the report. There was a substantial gap in understanding between IT and Finance on the \$43 million amount. The IT people said they never intended to restrict the City’s leasing relationship with MFP. They wanted a vendor of record relationship with MFP. They also wanted to put an unlimited amount of equipment on lease, not restricted to \$43 million. But nobody in IT told that to Nadir Rabadi when he was doing his analysis, so what IT envisaged didn’t make it into the report.

d. No Reference to the 90-Day Lease Rate Guarantee

The RFQ asked bidders to give a lease rate valid for 90 days from the RFQ closing date. So to take advantage of this rate, Council would have had to approve the deal with MFP, staff would have had to negotiate the contract, and all equipment would have had to be put on lease before September 11, 1999. Ultimately, MFP extended the rate to the end of September, but this was because, in its response to the RFQ, MFP said the lease rate factor was to start on October 1. Still, it was a tall order, especially in the middle of summer.

But there was nothing in the report about the 90-day deadline anyway. Nadir Rabadi, as he drafted the first version, didn’t think it was an issue because he thought all of the equipment would be delivered in time. No one who read subsequent versions picked up the omission, and Council didn’t

have an opportunity to consider whether the City would be able to accomplish this Herculean labour within the restricted time.

After the 90-day period expired, the rates could change, based on the mechanism the bidders were asked to specify in their responses—the paragraph to which MFP had responded so vaguely. Ms. Liczyk said it wasn't the practice at the City to include such information in all reports to Council, especially if no one expected a problem with meeting the deadline. It should be the practice. It's relevant information and Council should be aware of it.

At the start of the inquiry, there was a misapprehension that Wanda Liczyk had ordered the reference to the 90-day rate guarantee removed from the draft. That wasn't true. The evidence at the inquiry clearly showed that, from the very beginning, it wasn't in any of the drafts.

There is no dispute that MFP provided the lowest lease rate, but councillors should not have been left with the impression that the rate would apply indefinitely. And the report didn't disclose that MFP's mechanism to determine how future lease rates might be set was anybody's guess.

e. No Reference to Sale and Leaseback

IT staff intended to sell the computer equipment the City had already bought in 1999 to the successful bidder and lease it back. This element of the transaction was not clear in the RFQ, and it was no clearer in the report to P&F. This was another critical omission.

The sale and leaseback was an administrative disaster, as will be discussed later. It wasn't a sale of City assets in the conventional sense, since the equipment would stay in place, but it was relevant and it should have been revealed in the report.

The sale and leaseback also generated a Provincial Sales Tax liability for the City of \$1.8 million. The tax liability had nothing to do with the vendor or the choice of vendor, but again, Council should have had this information in order to make an informed decision.

f. No Looking Ahead

Apart from an absence of detail that would have revealed the broad leasing program and vendor of record relationship pictured by IT staff, the report to P&F contained no discussion about changes during the term of the lease

(upgrades, buyouts, and other equipment changes) and end-of-lease options. Since there had been no analysis of these elements, it is not surprising that they were not discussed in the report.

E. DEMOCRACY MISFIRES: THE JULY 20, 1999, POLICY AND FINANCE COMMITTEE MEETING

The committee system at City Hall is designed to take some of the decision-making load off Council. Staff reports on issues, along with recommendations, go to a committee of councillors who give them close scrutiny rather than to the full Council. When reports go forward from committees to the whole Council, the views of the committees are very persuasive. Staff reports are themselves extremely convincing for many councillors, and the added imprimatur of a committee's approval invariably gives the reports great momentum. Councillors rely on the committees' views and frequently vote on the recommendations in the reports without further debate or questions. Often, then, substantive input by the democratically elected decision-makers happens in committees, not in the full Council. This is what happened to the report recommending that the City lease its computers through MFP.

P&F was the committee responsible for setting financial priorities, recommending the annual budget, monitoring spending, and addressing proposed spending deviations from the approved budget. Clearly, it was a committee that dealt with matters critical to the City's best interests. The Mayor himself chaired it, although Deputy Mayor Case Ootes usually sat in for him. The computer leasing acquisition worth tens of millions of dollars went to P&F, and one of the influential members of this influential committee was Councillor Tom Jakobek.

1. TOM JAKOBEK

Tom Jakobek weaves in and out of many of the events examined in this inquiry. It might be helpful at this point to take a closer look.

At the age of 21, Tom Jakobek won his first election and became the youngest school trustee in Toronto's history. He went on to win seven

civic elections. As Budget Chair, he was the author of several City budgets, and there is no doubt that he was vigilant and exacting in his role as the City's budget chief. He had long nursed the ambition to be Mayor of Toronto. When he finally did run in 2003, he was the first candidate to file his papers.

As a City Councillor, budget chief, and member of many committees over the years, Tom Jakobek was widely considered powerful, perhaps even the most powerful member of Council next to the Mayor and the Deputy Mayor. He had a very high IQ. He himself boasted of his phenomenal memory, although I saw him doing his best to mask his powers of recall in the witness box.

How did the staff side of City government see him? That question is eloquently answered by a letter from CAO Mike Garrett to Mayor Mel Lastman about Councillor Jakobek, the Budget Chair, on December 13, 1999:

Further to our previous conversations, I am writing to express my concern with respect to the conduct of the Budget Chair in interactions with staff of the City. As Chief Administrative Officer, it is my responsibility to bring to your attention issues which negatively impact on staff's ability to serve Council and the public in a professional and objective manner.

I have been approached on numerous occasions by staff in recent months who feel that they are being subjected to behaviour that impugns their reputation, that questions their professionalism and performance, and that deliberately creates an unproductive and unhealthy corporate culture.

Staff have made every effort in the last two years to ensure the success of the amalgamation and municipal services during complex and turbulent times. In an organization of this size that is undergoing vast fundamental change, with many diverse and difficult issues, there is no doubt that staff will be challenged and will make the occasional error. Staff, as professional civil servants, understand that they will be held accountable. However the continuing conduct of the Budget Chair is beginning to create a culture where staff will not be innovative, accountable, or free to be open and creative in resolving issues or problems. This, in turn, will make it increasingly difficult to serve the taxpayers in a cooperative, collegial and creative manner.

Mr. Mayor, the employees are used to working within an environment of mutual respect, trust and dignity with members of Council, both in the current and former municipalities. I am concerned, on behalf of

staff, that the conduct of the Budget Chair diminishes our collective ability to support and nurture that environment. Based on our previous discussions I know that you too share this very real concern.

I am committed to ensuring that your administration is professional and productive. Further, I am committed to working with you and all of Council to continue to build an organizational climate that supports and promotes the kind of City I know you envisage. As we enter the new year I would respectfully ask that you consider our past discussions and the concerns expressed in this letter. I believe that your intervention is required to ensure the City is as successful as it can be.

Mr. Garrett impressed me as a highly intelligent and dedicated CAO. The inquiry didn't obtain this letter until after both he and Mayor Lastman had testified, but I have no doubt that Mr. Garrett thought carefully, and considered the situation to be very serious, before putting his concerns to the Mayor in writing and asking him to intervene. Unfortunately, nothing seems to have changed as a result of Mr. Garrett's letter. Tom Jakobek carried on bullying and berating staff who didn't meet his expectations.

Meanwhile, Mr. Jakobek also actively interfered in the hiring of City staff, which was wholly inappropriate. For example, he would call Mike Garrett to give him names of people who should be working for the City, or raise objections about Mr. Garrett's hiring decisions. That was one of the roots of their rocky relationship.

Wanda Liczyk, too, had difficulty dealing with the abrasive Councillor, especially at first, as she said in her affidavit:

Councillor Jakobek became the Budget Chair for the new City of Toronto effective January 1998. Almost immediately, I realized that the budget process under his leadership would be very different to what I had been accustomed to in North York. . . . Councillor Jakobek, in particular, was denigrating to almost all staff who appeared at the Committee, including myself. . . . The budget process was a very public process with the media being present at all meetings.

While he seemed to be cranky with staff generally, there were times when certain senior staff members were useful to him. For example, he thought nothing of asking Jim Andrew to do personal favours for him on weekends or while Mr. Andrew was on vacation.

Tom Jakobek made extraordinary efforts to frustrate the inquiry. He put on a superficial façade of willingness to tell the truth, and co-operate, yet his behaviour was to the contrary. He was consistently evasive, challenging us at every turn, and didn't co-operate at all until he knew exactly what evidence had already been uncovered. His tactics imposed considerable extra cost on the inquiry, which of course is borne by the taxpayers of the City. This is ironic considering his reputation as the sharp-eyed, penny-pinching budget chief. Mr. Jakobek could lie with disarming smoothness, dodging straightforward questions by spinning off in another direction or changing the question. When he was challenged with the truth or caught in a lie, he would simply rework the facts into ever-shifting alibis and fresh explanations. In the course of the inquiry, he told an astonishing number of lies, drifting from one to another, improvising as he went along. He lied to his own lawyers, to five reporters and through them to the public, and to me under oath. There are liars who lie even when they are telling you they are lying. Who can believe anything they say?

Mr. Jakobek repeatedly said he was sorry and expressed deep regret for some of his lies, but the expressions of regret were not sincere. They were cynically deployed public relations stratagems to attract sympathy and mask further dissembling. His lies were an abuse of the public, made even worse by the fact that he was running for mayor at the time. It was impossible to trust his repeated assertions of sincerity and repentance.

2. THE JAKOBEK AMENDMENT

The staff report on computer leasing, shortcomings and all, went to P&F on July 20, 1999. It was co-signed by Wanda Liczyk and Jim Andrew.

Tom Jakobek moved an amendment at that meeting that turned out to be the cause of much later debate and analysis. When it came to that amendment, there was much contradictory evidence which required me to choose among the stories of four public servants, all of whom were in positions of confidence and trust in municipal government: a former City Councillor and mayoralty candidate who had spent most of his working life as a politician for the City of Toronto, Tom Jakobek; the former Chief Financial Officer & Treasurer, Wanda Liczyk; the Director of Treasury & Financial Services, Len Brittain; and the former Executive Director of

Information Technology, Jim Andrew. All of them would be expected to be highly credible historians. Regrettably, they were not. Excluding Len Brittain, each of them presented difficulties for me in this inquiry. I found each of them, at various times, less than forthcoming about certain matters. Often, as throughout the inquiry, I had to search for a kernel of truth in conflicting and equally implausible stories. In deciding whose story was more believable, it sometimes came down to figuring out who had the most compelling reason to lie.

Mayor Lastman didn't attend the MFP part of that P&F meeting. Deputy Mayor Case Ootes took over as Chair when Mayor Lastman had to leave to attend to urgent matters elsewhere. However, Mayor Lastman had been briefed earlier on the MFP deal by Wanda Liczyk, who, with Jim Andrew, was responsible for the content of the report. The Mayor assumed, reasonably, that the report had Ms. Liczyk's seal of approval as co-author, whether she had actually written it or not.

From Ms. Liczyk, Mayor Lastman had learned that a proposal for a \$43 million computer lease transaction was on the agenda for the P&F meeting. He understood that Ms. Liczyk was recommending a three-year lease, and that MFP would supply the equipment as lessor in the proposed transaction. The Mayor thought this was a big decision. The City was changing its policy from debenture financing to leasing. He relied on Ms. Liczyk's and Mr. Andrew's wisdom on this policy change, and would later agree that, if any mistakes or omissions in the report emerged at the P&F meeting, Ms. Liczyk would have had ample time to see that they were corrected before the full Council meeting, which would start on July 27.

Committee meetings are generally open to the public, but for part of this meeting, P&F met in camera, out of the public eye, between 2:12 p.m. and 3:10 p.m. During that time, Councillor Tom Jakobek asked a number of questions about the computer leasing report. The P&F meeting agenda was full to overflowing, but as Mayor Lastman agreed, almost nothing escaped the famously sharp financial eye of Budget Chair and P&F member Tom Jakobek. Councillor Jakobek proposed a motion for an amendment that came to be known as the "flexibility clause" or the "Jakobek amendment":

[T]hat the Chief Financial Officer and Treasurer be requested to ensure that the terms and conditions of the lease be flexible enough to ensure

that the life span of the computer equipment is extended beyond three years.

The motion was seconded and carried, and business moved on, all in a matter of minutes. Yet this little amendment, which was passed unanimously by P&F and ultimately approved by Council, was to have an explosive impact on the deal between MFP and the City of Toronto.

a. A Redundant Move

Mr. Jakobek said he knew computers could last longer than the three-year lease term proposed in the staff report. He saw some references to five years of life for computers in the report itself, and he simply wanted to ensure that staff didn't dispose of equipment unnecessarily early. This was perfectly in keeping with his well-documented sentiment that money should not be wasted on new computer equipment when the old equipment was still useful, he said, and all he was trying to do was to maximize the utility of every taxpayer dollar. He said it had nothing to do with lining MFP's pockets. It seemed innocuous, but the amendment opened the door for MFP to enhance its deal. Moreover, Tom Jakobek's story of his reasons for making the motion had problems.

When he moved the amendment, Mr. Jakobek knew very well that the staff report was recommending MFP as the lessor. At the inquiry, he would go only so far as to agree that he "must have seen it."

Mr. Jakobek said he had never been given a copy of the full agenda and didn't have a specific recollection of what went on during the P&F meeting. He didn't remember whether he had written down the wording of his amendment himself. Yet he said he remembered showing the text of it to Wanda Liczyk, and even remembered that he had to stand up and walk it over to her. He thought he had also shown the wording to Len Brittain. He claimed he was told that the proposed wording covered his concern and they could work with it.

Wanda Liczyk denied that Mr. Jakobek asked her to review the wording. She thought the motion was unusual and was surprised when he tabled it. Her account is more plausible, for two reasons. First, after a difficult confrontation in the Mayor's office in 1998, Ms. Liczyk established a practice of briefing Councillor Jakobek before Budget Advisory Committee meet-

ings and also before P&F meetings. At the latter briefings, he would expect her to inform him of any major areas that might have important financial implications and identify those issues that might provoke some debate at committee. She briefed him the day before the P&F meeting, and he didn't bring up the issue that supposedly concerned him now—hence her surprise when he held the report and then when he made his motion. Second, Mr. Jakobek's claim that his amendment was designed to avoid thoughtless dumping of perfectly functional equipment after three years holds no water. The report already addressed this very issue. It recommended three-year leases, but added a proviso:

The option to purchase some or all of the leased computer equipment and extend its usage by two years to a total of five years must be analyzed and evaluated through cost-benefit analysis just before the lease ends in 2002. A prudent final decision should be taken in 2002 with respect to the exercise of the purchase options for the computer equipment.

The point was reiterated elsewhere in the report, where it said that one of the City's financing options was "to lease equipment for three years, and extend use for another two years if it is cost beneficial to do so."

The report also recommended that staff report back to P&F as new leasing options arose:

The Chief Financial Officer and Treasurer and the Executive Director, Information Technology Division report back to the Policy and Finance Committee periodically on new leasing proposals and financial impact for the balance of the equipment and software;

In other words, staff had already addressed the prospect of keeping the equipment longer than three years, and had suggested that options be considered and reported back to P&F at the appropriate time, namely near the end of the initial three-year lease term. That suggestion was sensible. Computer technology evolves at a gallop, not a walk. Who could reliably predict in 1999 how the City's technology needs might change by 2004? Assessing the situation in 2002 made far more sense.

Wanda Liczyk pointed out that if Mr. Jakobek had been concerned about building in the flexibility to extend the leases to five years, there were

options available to him besides his amendment, such as adding the requirement that staff report back to P&F before the end of the three-year term about options for the equipment. But the way he chose to do it benefited MFP greatly, as it turned out.

b. Questionable Motive

There was another problem with Tom Jakobek's explanation for proposing the amendment: his close ties to MFP sales representative Dash Domi.

Around this time, notes made by Sue Cross, Jeff Lyons's assistant, were describing Tom Jakobek as "a big MFP guy." About six weeks before the P&F meeting, he went on the well-known Philadelphia trip with MFP sales representative Dash Domi.

About four weeks before the P&F meeting, he asked for and received from Jim Andrew a copy of the draft RFQ, when there was no proper reason for him to do so.

Councillors should take great care not to be involved with suppliers during an active tender. They should have nothing to do with a tender document—not the drafting of it, not the reviewing of it. Nor should they have a copy of it before it is released to the public. These are roles for the staff, not for the politicians. For politicians, they are nothing but trouble: traps, really, because there is no good reason for a councillor to have a draft tender document.

In June and July 1999, Mr. Jakobek and Dash Domi were in telephone contact many, many times. In those two months alone, Dash Domi called Tom Jakobek more than 30 times. He called the day before the July 20 P&F meeting and he called twice on July 27, the first day of the full Council meeting. Mr. Domi didn't call any other councillor at home, but some of these calls were to Mr. Jakobek's unlisted home phone number and his cell-phone number.

As to whether Mr. Jakobek and Mr. Domi met frequently in person, it was hard to know. There were Mr. Domi's expense receipts relating to him, but out of the events shown below, Mr. Jakobek admitted to being present for only two: breakfast with Irene Payne on February 23 and the famous Philadelphia trip on May 2, although he repeatedly lied about the latter. Mr. Domi routinely lied on his expense reports, including some of those shown below. On the other hand, Tom Jakobek had been revealed to the inquiry

as a notorious liar. Which of two admitted liars to believe? This is what appeared on Mr. Domi's expense accounts relating to Tom Jakobek up to the date of the P&F meeting:

February 23	breakfast \$56.92 (with Irene Payne)
March 19	dinner (Vince, Tom, John Danson) \$278.66
March 30	Pizza Banfi (T.O. Jakobek) \$134.06
April 17	Molson Centre Montreal, Hockey Tickets, \$464 (City T.O., Vince, John Danson, Tom J.)
April 24	Platinum Club Air Canada Centre (T.O., Tom J.) \$343.21
April 24	J.J. Muggs In Suite Service Air Canada Centre \$413.45
April 30	Platinum Club Air Canada Centre 369.27 (City TO, Tom J., Jim Andrew, Wanda L.)
April 30	J.J. Muggs In Suite Service Air Canada Centre \$542.05 (City TO, Tom J., Jim Andrew, Wanda L.)
May 2	Philadelphia (First Union Centre, Ont. Gov. & Tom J., City of T.O., Vince) \$607.50 and \$6,420.00
May 8	Mortons (Tom J., Vince, Jim Ginou, Harold P. Gov. & City)\$364
May 28	LaSerre, 4 Seasons, (City T.O., Vince, Tom J.) 37.55
June 4	LaSerre, 4 Seasons, (City T.O., Jako, Vince) 83.69

Both Tom Jakobek and Dash Domi lied repeatedly about their association during the inquiry, and the effort they put into distancing themselves from each other is perhaps the clearest indication that they had something to hide. The effect of the amendment must also be taken into account in considering Mr. Jakobek's motive, and the effect was a substantial increase in profit for MFP.

c. Staff Interpretation of the Jakobek Amendment

Wanda Liczyk interpreted the amendment as delegating to her the discretion to extend the lease beyond three years. In her view, the Jakobek amendment overrode the first recommendation in the report, which stipulated a three-year lease term with MFP. Ms. Liczyk was surprised by that. Council usually wanted staff to report back and rarely did it give them such broad latitude to make such decisions on their own.

That raised another area where the evidence of Tom Jakobek and Wanda Liczyk conflicted: Ms. Liczyk said she spoke to Mr. Jakobek to ask him what he meant by the motion. According to Mr. Jakobek, he didn't speak to either Wanda Liczyk or Len Brittain after the P&F meeting. Later, he was less certain and said he didn't remember. But it makes sense that Ms. Liczyk would want to speak with Mr. Jakobek to make sure she understood his intent to authorize extending the lease term at her discretion without the need for further approval. Yet Ms. Liczyk didn't raise the issue that the deal would have to be re-tendered, with Mr. Jakobek or anyone else, and she should have.

Jim Andrew claimed he wasn't even at the P&F meeting. This was a crucial committee meeting to discuss a report, which he co-signed, on what was supposed to be a \$43 million transaction. His claim made no sense, and it was reliably contradicted. For example, he sent an e-mail to Wanda Liczyk the day before saying, "Attached are the Y2K briefing notes for tomorrows [*sic*] P&F comm. I will also be there." He spoke to Ms. Liczyk by phone several times the day before the meeting, including a 15-minute call at 9:03 p.m. Moreover, Ms. Liczyk clearly remembered that he was there and remembered that questions on the report were put to him.

Jim Andrew also maintained that he never attended the in camera portions of committee meetings. Again, this makes no sense. Senior staff involved in a matter before a committee regularly attended in camera meetings. As co-author of the report, his presence would be a given. Not only would he have a right to be there, he would be expected to be present. Either he forgot he was there, or he was attempting to evade responsibility by denying that he was at the meeting.

Mr. Andrew said Wanda Liczyk told him about the amendment. He didn't think the matter needed any input from him because he had already contributed what he could about the reasonable life span of IT equipment to her staff to put in the report and the briefing notes. But he did understand that the amendment increased the lease term to five years.

Len Brittain had roughly the same interpretation of the amendment as Ms. Liczyk and Mr. Andrew did. He thought that extension of the lease term to five years was the only logical interpretation and agreed that if the City did extend the term, interest rates and residual value would become the important parts of the deal. But he didn't ask Don Altman to analyze the

financial implications of a five-year lease. It didn't bother him that he found the amendment vaguely worded, and he said he didn't give the matter much thought afterward.

Mr. Brittain said that staff couldn't challenge councillors at the meeting itself. Presumably, that was why he didn't speak up. But not all staff members were so passive in committee meetings. Lou Pagano, for example, said that if he believed a proposed change would affect the integrity of the process, he would tell the City's legal representative, right at the meeting, that the amendment was "changing the conditions of the call." The matter would then go to the chair, who would likely stand the report down. But none of this happened on July 20, as it should have.

Don Altman, Nadir Rabadi, and Brendan Power, who were not at the meeting, also understood that the amendment increased the lease term to five years. Don Altman believed that the amendment would have a significant financial impact. Interest costs would change, and the payment schedule would grow. In other words, the whole thing would cost more. Nadir Rabadi, who worked so hard on the original deal, read the amendment, but the implications didn't concern him. By then, he had moved to the Works Department.

Len Brittain was the Director of the Treasury and Financial Services Division. Don Altman and Nadir Rabadi worked for him. What could have been a safeguard, this division's scrutiny, turned out to be no safeguard at all.

Brendan Power found out about the amendment soon after the meeting. He saw the amendment as increasing the lease term to five years. He thought desktop computers and printers wouldn't fall into a category of equipment that could reasonably be expected to be useful for more than three years.

So several senior staff members knew about Tom Jakobek's amendment. They knew it was unclear, that it presented problems, and that it would make the lease much more expensive for the City. Yet not one of them did anything, either at the meeting or later, to draw attention to it before it went to Council the next week. Nor did they seek clarification from Council on the amendment to guide them through the forthcoming leasing transaction.

And what of the other councillors who passed the amendment at the P&F meeting? Were they asleep at the switch, as suggested by one of the lawyers at the inquiry? The amendment certainly looked innocuous enough.

On its face, there seemed no reason to question it. When asked whether there would be a high level of debate for an amendment such as this, Mayor Lastman said it “just depends on how anxious they are to get out of there.”

Set aside Mr. Jakobek’s specious attempt to evade criticism for his contact with Mr. Domi. The phone calls between the two during the blackout period, and the possibility that Tom Jakobek leaked a confidential document to Mr. Domi, paint a disturbing picture. Through Tom Jakobek, MFP sales representative Dash Domi had penetrated to the heart of the City’s confidential decision-making process.

The committee system is designed to take some of the decision-making load off Council. The July 20 P&F meeting did no such thing, and democracy misfired. The meeting resulted in a potentially sizable and expensive change to the computer leasing transaction, initiated in suspicious circumstances by Tom Jakobek.

Senior staff recognized the potential effect but did nothing about it. Council was relieved of none of its decision-making load—quite the opposite. Council was oblivious to the ramifications of the deal it had approved and was saddled with a potentially ruinous additional problem.

F. THE BLACKOUT PERIOD

At 8:45 a.m. on June 11, 1999, with bidding closing at noon, Dash Domi had called Jim Andrew. At the hearings, Mr. Domi claimed that he called because he wanted to inform the Executive Director of IT that MFP would be submitting its response to the RFQ at the designated time. He claimed he didn’t discuss the form or content of the bid. But he called the head of the department that was buying goods for the City just hours before the bids were due. No matter how a blackout period is defined, that was wrong. It’s simply common sense. And there were other calls from Mr. Domi to Mr. Andrew during the time leading up to the bids.

Mr. Domi called someone else on the day the bid was due: Councillor Jakobek. He called at 2:11 p.m., a 49-second call, and again at 3:36 p.m., a 51-second call. Mr. Domi called Councillor Jakobek on May 31, too—the day the RFQ was issued. That day, he called at 9:26 a.m. and 4:41 p.m. Councillor Jakobek called Mr. Domi on the same day, at 4:34 p.m. That call lasted a minute or less.

Dash Domi knew about the blackout period and its significance, yet he called Tom Jakobek about 20 times during the period, including the day before the P&F meeting and on the day the RFQ matter was considered by Council. According to him, the calls were to “make a presence in the City of Toronto for myself and my company.” He was “in pursuit of building relationships.” Mr. Jakobek was a “decision-maker in the City, a key contact,” “influential,” and a “strong politician.” And Mr. Jakobek, being the budget chief, would know about budget constraints and problems, which Mr. Domi thought would probably interest MFP. He knew that Mr. Jakobek was a member of P&F, and he was not calling any other councillor with such frequency. Mr. Domi had little memory of what they discussed or what sort of messages he might have left for Councillor Jakobek. Obviously, however, he behaved as though he considered it important to keep in touch with the Councillor as MFP prepared its response to the RFQ.

The blackout period was in effect on the day of the P&F meeting on July 20, but that didn't stop Mr. Domi from chasing down Mr. Jakobek after the meeting. According to Mr. Jakobek, when Mr. Domi approached him, “he was quite emotional and . . . was chasing me, wanted to speak to me.” But Mr. Jakobek flip-flopped on whether Mr. Domi tried to catch him after the P&F meeting or after another meeting entirely. First he said Mr. Domi chased him after an Administration Committee meeting. Ten minutes later, he said it was after the P&F meeting, but then he retracted that. Since Dash Domi had good reason to believe that the decision about the computer leasing RFQ would be made at the P&F meeting, and because he was pursuing the deal so aggressively, he had good reason to want to speak to Mr. Jakobek immediately after that meeting. I conclude that they did speak, and that it is highly probable that Mr. Jakobek told Mr. Domi the results of the committee's recommendation.

Mr. Jakobek said he didn't stop to talk to Mr. Domi, but not because of the blackout period. He was simply in a hurry. Actually, the veteran City Councillor and Budget Chair said he didn't know anything about the blackout period. He seemed to think that whether a blackout period existed varied case by case, and he didn't recall being told about a blackout period for this particular RFQ.

That explanation gave way to a second reason Mr. Jakobek wouldn't have been observing the restrictions of the blackout period: he didn't think

they should apply to elected officials. Politicians do not draft the recommendations or reports, he pointed out, and presumably he thought this meant politicians don't influence them. In his view, if the blackout period applied to councillors, it would prevent them from hearing from people and gaining valuable information. He was not the only Councillor who felt this way, but in Mr. Jakobek's case, the view was ironic. He developed a close association with MFP sales representative Dash Domi and then made an amendment to a staff report during the blackout period, sowing confusion at the City and benefiting MFP richly. But the irony seemed lost on Mr. Jakobek.

Much confusion and contradictory evidence surrounded the subject of the so-called "blackout period." It was generally agreed that for the tendering process to be fair and to be seen as fair, contact between bidders and City staff during certain critical periods should be prohibited or at least minimized. No bidder should have or seem to have special access or insider information. Most witnesses agreed with the principle, but the practice was very different.

The computer leasing RFQ was not the only major tender where there was confusion about blackout periods. The September 1998 RFP for hardware and software likewise failed to properly identify a blackout period. Dell, ultimately the winner of the bulk of the business from that RFP, contacted City staff after the bids were in and before City Council finally decided. Dell took active steps, directly and through a lobbyist, to influence the decision-making process during this crucial time. The Dell witnesses also couldn't agree on when a blackout period should apply or what kind of contact with City staff was appropriate during it.

When the blackout period began and ended and what kind of contact was appropriate was far from clear, not only for bidders but also for City staff. It would serve no useful purpose to go through their many different views in detail.

1. WHEN DID THE BLACKOUT PERIOD BEGIN AND END?

Major tenders must be run fairly. Fairness demands that all competitors have the same access to City decision-makers. Therefore, the City must clearly define what contact with public officials is allowed during the ten-

der process, when and how contact is allowed, and when it is prohibited altogether. If those rules are not clearly defined, competitors will naturally take advantage of any opportunity to persuade the City of the merits of their product.

The computer leasing RFQ was issued on May 31, 1999. Witnesses generally agreed that the blackout period for this particular RFQ should have begun on that date. (Blackout periods for other types of procurements may properly begin earlier.)

While there was general agreement about when the blackout period should begin, there was no consensus about when it should end. In the case of the computer leasing RFQ, there were three possible dates: June 11 (the date the RFQ closed), July 20 (the date of the Policy and Finance Committee meeting), and July 27 (when Council voted to award the leasing contract to MFP). By the first date, June 11, the bids were in, but no decision had been made. By the second date, July 20, staff had given the Policy and Finance Committee a confidential report, and P&F had recommended (with an amendment) that MFP be selected, but the final decision awaited Council approval. The final date was the City Council decision: July 27. On that day, MFP was formally selected to provide leasing services.

Most witnesses agreed that the blackout period should have ended only when Council made its decision. Yet there was often contact between bidders and City staff during the blackout period, no matter how the blackout period was defined.

2. CONTACTS AND LEAKS

Witnesses didn't agree on a definition of the blackout period, and there was even less agreement on what kind of contact was appropriate while it was in effect. Sensibly, most tender documents, including this RFQ, included the name of the specific individual who would answer any questions from bidders. That individual would circulate the answer to any question to all of the bidders, not just to the bidder who asked. That's only fair. The contact person would promptly notify the public about any changes to the bidding process.

Should all other contact between City staff and bidders be prohibited? But what about contact unrelated to the RFQ? And what about contact

with people other than the designated contact person? The City has thousands of supply contracts at any given time. A supplier who already has a contract with the City may bid again if a contract is re-tendered, bid on more than one contract during the same period, or be preparing to bid on an upcoming tender. So a total prohibition on contact is obviously not practical. The City has to be able to conduct its business with its existing suppliers even during the bidding and evaluation process. But City staff should be vigilant to ensure that they do not discuss, even casually, anything related to a bidding and evaluation process, and they must take care to keep all documents confidential.

The contact between MFP and the City during the blackout period (however defined) was not about existing business because, except for the councillors' computers, MFP had no ongoing business with the City. That was a small deal, and no administrative issues cropped up around the time of the computer leasing RFQ. Yet in the period from May 31 to July 27, Dash Domi contacted Jim Andrew eight times: on June 4, 10, 11 (the day the tender closed), 18 (twice), and 25, and on July 16 (twice). Mr. Andrew called him back four times. In the same period, Dash Domi contacted Councillor Tom Jakobek 28 times. Many of those calls were very short, but in a few the records seem to indicate that some conversation took place.

Mr. Domi, Mr. Andrew, and Mr. Jakobek all denied talking about the RFQ during these calls, and there is no way to know what they discussed. But the timing gives the calls a distasteful connotation.

The concern that MFP may have had inside information is heightened by some other phone calls. During this crucial period of May 31 to July 27, Mr. Domi called Nadir Rabadi's phone number four times. Mr. Rabadi was the financial analyst crunching the numbers on the bids. He was not one of Mr. Domi's high-level strategic targets, and it is unlikely Mr. Domi would even have known who Mr. Rabadi was. Indeed, he said he didn't know him. It is therefore very odd that Mr. Domi happened to call precisely when Mr. Rabadi was doing his analysis of the bids. Did he know to call Mr. Rabadi because he had heard of him through one of his contacts? Nadir Rabadi, whom I found to be a truthful witness, said he never met Mr. Domi and had no recollection whatsoever of getting any calls from him. Had Mr. Domi called him about this leasing RFQ, he would have informed his superior. So the question lingers, and that in itself is troubling.

The suspicion that Dash Domi had inside information about the computer leasing RFQ is reasonable from yet another perspective. A part of the confidential staff report to P&F was found among his papers. Dash Domi didn't keep files, as such. By his own admission, he was not organized enough for that. Documents just accumulated in a tray and eventually ended up in a cabinet behind his desk. The documents he personally disclosed were very scanty, yet he couldn't explain how this confidential document found its way into his possession. No witness would admit giving it to him.

There is no question that Dash Domi should not have had this document. MFP President Peter Wolfram admitted that "procurement-sensitive documents" should not be in MFP's or anyone else's files. When asked, he agreed that anyone at MFP who accepted such a document was acting inappropriately. He agreed that there is a mutual obligation on the City and its bidders to preserve the confidentiality of this kind of material. And he also agreed MFP couldn't turn a blind eye if it was the City leaking such documents.

Dash Domi clearly received the document inappropriately. But who gave it to him? Wanda Liczyk denied any role in the leak, and Mr. Domi thrust himself at so many City officials who might have been in a position to leak documents to him that it is impossible to tell. However, Tom Jakobek cannot be eliminated as the main suspect. When asked if he leaked anything confidential to Mr. Domi, Mr. Jakobek's reply was curiously elliptical: "Not that I'm aware of, no."

The question of other contact by MFP during this period was complicated by Dash Domi's irresponsible practice with his entertainment receipts. He submitted a receipt to MFP for reimbursement, claiming it was for a dinner with Wanda Liczyk on July 10. If true, it left an unpleasant appearance that he was secretly lobbying the CFO while her department was analyzing the bids: a serious breach of procurement protocol, particularly because the bids were to be discussed at the P&F meeting the next day. Ultimately, Wanda Liczyk reliably showed that she was elsewhere that night, and the receipt turned out to be another instance when Mr. Domi randomly assigned names to his expenses. This was an example of how, because of misinformation, the inquiry had to fully investigate the appearance of very serious misconduct.

All of these concerns surrounding inappropriate contact with the City during a bid serve to illustrate the wisdom of a clearly defined blackout period. The purpose of the blackout period is to maintain a level playing field. No bidder should have an advantage over any other. No bidder should have confidential documents or information. Contact between bidders and City staff, other than through official channels, creates an appearance of favouritism, if not an actual advantage.

3. WHAT ARE THE RIGHT RULES FOR A BLACKOUT PERIOD?

The blackout period should be clearly defined, and clearly understood by City staff. All bidders should know how to contact the City if they have questions or concerns. They should also know what kind of contact is inappropriate. A blackout period should have a defined beginning and end, and it should be rigorously enforced. Both City staff and bidders should know the consequences of having any discussions related to the tendering process during the blackout period. A blackout period need not be absolute, especially as it concerns other or pre-existing City business. The City must continue to function.

The City purchases millions of dollars' worth of goods and services each year. There is no doubt that having a contract with the City of Toronto can be profitable for a supplier. Those contracts are sought after eagerly. Awarding them has to be fair and has to be seen to be fair, and the City must be scrupulous in making sure the process is above reproach. Clearly defining a blackout period, and imposing consequences for breaching it, is an important step in that process.

G. COUNCIL VOTES

The big day of decision wasn't a big day at all. On July 27, 1999, Council voted to adopt the report from P&F, including the Jakobek amendment, without discussion or further amendment. It passed without fanfare, and almost without acknowledgment. A pro forma vote, and MFP's fortunes were secured.

Also on July 27, Dash Domi called Tom Jakobek twice. Mr. Jakobek would claim not to remember speaking to or receiving messages from Mr. Domi that day.

What did the councillors vote for? The answer depended on who was asked. Various staff members had various interpretations of the Tom Jakobek amendment, or the “flexibility clause,” and different ideas about the computer leasing deal as a whole.

Mayor Lastman thought Council had approved \$43 million of computer leasing. He believed Wanda Liczyk had to report back to P&F on any new proposals beyond that \$43 million. Councillor Balkissoon thought much the same thing, also expecting reports to Council about any offers to sole-source or re-tender. CAO Mike Garrett agreed that any proposed changes in the lease term or costs above \$43 million should have been brought to P&F by Ms. Liczyk and Mr. Andrew.

But neither Council nor the CAO had the information they should have had that might have prompted them to ask the key questions. Mr. Garrett, for example, an intelligent and insightful CAO, who would have grasped every nuance properly reported to him, didn’t know the MFP deal involved a sale and leaseback. Nor would readers of the report know that MFP was only the lowest bidder within the 90-day guaranteed rate window, which was already half over when the report went to P&F. Staff evaluating the bids had failed to appreciate the practical impact of the 90-day window, so of course they also failed to consider it in their analysis or put it in the report. Had they done so, councillors might well have asked the crucial question: “What if all the equipment is not on lease within 90 days?” Things might have been much better for the City if councillors had known to ask that question.

In impressive testimony before the inquiry, Mike Garrett set out the key points clearly. Staff’s report to Council on the MFP transaction was expected to be accurate and to contain all the information Council needed to make a sound and informed decision. Mr. Garrett expected disclosure from Ms. Liczyk and Mr. Andrew on the sale and leaseback, the 90-day guarantee period, and the mechanism for determining lease rates. Without this information, he believed that the report was not full, frank, and accurate. He was absolutely right.

Confusion on top of error makes wise decision making impossible. Mike Garrett recognized this and again hit the nail on the head: Staff should have gone back to Council to clarify the amendment instead of just plunging blindly ahead. If the amendment actually meant five-year leases were now

possible, the original tender had changed dramatically, and the City should have re-tendered.

But since no one working on this file had the insight to pull back from the precipice, Council tumbled over it in a brief, uncontested vote. Toronto has been nursing the wounds caused by this ill-advised plunge for years now.

XII. WHEN DID MFP KNOW IT HAD WON?

WHEN AND HOW DID MFP LEARN THE GOOD NEWS that it had won the computer leasing RFQ? It should have been at some point after City Council made its decision on July 27, 1999. At that point, City staff would have informed Dash Domi or someone else at MFP. It is easy to imagine that some sort of celebration at MFP's end would have followed, or that there would at least be an acknowledgment of some kind. However, there is reason to believe that people at MFP were confident they had won the deal before City Council voted.

A. LOOKING “READY TO GO”

At 6:45 a.m. on July 14, a month after the bids were opened and six days before the Policy and Finance Committee was to meet, MFP's in-house legal counsel, Kim Harle, sent an e-mail to Sandy Pessione and Dash Domi:

Sandy and Dash, I have been reviewing our response to this RFQ with a view to starting to draft the necessary revisions to the master lease and program agreements already in place with the City.

She sent a copy to Brian Stevens, then Treasurer and Vice-President of Debt Placement at MFP, and to Suzanne Michaelson, her boss and General Counsel & Corporate Secretary of MFP.

Ms. Harle had no specific recollection of sending that e-mail, or the circumstances under which she undertook the work. In the ordinary course of events, Ms. Michaelson would have assigned the file to her. Although she couldn't remember how or from whom she eventually learned that MFP was the successful bidder, she had no recollection that anyone had either told her or implied that MFP had won when she sent the e-mail on July 14. She testified that there was nothing unusual about her drafting a contract before a deal was final. She did it frequently. As an entrepreneurial company, MFP wanted to demonstrate to its clients that it was "ready to go." Peter Wolfram and Brian Stevens confirmed that this was the case.

Because she was an in-house counsel, there was no fee associated with Kim Harle's working on something that might not come to fruition, but some might consider it unusual to commit staff time and resources to a deal that was still up in the air. Dan O'Neil of Bombardier, one of the unsuccessful bidders on the computer leasing RFQ, certainly thought so:

I wouldn't want to spend resources on a deal that I hadn't won yet. . . . There'll be plenty of time to put the documents together if we won the business. . . . There would be no need, in my mind, to start the documentation process before knowing. . . . the business was ours. I wouldn't have done it.

B. THICKLY VEILED SARCASM?

At 12:45 p.m. on July 14, the same day Kim Harle sent her e-mail, Brian Stevens, once voted "Man of the Year" by the Canadian Finance & Leasing Association, also e-mailed Dash Domi and Sandy Pessione, with a copy to Irene Payne and her assistant, Christine Vivaldo:

Subject: City of Toronto

Congratulations!

Please copy me with yellow sheet (draft will do) asap or at least advise deal parameters as currently understood, so we can begin to get funding in place.

Thank you.
Brian Stevens

Why did Brian Stevens seem to think it was a done deal?

Peter Wolfraim was the first MFP witness to testify about Brian Stevens's congratulatory e-mail. On his way home from testifying at the inquiry, he called Mr. Stevens to alert him to the attention his e-mail was getting. There was a story about it in the paper the next day. After reading the article, Mr. Stevens left a voice-mail message for Mr. Wolfraim, which Mr. Wolfraim wrote down:

I never thought I'd make the front page of a Toronto newspaper, certainly not for premature congratulations. I remember very little about what happened at that time, I remember we were one of the lower bids when the tenders were opened, it could have been as simple as Dash or Irene saying to me, hey, we may get some of this business, that would cause me to send congratulations and ask for details. Loan applications take time, salespeople don't always understand that, especially in the summer time when credit committees go on holidays and signatures go on holidays and so forth.

By the time he testified, however, Brian Stevens gave a somewhat different account:

So here I was down on the mushroom farm asking now for details so I could go and talk to funders, who in July and August, are difficult to find and deal with. People go on vacation, credit committees don't meet, and all of a sudden I'm faced with perhaps very quickly having to come up with these multi-millions of dollars, and I'm just asking for help, let me know what you think the deal's going to look like.

Mr. Stevens said that writing "Congratulations!" in his message was meant to be sarcastic. He knew that MFP had been the lowest bidder, and he had received a copy of Kim Harle's e-mail. He wanted to let Dash Domi and Irene Payne know that, as the person whose job it was to solicit the necessary funds for this transaction, he should have been kept in the loop: "So, again, I'm a little bit ticked that he hasn't come and told me . . . or somebody hasn't come and told me what they think is going to be required of my department, perhaps in fairly short order."

It is true that it's often difficult to catch the intended tone and nuance from an e-mail, but from a plain reading, it's hard to imagine just how he

meant to convey his frustration. How would Dash Domi have deduced that Mr. Stevens was being sarcastic? Contrary to the possibility suggested in his voice-mail message to Peter Wolfraim, Brian Stevens had never even met Mr. Domi at that point. If he wanted to let a new employee like Mr. Domi know that he was unhappy about not being kept in the loop, why would he not just tell him so, or alert him to the corporate niceties of MFP, or explain to him why he would need to know right away? How would a new employee he had never met be able to discern any sarcasm at all in that e-mail?

Dash Domi said he couldn't recall seeing Mr. Stevens's e-mail at the time, and had no memory of its content until he and Mr. Wolfraim talked about it after Mr. Wolfraim testified. Since he had "never exchanged two words with Brian Stevens" at the time, he thought that if he had read the e-mail, he wouldn't have answered it or talked to Mr. Stevens anyway; instead, he would probably have asked Irene Payne who Brian Stevens was and why he was congratulating him. But he had no actual memory of having done so.

Irene Payne claimed not to have seen the e-mail until commission counsel showed it to her, and she testified that it was presumptuous of Brian Stevens to send a message like this before MFP had received official notice that it had won the business. On the other hand, Peter Wolfraim thought it was not unreasonable, if Brian Stevens had heard that MFP might win, for him to be on the phone with lenders without knowing at that time how large the deal might be.

Brian Stevens said he was almost one hundred per cent certain that he never received a response from Dash Domi, Irene Payne, or Christine Vivaldo. Possibly he talked to Sandy Pessione about it, but neither he nor Sandy Pessione had any real recollection of such a conversation. How odd that he wouldn't follow up, given his concern about the possibly urgency and his annoyance at being kept in the dark.

Sandy Pessione also received a copy of this e-mail. Brian Stevens is not someone he talked to regularly. He said he must have read the e-mail but didn't recall it.

Brian Stevens and Kim Harle were not the only MFP employees who seem to have been preparing for the City's business coming their way. On July 20, the day Policy & Finance Committee made its decision, Ms. Payne's assistant made this entry in her notebook:

4:48 – Mike F - reviewed deals w/Kim Harle re: C of Toronto. Does someone have a write up on deal to see pricing & related issues, e.g. terminations. Wants more details on deal because heard we have ~~this~~ possibly been awarded deal. Can you or direct him to who has those details.

“Mike F.” was Mike Flanagan, at that time MFP’s Senior Vice-President of Trading and Asset Management. Mr. Flanagan couldn’t remember speaking to Ms. Vivaldo about it, but he recalled hearing that MFP was the lowest bidder on the RFQ. From that, he believed it likely that MFP would be the winner.

The time of the entry is precise: 4:48. It wasn’t clear at the inquiry whether it was a voice-mail message from Mr. Flanagan to Ms. Payne or a conversation between Ms. Payne’s assistant and Mr. Flanagan. The important point is that this was less than two hours after Mr. Jakobek moved his amendment at the Policy & Finance Committee and less than two hours after Mr. Domi spoke to Mr. Jakobek right after that meeting. Coincidence? Maybe, but it sure looks suspicious.

MFP optimism is credible, because it is entirely possible that the bid results were read aloud. It is also reasonable to suppose that given that reason for optimism, MFP would want to begin preparing to negotiate a deal with the City. On the other hand, Council was not going to decide until the end of July, and to take advantage of the 90-day rate guarantee, the City had until September 11 to put an agreement in place. It seems that MFP would have had plenty of time, and could have waited until after Council’s decision to start working on it. In the end, the master lease agreement was signed sometime in August or September but back-dated to July 30, 1999.

C. DID SOMEONE TELL MFP BEFORE COUNCIL DECIDED?

If MFP staff knew they had won before the final decision of City Council, who could have told them? Dash Domi had developed relationships with Jim Andrew, Wanda Liczyk, and Tom Jakobek. His contact with all three of them is dealt with more extensively in other chapters, but because each of them knew MFP was the winner, and because each of them had been entertained by MFP, the precise details of the entertainment and contact are, in the end, not that important. It does look more as though Mr. Jakobek is

probably the one who told MFP, given his brief chat with Mr. Domi immediately after he made his amendment and the message from Mike Flanagan to Irene Payne less than two hours later. An important lesson, though, is that these three public servants looked compromised by their relationships with a supplier, and that is not good.

Complicating things for them was the misleading and unethical way in which Dash Domi dealt with his expense receipts. This made it difficult to sort out exactly what contact City officials had with MFP in the months leading to its successful bid on the computer leasing RFQ.

Did MFP know, before it should have known, that it had won the RFQ?

Other than what he remembered about the day the bids were opened, Dash Domi said he couldn't recall how he learned that MFP was the successful bidder. It was his first win for MFP, it was a big one, and he had aggressively pursued the decision-makers at the City to get it. Yet he couldn't even remember how he had felt when he found out, or whether he celebrated the victory. Who told him or when was a blank. Indeed, no one at MFP could recall how they learned or who told them that the company had won the deal they had gone after so resolutely. Yet the e-mails Kim Harle and Brian Stevens sent a month after the bids were opened showed that they were anticipating the win.

All of the factors point to the conclusion that MFP probably did know it had won before Council made a decision.

The question of when and how MFP knew it had won generated considerable controversy. If a City official or a councillor revealed an outcome to a bidder even before City Council decided, it would be a very serious breach of the oath of office. Their responsibility is to the public, not to vendors. Tom Jakobek, Jim Andrew, and Wanda Liczyk, through their relationship with Dash Domi, created circumstances where the question had to be asked. They left themselves open to the accusation that they had revealed confidential information to him. In doing so, they made the decision to award the contract to MFP appear compromised, thus shaking public trust in the decisions of City government.

By August 3, 1999, MFP officially knew that it had won. On that date, Dash Domi, Rob Wilkinson, Jim Andrew, and Kathryn Bulko met for breakfast. Their recollections of what was discussed varied among them, and whether the official news was an anticlimax remains an open question.

XIII. MFP AND THE CITY SIGN A DEAL: THE MASTER LEASE AGREEMENT

LOOKING AT WHERE THINGS WENT WRONG with the leasing transaction, there were many times when more vigilant oversight could have made a difference. The approval of the master lease agreement (MLA) is another one.

MFP used three agreements in the lease structure: the MLA, the program agreement, and multiple equipment schedules. The MLA set out various terms and conditions for the other agreements in the lease structure. It was the first agreement to be signed, but it was not the most important one. Essentially, it was a template for future leasing transactions, to which equipment schedules would be added.

With the 1997 lease with MFP for the councillors' computers, the City already had an MLA with MFP and, presumably, it was familiar with the terms and conditions in it. In any case, MFP included a copy of it in its response to the RFQ. The City could have included its own draft contract in the RFQ, as the Province of Ontario sometimes does with the expectation that the successful bidder will be expected to sign that particular contract. In any case, since the City had MFP's proposed contract in hand, it could easily have asked its lawyers to review it and put in some terms and

conditions favourable to the City. That didn't seem to have occurred to anyone.

MFP wanted to be ready in the event that it won this leasing RFQ. Its lawyers began drafting the MLA even before the winner was known. Drafting consisted of reviewing the original MLA and updating it to reflect MFP's June 1999 response to the leasing RFQ. When MFP heard that it had won the contract, it was ready and presented the draft to the City. The City then negotiated with MFP, at arm's length, and both parties had independent legal advice.

A. BRENDAN POWER NEGOTIATES

City Council approved the leasing deal with MFP on July 27, 1999. According to the RFQ, MFP's quoted three-year lease rates were valid for only 90 days: that is, until September 11, 1999. As mentioned earlier, MFP did extend the rate to the end of September. But the City did not know that MFP would do so at the time, of course, and never asked. As far as the City was concerned, if it was going to have the benefit of MFP's rates, it had to act quickly to get the MLA in place.

Rob Wilkinson was the primary negotiator for MFP. Along with MFP's legal counsel, he was able to negotiate the MLA to MFP's liking.

Brendan Power, a consultant, was the City's point person in negotiating the deal with MFP quickly. Although he did have experience in IT leasing, by his own admission, he was not a leasing expert. But he certainly must have talked a good line. Only in hindsight, it seems, did anyone at the City feel that he was not up to the task. No one questioned his ability at the time: not the IT people, not the Finance people, and not the Legal people. Brian Loreto,⁴ a lawyer in the City's Legal Services Division, and Mark Fecenko, the City's outside counsel, both thought he was very capable and eminently qualified in IT procurement. Mark Fecenko worked with him over the course of several months, on dozens of matters, and came to respect him as a strong IT procurement person. Mr. Fecenko had no idea that Mr. Power was not a City employee.

A great deal of responsibility was handed to Brendan Power, with very

⁴ Mr. Loreto died not long after concluding his testimony at the inquiry.

little assessment of his actual abilities. In the case of the MLA, Mr. Power was charged with negotiating a multimillion-dollar deal with little or no oversight. He didn't seek legal advice until very late and then treated legal scrutiny as a hurdle to be overcome.

Mr. Power could have involved the Finance staff in the negotiations. For example, he might have consulted them about lessee/lessor obligations, calculations for the lease rates, extensions, buyouts, early returns, interim rent charges, late charges, interest rates, and so on. He didn't, and he didn't involve Mark Fecenko, either, which was a critical error. It appears that no one at the City ever specifically told him when to involve counsel, but despite that, he talked to Mark Fecenko regularly. Even before he got the draft from MFP, he could have asked Mr. Fecenko to look at the MLA from the councillors' computer lease in preparation for the negotiations. Going back even farther, he didn't involve Mr. Fecenko in drafting the tender document.

Mr. Power began negotiations on his own, starting in early August 1999, shortly after MFP was informed it was the successful bidder. By August 5, Kim Harle, MFP's in-house counsel, had given Rob Wilkinson a revised version of MFP's existing agreement with the City. By August 10, Brendan Power had received and reviewed MFP's draft. He sent an e-mail to both Jim Andrew and Lana Viinamae to outline the business issues needed to be settled before the "legal scrubbing." He had some concerns. The City would be in default if it didn't make the payments on equipment schedules within five days of the due date, and Mr. Power suggested that the City not agree to that condition. There was no provision for termination without cause, and Mr. Power thought one should be added, along with cost tables. And, since equipment would be moved around from time to time, he thought the City should reach an agreement with MFP about asset management and control, including whose asset management system would be used. That would be particularly important when carrying out upgrades or modifications. He also thought that the definition of "equipment" should include software. Finally, he pointed out that the agreement contained a clause stating that the equipment schedules were to remain in force even if the agreement was terminated. He said the City should consider carefully before agreeing to that: "Do I see rolling windows?"

Mr. Power explained that "rolling windows" was a term for renegotiating a lease schedule for longer and longer terms, or staggering the acquisition of new equipment on lease schedules. That is exactly what was

to happen with the lease rewrites in July 2000, but despite his evident concern, Mr. Power did nothing to make sure the risk of “rolling windows” was addressed in the MLA.

Mr. Power and Mr. Wilkinson completed their negotiations on August 17, 1999, and Rob Wilkinson sent an e-mail to Lana Viinamae and Brendan Power attaching the revised draft MLA and program agreement.

B. THE CITY’S LEGAL SERVICES DIVISION GETS OUTSIDE HELP

The City’s Legal Services Division provided legal services to Council, its committees, and the City’s departments, agencies, boards, and commissions. Approximately 80 lawyers worked there, and in some ways, it operated much like a law firm. The lawyers didn’t get actively involved in a matter unless they were asked to. In other words, it was up to City staff to ask for legal advice. That detail became important as the story of drafting the MLA unfolded. In this case, it was up to IT, and Brendan Power in particular, to decide when and how to seek legal advice.

The Legal Services lawyers did a significant amount of the City’s legal work, but not all of it. Sometimes they would engage external legal counsel, and the Y2K Project was one such occasion. The City Solicitor was Ossie Doyle, and the City lawyer primarily responsible for IT matters was Brian Loreto. They both testified that the work on the Y2K Project was simply too much to be handled by Legal Services alone.

Following a competitive process, in early March 1999, the City retained a law firm, then known as Fasken Campbell Godfrey (Faskens), to work on Y2K matters. The principal contact at Faskens was Mark Fecencko. His practice focused on IT, and he was the co-author of a book on computer-related agreements.

A section of the retainer letter from the City specified how and from whom Faskens should receive instructions. For corporate governance and priority and policy matters, Ossie Doyle had designated Brian Loreto or an alternate to give instructions. Faskens was to report to Council and its committees through Mr. Doyle. On transactional matters, Lana Viinamae or her designate would give instructions, as long as any work to be done that

appeared to bear on corporate matters, priorities, or policies had first been discussed with Mr. Doyle or his representative. Invoices were to be sent to Lana Viinamae, copied to Brian Loreto. Any correspondence to Ms. Viinamae or her designate was to be copied to Mr. Loreto as well.

The reason for directly involving the Y2K Project team was the urgency. Y2K had an unmovable deadline, and it would be faster for Faskens to deal directly with the Y2K Project office rather than going through Legal Services.

Usually, Legal Services had considerable oversight over the work of outside counsel. The Y2K Project was one rare occasion when Legal Services was not going to do any of the work, deferring entirely to outside counsel who were expected to report to the client department, in this case, IT. Thus Faskens was not merely supplementing the work of Legal Services, it was supplanting it, and that was how it was intended. The City needed legal advice quickly, and this was the only way to do it.

The MLA was purely a transactional matter, so it was appropriate under the retainer for Mark Fecenko to deal exclusively with the Y2K Project. The vast majority of the instructions to Faskens on Y2K matters came from Brendan Power. There was no role for Legal Services to play in the negotiations of the MLA once Faskens was involved, which was the very purpose of retaining outside counsel in the first place.

C. A QUICK LEGAL SCRUBBING

On August 18, 1999, three weeks after the deal was approved by Council, Brendan Power contacted Mark Fecenko for the first time about the leasing deal to ask him to review the MLA and the Program Agreement. Mark Fecenko said it wouldn't have made any difference from a legal point of view, but I found it odd that Brendan Power never once mentioned to him that the deal was worth \$43 million.

Understandably, and like many lawyers, Mr. Fecenko preferred to be brought into such discussions early, not at the last minute as he was in this case. Ideally, he would have liked to have been brought in while the tender document was being prepared and to have been fully versed on the business deal the client was seeking to obtain. It certainly didn't happen here. If it had, Mr. Fecenko would have advised the City to issue an RFP, not an RFQ. More important, in the circumstances, he would have known that the

RFQ contained a considerable amount of RFP language and wasn't really just about price.

Brendan Power didn't usually involve legal counsel in the business case behind a transaction. Typically, in his many dealings with Mark Fecenko, he would ask him specific questions about specific legal issues. He seemed to see legal scrutiny as an obstacle to be overcome once the negotiations were all over. He followed his usual practice in this case.

The MLA Brendan Power sent Mr. Fecenko contained a reference to the RFQ and MFP's response, and Mr. Fecenko asked for a copy of both in order to understand the deal better. Mr. Power told him that they only set out the business terms, and all he needed was a review of the legal issues in the MLA. Mr. Fecenko accepted that, which was reasonable. He had had enough dealings with Brendan Power to rely on his information, and besides, Mr. Power told him that the City's Finance people had reviewed the other documents and were satisfied.

Thus, Mark Fecenko never saw the RFQ or MFP's response. As he read the MLA, everything suggested to him that the deal was as Brendan Power had described it. Had it been an RFP, he would have insisted on seeing the other documents, because an RFP would be more likely to contain legal terms as well as business terms.

At noon of the day after sending Mr. Fecenko the draft, Mr. Power contacted him again. He told Mr. Fecenko that he wanted to get any changes to MFP's lawyer the same afternoon so that the contract could be signed before a number of City executives went on vacation the next day.

Mr. Fecenko testified that his job was to protect the City. He needed to be satisfied that the two documents he hadn't seen, the tender document and MFP's response, contained no unusual terms and conditions or inconsistencies with the MLA. Mr. Power assured him they contained neither, and Mr. Fecenko accepted that, again based on his knowledge of Mr. Power's procurement expertise.

The same day, having reviewed the MLA, Mr. Fecenko wrote to Mr. Power raising four points to consider in his negotiations with MFP. They also talked that day and discussed Mr. Fecenko's concerns with certain terms and conditions. In his memo, Mr. Fecenko suggested broadening the language of the "Disclaimer of Warranties of Lessor" section, changing the notice provisions of the "Default by Lessee" section, and broadening the

City's ability to use "Fiscal Funding." His remaining advice was to change the order of precedence in the "Entire Agreement" section. As it turned out, MFP rejected that change. Later, Brendan Power let Mark Fecenko know that MFP had accepted all of the changes except for one:

Mark, MFP has agreed with your changes to the Agreement with the exception of Default by Lessee (s.17). The [sic] have suggested a change of "five days of the due date thereof" to "ten days of the due date thereof". I discussed with the City Management and they are willing to accept those terms so the Agreement is ready for signing.

He didn't tell Mr. Fecenko that MFP had rejected Mr. Fecenko's suggestion to change the order of precedence in the "Entire Agreement" section. There was no reason for Mr. Fecenko to doubt the truth of what Brendan Power had told him, and Mr. Power never asked him to look at the final version.

Was there anything else he didn't tell Mr. Fecenko? Yes, there was. There were four provisions of the MLA that appear to vary from MFP's response to the RFQ: asset management; equipment return costs; the right to upgrade the equipment during the term of the lease; and the effect of payment delays. Mr. Power didn't tell Mr. Fecenko about these variations. Why not? He didn't notice. I am confident that if Mr. Power had shown Mr. Fecenko the RFQ, MFP's response, and the MLA, Mr. Fecenko would have noticed these apparent discrepancies. In choosing to handle this contract without the benefit of Mr. Fecenko's special expertise, Mr. Power was cavalier and extremely careless in protecting the City's interests in a \$43 million contract.

MFP wrote the first draft of the MLA. Was MFP careless, too? Why were there provisions in the MLA that varied from its own response to the RFQ? Was this deliberate? It was hard to tell. By the time the inquiry started, MFP and the City were engaged in bitter litigation, with each suing the other. Neither was prepared to admit anything lest the other try to use it against them in the courts.

MFP's position at the inquiry was simple: There were no variations; the parties must have understood and expected that they were negotiating at arm's length, with each looking out for its own interests. The City, it said, had access to whatever assistance, legal or otherwise, it needed in this process; indeed, MFP made some changes to the contract specifically in

response to requests from Mr. Power based on the independent legal advice he had received. Further, it was the City's own responsibility to review any business terms that were important to it and to identify any resulting issues for inclusion in the final contractual documents. If the City didn't do this—well, that wasn't MFP's fault; MFP protected its interests and presumably the City was protecting its own interests, too.

Thus, the final, executed lease documents didn't incorporate all of Mr. Fecenko's advice, and Brendan Power hadn't given him an accurate picture of the deal. He had asked Mr. Fecenko to review the MLA on August 18, and to do it in less than a day as a matter of urgency. In the end, it is not clear on the face of the contract exactly when the MLA was signed. Some witnesses said it was signed at the end of August; some said it was the end of September. What is clear, however, is that the MLA was back-dated to the end of July, possibly because that was when Council approved the contract. The Program Agreement wasn't signed until October 1.

Mr. Fecenko didn't send a copy of his memo to Brian Loreto, even though the retainer letter from the City explicitly required him to do so. Mr. Fecenko said it was an oversight and I accept that. Brendan Power didn't copy Legal Services on his correspondence with Mr. Fecenko, either. Apparently, he didn't know he was required to do so and assumed that copying Brian Loreto on correspondence with Faskens was a courtesy.

D. THE LAST HURDLE: APPROVAL AS TO FORM AND AN OPINION LETTER

Contracts binding the City had to be executed by the City's approved signing officers. As part of the required due diligence, each contract was also to be approved by the City Clerk's office (to ensure Council approval) and Legal Services. It was the practice, although not mandatory, that the City Solicitor approve a document "as to form" before the Clerk's office signed it. Approval as to form meant that Legal Services was satisfied that the parties were correctly named, all of the pages were included, there was a place for signing, and the authorization stamp and the "approved as to form" stamp were affixed. If Legal Services had done all of the legal work on the matter, approval as to form also meant that the document reflected, at least

on a basic level, what Council had authorized and that it referenced the appropriate Council authority. It never meant that Legal Services had approved the contents of the document.

For the MLA, as it turned out, Legal Services only certified that the MLA “appeared” to be authorized by the Council report, and then relied entirely on Mr. Fecenko in its assessment that the MLA was “commercially reasonable.” Therefore, it then became the City Clerk’s responsibility to ensure that Council had authorized this. It was not clear from the evidence whether the Clerk knew that this task had been passed from Legal Services to the City Clerk. As a result, there was a potential gap in responsibility for confirmation that Council had authorized the MLA.

When the document went to Brian Loreto, he was unwilling to approve the MLA without some assurance that it had been reviewed by external legal counsel. On August 20, 1999, only two days after first contacting Mark Fecenko about it, Brendan Power asked him for a memorandum for Mr. Loreto to confirm the commercial reasonableness of the MLA. Later that same day, Mr. Fecenko faxed him a very short opinion letter:

Further to your request, this letter states my view, based on my experience in dealing with such agreements, that the terms and conditions of the above-noted agreements fall within the realm of commercial reasonableness.

What did he mean by “within the realm of commercial reasonableness”? He didn’t mean that the leasing transaction itself was commercially reasonable. He intended it to mean that the documents referred to in it (the drafts of the MLA and the Program Agreement) were standard in both form and content for such a transaction. But how could he know that the MLA fell into that category? Since he had not reviewed the RFQ or MFP’s response and had not been part of the negotiations with MFP, he didn’t know all of the terms and conditions.

Mr. Fecenko admitted that he could have used a better term or phrase. He also conceded that he didn’t tell Mr. Loreto (who, he knew, would be relying on his letter) that he had seen only a draft of the MLA and the Program Agreement and had not seen the RFQ or MFP’s response. Nor did he say that he had never seen the final version of the MLA. At the time of

the inquiry, he said he was still comfortable with the opinion he gave. The City, he said, had asked him to review the legal terms and conditions and give an opinion on whether there was anything unusual in the documents. That was what his opinion letter was talking about.

Had Mark Fecenko seen the RFQ and MFP's response, which Brendan Power opted not to send him, together with the final MLA, the contract might have been a very different document. He could have raised the alarm about the inconsistencies between the background documents and the contract that was to be executed because he would have seen that it wasn't a "pure" RFQ. But that is, of course, hypothetical. He didn't see the background documents. But if he had at least seen the final MLA, he would have seen that, contrary to what Mr. Power told him, his suggestions had not been incorporated in the final version. That, too, is hypothetical. In either case, he wouldn't have given the opinion letter.

Brian Loreto said he didn't know that the City was even contemplating leasing computer hardware and software until Brendan Power told him, on August 20, 1999, that approval of an agreement was needed. Given the City's retainer with Faskens, there was no reason for him to know. He didn't take part in drafting the RFQ, evaluating the bids, or reviewing the report that went to the Policy and Finance Committee. He relied entirely on information from Brendan Power and Mark Fecenko. Based on Mr. Fecenko's short letter attesting to the "commercial reasonableness" of the MLA, he stamped and initialled the document "approved as to form."

E. THE DEAL IS SIGNED

The MLA with MFP was signed on or around October 1, 1999, but it was back-dated to July 30, 1999. Al Shultz, the Director of Accounting Services, signed on behalf of Wanda Liczyk and Jeff Abrams signed on behalf of the City Clerk, Novina Wong. Lana Viinamae signed the first equipment schedule, for more than \$20 million, for a five-year term. On October 1, she sent a celebratory e-mail to Jim Andrew, copied to Len Brittain, Lou Pagano, Brendan Power, Frank Spizarsky, and Wanda Liczyk:

This is to confirm that we have approved the first MFP "Certificate of Acceptance". This covers the majority of our hardware acquisitions to date for 1999 as outlined in the Council report recommending leasing.

As requested by Finance, the lease term of 60 months has been used for this certificate. We can expect our first MFP invoice within the next 2 weeks.

Sixty months? Council hadn't approved a lease term of 60 months. Why was Lana Viinamae saying this in her celebratory e-mail? No one asked.

The MLA was properly executed, but it eventually came to light that the Program Agreement and equipment schedules were not. Lana Viinamae was the sole signatory of those agreements. She believed that because the July 1999 Council report said the contract with MFP would be "centrally administered" by the Contract Management Office, it gave her this authority. She was wrong, but her belief was not without foundation.

In July 1999, a "certificate of incumbency" certified by the City Solicitor specified that a number of people, including Lana Viinamae, were "within the purview of their authority as an officer of the City, and within the scope of their designated responsibilities with the City" in signing the MLA, the equipment schedules, and the program agreement. Although there was some dispute about how this document came to be created, there was nothing to indicate that Ms. Viinamae intended to mislead the City or MFP, or to act outside her authority deliberately. In any event, when the error was discovered in February 2000, the contracts were re-executed, and no one took the position that the agreements were not binding on the basis that they had not been properly executed before.

F. THE STAGE IS SET FOR MORE COSTLY MISTAKES

The negotiation of the MLA with MFP is just another instance of the City's lackadaisical attitude to the leasing deal. Brendan Power, a consultant, negotiated the terms of the lease single-handedly. Neither Lana Viinamae nor Jim Andrew looked over his shoulder or reviewed the terms and conditions before the MLA was signed. Some of the terms appeared sufficiently inconsistent with the terms in MFP's response to the RFQ that the City alleged that MFP engaged in a deliberate "bait and switch" technique. I have disposed of that allegation in chapter XV.

Much more could have been done to protect the City's interests. Legal advice was treated as a formality: "legal scrubbing," in Brendan Power's

words. Although Mark Fecenko could have insisted on reviewing the background documents, he had no reason to doubt Mr. Power's truthfulness and abilities. Mr. Fecenko clearly had the necessary experience to understand all aspects of the leasing deal. Regrettably, he was asked to look at only a small part of it. In fact, he was given only selective information about the City's goals and its progress toward them. In the end, his knowledge and ability were largely wasted, because Brendan Power gave him neither complete details nor the contextual framework in which to consider the document.

The City was bound by the deal it made, and there is little doubt that some parts of the contract could have been more favourable to the City. It was just the beginning, however. The administration of the agreement—the sale and leaseback, the change from three-year lease terms to five, the lease rewrites, and the lack of asset management—would prove costly, as will be seen in other chapters.

XIV. MORE BUMBLING: EXTENDING THE LEASE FROM THREE YEARS TO FIVE

HOW DID IT HAPPEN? The RFQ asked for three-year lease rates, yet the very first lease schedule the City signed with MFP on October 1 was for five years. The switch to five years boosted MFP profits and substantially reduced its risk. It also cost the City far more than the three-year lease MFP quoted in its bid. Yet experts told the inquiry that the extension to five years had little if any merit.

No new contract was put out for tender. The bidders on the May 31 RFQ were not invited to submit new numbers for a five-year lease. No paper trail existed to document the switch to a five-year lease term. Except for a brief calculation by Len Brittain, using hypothetical numbers, the City didn't even compare the costs of three-year and five-year terms. When Lana Viinamae signed the first equipment schedules, the City didn't even have the lease rates from MFP.

How could such a thing happen? The City was a victim of its own failings:

- City staff failed to ask the right questions to determine with certainty whether Council had approved five-year leases.

- The City failed to consider whether five-year leases made sense considering the life expectancy of the leased equipment.
- The City failed to get the five-year lease rates before signing.
- The City failed to analyze the cost of five-year lease rates compared with three-year rates (which it couldn't do because it didn't have the five-year rates).
- The City failed to consider whether a new tender should be issued for five-year leases.

Once again, communication between individuals and between IT and Finance was sorely lacking. Each staff member involved in extending the lease terms paid too little attention. The lack of a paper trail is astounding: Not one person thought to document what was happening. No one exercised real management oversight. With the innocuous-looking Jakobek amendment, and no semblance of due diligence by City staff, MFP was able to obtain a much more favourable deal, without bidding again and without competition. The inquiry's leasing expert said MFP gave the City reasonable five-year rates, but since the City performed no proper analysis, that was just lucky for the City.

A. THE JAKOBK AMENDMENT IS NO CLEARER

Wanda Liczyk co-wrote the report to P&F. She knew it recommended a three-year lease and that only at the end of three years would the City analyze whether it should extend the leases beyond three years. She knew that the report required her to report back to P&F on new leasing proposals. She knew that most of the equipment on lease had a three-year life span, and she knew, from her North York experience, that the lease term should match that life span. She also knew that the financial analysis in the P&F report was based on only a three-year term and didn't consider the financial advantages or disadvantages of longer lease terms.

Wanda Liczyk said she never thought the Jakobek amendment gave them authority to put all \$43 million worth of assets on a five-year lease. She said it wouldn't have been prudent for Council to approve that without a detailed

financial analysis. According to her, she asked Len Brittain to work with IT to assess the practical impact of the Jakobek amendment after the July P&F meeting. She wanted him to assess whether the amendment benefited the City and, in particular, whether any of the assets to be leased had a life span of more than three years. She thought that only a small amount of equipment would fall within the meaning of the Jakobek amendment.

Len Brittain recalled no such instructions from Ms. Liczyk. And it made sense that during this heady, busy time, she wouldn't ask him to do a detailed analysis until Council made a final decision. Why do the work before Council approved? Ms. Liczyk said so herself. Council often changes, clarifies, or adds to recommendations in committee reports. For that reason alone, it is doubtful that she asked Len Brittain to do the analysis at that time. Moreover, I found Len Brittain to be a truthful, responsible, and honourable witness. He stepped up and took responsibility for his department. Indeed, he made a point of telling me at the end of his testimony that if there was to be any finger pointing, it should be directed at him and not at his staff. I believed him when he said he recalled no such instruction from Ms. Liczyk.

Because no one brought it up after the Policy and Finance Committee meeting, what would prove to be a very significant amendment slipped through, with no follow-up or financial analysis.

B. A HINT OVER BREAKFAST

No one at MFP or at the City could recall who told MFP that it had won, but it was official by August 3, 1999. On that day, Dash Domi and Rob Wilkinson met Jim Andrew and Kathryn Bulko for breakfast. It seems this was the first meeting between MFP and the City after Council awarded the contract to MFP.

Now that MFP was the successful bidder, it was time to start talking about the details of the deal. MFP wanted to know about the impact of the Jakobek amendment, and whether it opened the door to five-year leases. Mr. Wilkinson brought along charts on three-, four-, and five-year lease terms and floated the idea that a five-year lease would benefit the City: it could flat-line its budget over 60 months. There was no discussion about the difference between the overall cost of a five-year lease and that of a three-year lease.

No decision was made at that meeting, and rather than discuss it with the Finance people himself, Jim Andrew suggested that Rob Wilkinson contact senior Finance staff to propose extending the lease term. He saw a lease extension as essentially a Finance issue but conceded that Finance would have needed input from IT on the life span of the assets to decide whether a five-year lease was sensible. It didn't occur to him, it appears, that a five-year lease was beyond what Council had approved. Even so, as he conceded at the inquiry, he should certainly have made sure that Brendan Power, who was responsible for the negotiations between the City and MFP, was involved in any discussion about three-year versus five-year lease terms, yet he didn't do that.

C. ROB WILKINSON EDUCATES THE IT STAFF

One or more of Brendan Power, Lana Viinamae, Kathryn Bulko, and Line Marks met with MFP about every two weeks in August and September 1999. There was generally no particular agenda. Rob Wilkinson said they talked about "whatever was on anybody's mind." He also thought that "a lot of what was going on in these meetings was educating them about the processes associated with leasing." They discussed the life of the computer assets, refresh strategies, and the length of the lease term. Regrettably, Jim Andrew didn't attend those meetings. He could have been providing leadership on the City's refresh strategy.

Ms. Viinamae, Ms. Bulko, and Ms. Marks had no leasing experience whatsoever. They regularly deferred to Brendan Power who, while knowledgeable, was no leasing expert, as he himself said. Brendan Power, for his part, never involved any lawyers in considering the options. They were all business-related decisions, he thought, and didn't need the benefit of a lawyer's training.

In August, Lana Viinamae had assumed responsibility for computer leasing, and she met with Rob Wilkinson about three times in August and September to discuss leasing issues. In her mind, Council had approved a three-year leasing contract with MFP, and MFP was to be the vendor of record for that time. Her first meeting with Rob Wilkinson and Dash Domi, on August 12, was to discuss the process for leasing computer equip-

ment. By this point, two months had passed since the close of the RFQ and the clock was ticking on the 90-day rate guarantee period. MFP President Peter Wolfraim testified that he would have been open to talking about holding the rates longer if the City had asked. As it was, because of its response in the RFQ, MFP was guaranteeing its price until October 1 anyway, so this in effect gave the City another 20 days or so to accomplish what it needed to do. But, inexplicably, Lana Viinamae knew nothing about a 90-day rate guarantee, let alone any extension to it. No one had ever told her, so she didn't know to ask about the need to move quickly. As a result, when she learned that MFP needed the serial number of each computer for the sale and leaseback—obviously an onerous, time-consuming task—she didn't realize that it had to be done by the end of September.

Rob Wilkinson, an experienced leasing representative, was at these meetings to speak for MFP. He had been at MFP for a long time. He was one of the first people MFP hired, and he knew as much about IT leasing as anyone in the industry. When a sales representative needed numbers or complicated transaction modelling, he was the “go to” guy. He negotiated terms with Brendan Power on the first lease to be rolled out. On the strength of his presentations, the City would decide to extend lease terms, blend and extend leases, and reorganize hardware and software lease schedules. The City should have had an equally qualified representative to protect its interests. Instead, it relied on its supplier to educate its staff.

The pressure of Y2K had meant that a huge number of desktops had to be replaced all at once. In the course of these meetings, MFP learned that mass replacement in one fell swoop was unlikely to happen again. The City was under financial pressures. There would have to be some type of refresh strategy, or the assets would have to be used for a longer term.

Not surprisingly, a key concern for the IT people was to find some way to give the City breathing room to develop a refresh strategy. It didn't have one. Rob Wilkinson told them a five-year lease would give the City time to develop one. Meanwhile, everything could go on a five-year lease, but the equipment could be replaced earlier if that turned out to be the refresh strategy. They would have time to figure it out.

Rob Wilkinson knew that it was highly unlikely the City could replace all the equipment in three years. Indeed, that was one of the risks MFP took when it bid at a loss on the RFQ, but it knew the odds were in its favour.

It was highly improbable that the City would return all those thousands of desktops on one day at the end of a three-year term. This informed MFP's aggressive pricing on the bid, as Mr. Wilkinson acknowledged: "It is what helped us support such a large investment, because we knew that at the end of three years the odds of us getting month-to-month rent was very high. . . . That was what our thinking was and they [the City] should have equally known that." Peter Wolfrain confirmed that if the City had exercised its purchase option at the end of the three-year lease, MFP would have lost money. He also felt that wouldn't happen.

Rob Wilkinson said the City should have requested lease rates from bidders for 36, 48, and 60 months. Nadir Rabadi had made the same suggestion when the RFQ was being drafted, but it didn't get into the tender document. Had the City initially prepared a thorough business plan addressing what it was really looking for before it issued the RFQ, the problem of replacing all the equipment at the same time would have surfaced, as would the wisdom of asking bidders to quote on various lease terms and to provide refresh strategy options. But it was too late for that now.

Mr. Wilkinson knew about the City's serious budget pressures and thought that suggestions to reduce or smooth out the annual operating costs of leasing would be welcomed. Five-year leases were rare for MFP, and it didn't even have a quote on them, but the City wanted budget relief and stretching the leases was one way to do it. He proposed a staggered refresh strategy over three, four, and five years.

It looked attractive to IT staff, and none of them ever turned their minds to the problem that Council had approved only a three-year lease.

MFP met with City staff about 10 times in August and September, between the time MFP won the RFQ and the time the contract was signed. Lana Viinamae, Kathryn Bulko, Brendan Power, Line Marks, Len Brittain, Wanda Liczyk, and Jim Andrew all attended meetings with MFP during those two months.

D. THE PITCH TO FINANCE

In the April 1999 City Finance newsletter, Wanda Liczyk listed the 1998 accomplishments and the 1999 priorities for her department. She described 1998 as "an amazing year," because "in conjunction with the CAO and City

Departments, we presented an operating budget that had no increase in taxes.” Mayor Lastman had campaigned on a zero tax increase for 1998, 1999, and 2000. Clearly designated as a 1999 priority, and incorporated in the budget presentation to the Budget Committee, was a zero-increase operating budget for 1999.

Rob Wilkinson thought that the meetings with IT had evolved to the point where Finance should be involved. He and Dash Domi were to meet with Wanda Liczyk and Len Brittain on September 21. Wanda Liczyk recalled that MFP asked for the meeting to present possible scenarios under the Jakobek amendment. The day before the meeting, Mr. Wilkinson faxed Ms. Liczyk some materials in preparation for the meeting, with a handwritten note:

Wanda,

I have attached two scenarios. The first is projecting the lease payments over 10 years using a 36 month lease and a 36 month refresh cycle. The second is projecting a 60 month lease with a 36 month refresh cycle.

You will notice that the 60 month lease gives you a more constant annual lease payment than 36 months.

The model we will show you tomorrow is designed to be interactive between both of us. We will go through several scenarios involving the sale lease back credits.

Rob Wilkinson

This meeting was the first time Rob Wilkinson met Len Brittain, and he went to the meeting thinking there was now a consensus in IT that the lease should be extended to five years for desktops, that IT staff were receptive to a refresh strategy for 36, 48, and 60 months, and that the purpose of the meeting was to get Finance on the same page. In fact, there was no such consensus in IT. Lana Viinamae, for one, was adamantly opposed to extending the lease to five years.

Mr. Wilkinson presented to Ms. Liczyk and Mr. Brittain the five-year lease scenario, which included refreshing the equipment in thirds at intervals of 36, 48 and 60 months. He expected the City to analyze the proposal and understand, as he did, that the total cost of leasing was greater on a five-year lease than on a three-year lease. It would flatten out the City's payment

stream, but it would be using MFP's money for a longer period. So it would cost less each year, but more overall. Extending the lease terms beyond the useful life of the assets thus reduced the lease payments in the early years, but from the time of the first replacement under the refresh strategy, the cost would go up.

Structuring the leases over 60 months, with refreshes during the term, would increase the probability that MFP would be selected as the lessor during the refresh period, thus prolonging its profitable relationship with the City, as Rob Wilkinson knew. A further advantage for MFP was the minimal risk to the company. It invested essentially no additional money and simply made more profit on the transaction. Consequently, as Mike Flanagan of MFP said, the MFP investment committee only discussed the extension in a " cursory manner." The benefits for MFP in the change to a five-year term were obvious to them.

But at their meeting, neither Len Brittain nor Wanda Liczyk asked Mr. Wilkinson whether it would cost the City less to stay with the three-year lease and exercise options at the end of the term. Wanda Liczyk didn't stay for the entire meeting, but Mr. Wilkinson felt that both she and Len Brittain had reacted positively to his ideas.

Ms. Liczyk denied conveying the impression that she favoured the proposal. Based on Mr. Wilkinson's information, though, she understood that the five-year lease proposal involved a vast amount of equipment, and that it defeated her goal of matching the life span of the equipment to the lease term. She also realized that the MFP proposal was radically different from what she believed was authorized through the Jakobek amendment. Yet it never occurred to her that it was a problem to go to a five-year lease when the RFQ had asked only for three-year rates. It should have.

Ms. Liczyk said she expected MFP to send a written quotation on five-year lease rates, tied to specific assets. After the meeting, she asked Len Brittain to assess whether the City should pursue any of MFP's proposals. Mr. Brittain was to meet with the IT people the next day.

E. IT AND FINANCE TALK WITHOUT COMMUNICATING

The next day, Jim Andrew heard about the meeting between Wanda Liczyk, Len Brittain, Rob Wilkinson, and Dash Domi. He knew that five-year leases and a staggered refresh policy were discussed. He thought that perhaps he was out of the loop. So he called Rob Wilkinson. They chatted about the major points covered at the meeting. Mr. Andrew asked him to send him material on a comparison of 36- and 60 month-leases. Mr. Wilkinson obliged.

Interestingly, Jim Andrew seems not to have considered getting that information from Wanda Liczyk and Len Brittain, his own City colleagues who attended the meeting. That was an illustration of the silo mentality at the City: a senior staff person didn't first think to speak to someone within the City. It also shows why Jim Andrew either should have been either more personally involved with this transaction or should have ensured that Brendan Power was more involved, given that he was one of the few people who understood the repercussions of the five-year term.

The same day, Len Brittain and Don Altman from Treasury met with Jim Andrew, Lana Viinamae, and Line Marks from IT to discuss the MFP proposal. After the meeting, Ms. Viinamae thought Finance seemed interested in extending the leases to five years. IT wanted to stay with a three-year lease to keep the City's technology current and have a lease term to match the three-year equipment warranty. She came away from the meeting thinking that the lease extension was being considered only for software, not hardware.

Jim Andrew claimed that he made only a brief appearance at this meeting. He delegated to Lana Viinamae the authority to make decisions on his behalf on the lease transaction with MFP.

The next day, September 23, Len Brittain did a crude analysis of the 60-month option. Mr. Brittain himself said it was rudimentary, done at a conceptual level using hypothetical numbers. He didn't contact IT to get real numbers. But even this rudimentary analysis showed that a 60-month lease didn't make financial sense, so he didn't take it any further than that. It was the City's only financial analysis of the five-year lease option.

But Len Brittain dropped the ball. He didn't follow up on his conclusion or delegate further analysis to his staff. Nor did he inform his boss, Wanda Liczyk, that it made no financial sense.

After the meeting with Treasury, MFP prepared the first lease, a five-year term for \$20 million. Ms. Liczyk denied that she directed MFP to prepare it, and she didn't think Len Brittain would have authorized it without doing an in-depth analysis of the proposed transaction. Thereafter, everything but the leases for the councillors' computers would go on a five-year lease.

A week after that meeting, on October 1, Lana Viinamae copied Len Brittain on the e-mail in which she said she had approved the first "certificate of acceptance" from MFP, with a lease term of 60 months "as requested by Finance." Even then, he didn't point out that Finance had not requested a 60-month term. He simply assumed the decision must have come from Ms. Liczyk. But Ms. Liczyk was the very person he hadn't told about his analysis results: the 60-month lease was a bad deal for the City.

F. WHERE THE BUCK STOPPED

Who actually authorized the five-year leases? The question was the cue for a chorus of "Not me."

The City didn't have even the semblance of the kind of integrated decision-making mechanism essential for a complex decision like this. Compounding that systemic flaw, were the personal flaws. Several of the people involved simply failed to do what they should have done.

In the inquiry witness box, Wanda Liczyk tried to shift the blame onto Len Brittain, claiming that she relied entirely on his expertise and thoroughness. She trusted that Mr. Brittain had done his due diligence, had consulted with IT, and had concluded that it was appropriate for the City to enter into a 60-month lease with MFP. He had told her that everything was fine. But her testimony was at odds with Mr. Brittain's on this issue.

According to Ms. Liczyk, sometime in late September, Mr. Brittain told her that some of the computer assets could indeed be placed on a five-year lease, and that the extension was consistent with P&F and Council approval. She was satisfied with his response and didn't ask him for any further information or a written analysis.

Len Brittain, on the other hand, denied that he had told her any such thing. Indeed, it would have contradicted the rudimentary financial analysis he had done. To do a full analysis, he would have needed information from IT and prices from MFP. MFP didn't give the City a written quota-

tion until after Lana Viinamae signed the lease, so Mr. Brittain couldn't have done any analysis with real numbers in any case.

Ms. Liczyk testified that she assumed that only a minor amount of equipment would be on a five-year lease, and not the full \$43 million. She didn't ask Mr. Brittain to confirm the quantity because she was confident in his strong analytical abilities. Nor did she give any thought to whether the City should issue a new tender for five-year rates, given that the RFQ had asked only for three-year rates.

Because she thought it was only a minor change to the lease term, she claimed, she didn't think it necessary to report back to P&F, despite the requirement in Recommendation 4 of the report approved by Council that she report back "on new leasing proposals and the financial impact for the balance of the equipment and software."

It is difficult to believe that Ms. Liczyk didn't know that a significant portion of the computer equipment would be on a five-year lease. Lana Viinamae copied her on the e-mail she sent to Jim Andrew where she reported that the first certificate of acceptance covered "the majority of our hardware acquisitions to date for 1999." Ms. Viinamae's e-mail also said that Finance requested the 60-month lease term. If Ms. Liczyk wasn't the Finance person who had authorized it, then surely she would have known that Ms. Viinamae didn't mean her. And she would have known that it wouldn't have been Mr. Brittain, because he wouldn't have done something like this without first consulting or even notifying her. Ms. Liczyk knew from her meeting with MFP in September that the five-year option was a radical departure from the RFQ—and did nothing about it. Perhaps because of her friendly relationship with Dash Domi, she was acquiescent and passive. She failed to exercise the hands-on oversight for which she was so well known, and she failed to report back to P&F despite a clause in the P&F report obliging her to do that.

Len Brittain is fully at fault for not analyzing the five-year lease option more thoroughly than he did, but he didn't actively mislead Ms. Liczyk about his conclusion that the five-year lease was a bad deal.

Lana Viinamae testified that, until the last week of September 1999, she, Jim Andrew, and Brendan Power all thought the lease was going to be for three years. It was Jim Andrew who told her it was five years. She said that she told him about her objections to five-year leases. It was important for

the lease terms to coincide with the warranties and life expectancy of the assets, and she had particular reservations about the printers and the storage technology, which she didn't believe would last more than three years. Jim Andrew told her it was a Finance decision, not an IT decision, and they were going to have to live with it. A five-year program was better than no refresh program at all, he told her. Jim Andrew had no recollection of having this conversation with her. Whether or not the conversation took place, obviously IT and Finance had failed to communicate.

Jim Andrew was well aware of the decision to extend the lease. He went to a few of the August and September meetings. He asked Rob Wilkinson to send him the charts from the September 22 meeting between MFP and Treasury, and he also contacted Wanda Liczyk to suggest that Len Brittain meet with IT to finalize the transaction. Although he had several concerns about extending leases to five years and knew that Lana Viinamae did also, he didn't tell Wanda Liczyk or other Finance staff.

Lana Viinamae asked Brendan Power whether there was Council authority to extend the leases to five years. With no basis for his opinion, Mr. Power told her that the Jakobek amendment authorized it. Ms. Viinamae didn't read the amendment to verify that, nor did she contact anyone in Finance or Legal or the City Clerk to confirm that she had the authority to enter into the five-year transaction.

Shortly after she talked to Brendan Power, Ms. Viinamae said, she ran into Wanda Liczyk in the lobby of City Hall. She took the opportunity to tell her that she was not happy with the idea of the five-year leases. According to Ms. Viinamae, Ms. Liczyk explained that the budget constraints made the five-year leases necessary. It was now clear to Lana Viinamae from what Ms. Liczyk said that all of the equipment would be leased for five years. Ms. Liczyk had no recollection of this conversation with Ms. Viinamae.

In hindsight, Ms. Viinamae acknowledged that she ought to have confirmed her understanding of the situation in writing to Ms. Liczyk. On the other hand, no one reacted to her e-mail to Len Brittain on October 1 in which she announced that the lease terms had been extended to 60 months at the request of Finance.

Two draft letters to City Commissioners also provide some insight into who authorized the extension to five years. Brendan Power wrote the first

draft on September 17. It said that IT was announcing the new leasing program with a three-year lease. After the September 22 meeting of Finance and IT staff, there was a second draft, written on September 30. This time, the lease terms were four and five years, and both IT and Finance were doing the announcing. Lana Viinamae testified that this second letter reflected the direction change in the last week of September.

Line Marks sent the September 30 draft to Lana Viinamae, Jim Andrew, and Wanda Liczyk for signature. Ms. Marks couldn't recall getting signed letters back, and it appears that the letter was never sent to the Commissioners.

So where did the buck stop? Who decided to go to five-year leases? Wanda Liczyk did. No IT person would want leases with a term longer than the life of the asset. Len Brittain would never have taken it upon himself to make the decision without a thorough analysis, and even his superficial analysis showed that it wasn't a good deal. Wanda Liczyk made the decision herself to address budgetary constraints. And she did it without considering whether such a change contravened the authority granted by Council or considering whether the change would affect the City's technology capability. She knew there had been no financial analysis, and therefore she failed to make a principled financial decision.

G. LANA VIINAMAE SIGNS THE FIRST LEASE AND THEN GETS MFP'S RATES

The confusion, misunderstanding, and lack of communication that characterized the leasing deal from the beginning continued right up until the deal was inked. The person who signed a deal worth tens of millions of dollars, a deal the City had been working on for months, had no idea what she was signing. As it turned out, she wasn't even supposed to sign the document, but that was remedied later on.

Ms. Viinamae assumed that everything was fine. Otherwise, she wouldn't have signed. It was the largest commitment Ms. Viinamae had ever signed for the City. She signed it without noticing that the printers were on the lease schedule. She admitted this was an oversight. Ms. Viinamae assumed that bidders had actually provided rates for a variety of lease terms. She assumed that

the lease rates were a Finance responsibility. She assumed that the deal had been properly analyzed. She assumed that the lease rates were the same as those in MFP's bid. She relied on Brendan Power, the assumed leasing expert.

Of course, all of these assumptions were dead wrong. But almost everyone else who touched this file also assumed everything was fine and being taken care of by someone else.

When Lana Viinamae first saw the document containing the lease rate factors, she had no idea what it was and asked Brendan Power to explain it to her. Not surprisingly, they had different recollections of the conversation.

According to Ms. Viinamae, Brendan Power told her the lease rate factors would govern the first quarter, namely October 1 to December 31. They would change each quarter, like a bond rate, according to industry standards, and were consistent with MFP's response to the RFQ. Brendan Power said he told her the lease rates were different from MFP's original bid and not tied to any external benchmark.

Brendan Power had not questioned the five-year term, even though he thought it inadvisable. Finance, not IT, was responsible for the decision to extend the lease, in his view. Although he didn't think Lana Viinamae would have recommended a five-year lease for hardware with a three-year life span, he also said that she had asked him to get MFP's 60-month lease rate. Ms. Viinamae denied that.

Mr. Power did indeed get 60-month lease rates from Dash Domi on October 6, and he did send them to Lana Viinamae. But by that time, she had already signed the lease schedule. In other words, the City committed to extending the lease period to five years before anyone knew MFP's rates.

H. WHAT WENT WRONG?

Staff should have asked for Council approval of the lease extension from three to five years. Wanda Liczyk herself didn't think the Jakobek amendment contemplated extension of the lease term for all of equipment. Confusion reigned about the meaning of the amendment, and staff should have asked for clarification and verified that there was authority for extending the lease term.

Needless to say, before making a decision to go to a five-year lease term, the City should have obtained the lease rates from MFP and conducted a

full analysis of the financial implications of the extension. The inquiry's experts concluded that if the City had analyzed the five-year rates and compared them with the RFQ rates, the significant cost increase would have been obvious.

The inquiry's leasing experts also confirmed that a staged refresh could, in fact, have been accomplished under the three-year lease, and that the three-year term was by far the best option for the City. The rates MFP quoted for the RFQ were excellent, the three-year term appeared to match the expected life of the equipment, and the three-year option was less expensive than the five-year lease.

Even given all the other errors to that point, staff should have asked MFP for the lease rates, and IT and Finance staff should have worked together to analyze the five-year proposal. Brendan Power, Lana Viinamae, and Jim Andrew should have made sure that Mr. Brittain had all of the information he needed from MFP. Since they didn't, Len Brittain should have followed up with IT to get the information he required.

As the head of her department, Wanda Liczyk should have made certain that Finance did a full evaluation of the five-year lease proposal. And she should also have made her position on the matter clear to IT. Lana Viinamae, for example, certainly believed that all of the equipment was to be placed on a five-year lease, not just some of it.

Even after the further serious error of failing to analyze the options, the City, since it had decided to extend the lease terms, should have issued a new tender or invited those who had bid on the RFQ to bid on a five-year lease. A five-year lease is a substantially different transaction. By issuing a new tender, the City would have verified that MFP's five-year rates were competitive. They were, but that's beside the point.

Lana Viinamae was notorious for confirming decisions via e-mail and copying "the world." She should have confirmed what she thought were Ms. Liczyk's instructions and copied Jim Andrew, Brendan Power, and Len Brittain. If she had done that, perhaps someone would have noticed that Finance and IT were not on the same page, and that a full analysis had not been done. And she should not have relied solely on Brendan Power, a consultant, for answers to her questions about her authority. Effectively, she signed the biggest commitment she had ever made on behalf of the City in a vacuum.

The MFP transaction was concluded in the same atmosphere of passivity, neglect, and failed communication that plagued the procurement process from the outset. A vague and suspect amendment by Councillor Jakobek opened the door to a sequence of errors that culminated in the City's missing a great opportunity to sign on at excellent three-year rates. Instead, it accepted Mr. Wilkinson's entirely unnecessary five-year pitch and, in the process, spent much more of the taxpayers' money than necessary. Meanwhile, in the midst of negotiations with MFP, the senior staff who should have been meeting to communicate about the City's interests had time to meet on the golf course, courtesy of MFP.

I. MEANWHILE, UNOFFICIAL MEETINGS— ON THE GOLF COURSE

In the midst of all the serial bumbling inside the City, the coziness between MFP and City staff continued. In mid-August, MFP invited Jim Andrew to a performance by Cirque du Soleil, the well-known circus arts company. Mr. Andrew declined. Tom Jakobek hosted Wanda Liczyk, Jim Andrew, and Dash Domi for golf on September 2. After the game, they all went to Mr. Jakobek's house for drinks.

On September 23, MFP held a golf tournament at Glen Abbey, attended by Jim Andrew, Lana Viinamae, Kathryn Bulko, and Paula Leggieri. Given that the City and MFP were still negotiating with MFP, staff (but especially Jim Andrew and Lana Viinamae) should not have attended any entertainment events hosted by MFP during this time. Lana Viinamae, for example, was one week away from signing the equipment schedules for five-year lease terms that had never been put out to tender.

CAO Mike Garrett rightly told the inquiry that staff should not accept favours from a company during contract negotiations because that could influence objective decision making. Jim Andrew conceded that, by the time of this golf tournament, his guard was down and his ability to fully and objectively assess MFP's proposals was compromised.

XV. MISMANAGING THE MFP LEASES

SO FAR, THE STORY OF COMPUTER LEASING at the City of Toronto has been filled with tribulations and errors: the pressures of amalgamation and Y2K, conflicts of interest, and a leasing company that offered relationships over substance. But it is also the tale of massive bureaucratic mismanagement that ended up costing the City millions of dollars.

A. FORM BUT NOT FUNCTION: THE CONTRACT MANAGEMENT OFFICE

A contract with MFP was in place, and the report to the Policy and Finance Committee in July 1999 had specified that IT would “centrally manage the contract administration.” Within IT, the Contract Management Office (CMO) was formed to do the job. The CMO had three areas of responsibility: IT procurement; issuing RFPs, RFQs, or other tender documents for IT equipment; and managing leasing.

Lana Viinamae had become increasingly involved in leasing, and by the fall of 1999, with no prior technology leasing experience, she was in charge of computer leasing at the City. That was when the CMO started to take shape, but it didn’t exist formally until January 2000. Kathryn Bulko, Line Marks, and Paula Leggieri were all working in the Y2K Project office, and as it wound down, the advent of leasing presented a

new employment opportunity. All three of them would take on important roles in the CMO.

Kathryn Bulko was a long-time City employee, but her new job in the CMO was her first management position. She officially became Manager, Contracted Services, on January 18, 2000, reporting to Lana Viinamae, but she started working on leasing matters in the fall of 1999. She had little prior leasing experience, but she worked hard and often put in very long hours.

Line Marks was Lana Viinamae's assistant throughout the Y2K Project, although her job title didn't do justice to the scope of her work. She worked tremendously hard and was loyal to Ms. Viinamae to a fault. Her first and most significant task in computer leasing had to do with the sale and lease-back. She eventually became Supervisor, Contract Administration, Coordination and Approval, in the CMO. (Incidentally, Ms. Marks was testifying at the inquiry, with about two minutes of questions left to go, when the entire eastern seaboard had a massive power failure. This resulted in a week-long forced adjournment for the inquiry during the energy conservation period that followed in Toronto. In the end, she didn't have to be recalled when the hearings resumed after the blackout.)

Paula Leggieri likewise had no leasing experience. She was the logistics manager in the Y2K office, responsible for dealing with the details of office space, furniture, and equipment. She was hired as the Supervisor, Technology Leasing Administration, Coordination and Approvals, in the CMO.

So none of the three people Lana Viinamae selected had experience in leasing, and all of them would play important roles in administering the contract with MFP. They cannot be faulted for looking ahead and recognizing that leasing administration would be an opportunity for further employment once the Y2K Project was over. Unfortunately, their new jobs outstripped their abilities, and with no time for formal training courses, they had to learn about leasing on the job.

Lana Viinamae hired them, and there was a competition for the jobs. Leasing requires a thorough understanding of finance, IT, and administration, and Ms. Viinamae had little leasing experience herself. She failed in her duty to make sure that she, or her staff, had sufficient training and experience to analyze and administer the leasing transactions, which were now in her charge. As a result, the CMO was simply not up to the job.

1. THE LEASING PROGRAM THAT WASN'T

Throughout the inquiry, City staff referred to the “Leasing Program,” giving the impression that it was a formalized program authorized by City Council. It was not. Council only authorized putting \$43 million worth of equipment on a three-year lease with MFP. There was no leasing program. Nevertheless, the CMO staff seemed to believe that City Council had actually authorized putting all computer hardware and software acquired over a three-year period, not limited to \$43 million, on lease with MFP. They also believed that MFP was the City’s vendor of record for leasing. That wasn’t accurate either.

Starting in the fall of 1999, Y2K Project office staff who would later work in the CMO began developing forms and an approvals process for leasing hardware and software. Paula Leggieri and Brendan Power, and to a lesser extent Lana Viinamae, Kathryn Bulko, Line Marks, and staff in Purchasing, all worked on these leasing-related documents, including flow charts, business rules, procedures, and early drafts of the Information and Technology Leasing Approvals (ITLA) form. In its final version, that form clearly demonstrated the misapprehension that a leasing program existed. At the very top of the form was a paragraph summarizing the so-called authority to lease:

Approved pursuant to the Delegated Authority contained in Clause No. 2 of Report No. 24 of the Strategic Policies and Priorities Committee entitled “Year 2000 Business Continuity Plan” adopted by City Council on November 25, 26, and 27, 1998, and the delegated authority contained in Report No. 4 Clause 11 of The Policy and Finance Committee entitled “Leasing of Computer Equipment and Software Information and Technology Products and Services” adopted by the Council of the City of Toronto on July 27, 28, 29 and 30, 1999. MFP Financial Services is the Vendor of Record for Leasing.

The last sentence said that MFP was the “Vendor of Record for Leasing,” meaning that it had the exclusive right to be the City’s leasing provider. Senior management in IT may have wanted such an arrangement, but it was not what they had asked the Policy and Finance Committee and City Council to authorize.

But there it was in black and white. The form was developed by the CMO, but eventually all City departments used it for acquiring computer

hardware and software and putting it on lease, so the fiction spread throughout the City.

It is not clear who drafted the form. Paula Leggieri credited Brendan Power with drafting it, but he had no recollection of doing so. In any case, the draft form was circulated to others in the CMO, including Lana Viinamae and Kathryn Bulko. Looking at the form again, Ms. Bulko agreed that the two sources of authority cited on the ITLA form, the Y2K Delegated Authority Form and the Y2K Business Continuity Plan, though both authorized by Council, didn't authorize a leasing program as staff went on to implement it.

It is difficult to understand how so many could have had a complete misconception about what Council had really authorized. It wasn't just one or two individuals. Jim Andrew, Lana Viinamae, and Brendan Power all believed that the City had entered into a leasing program for all IT equipment, not at all limited to \$43 million, to be leased from MFP for three years.

The CMO staff were acting on assumptions handed down from their superiors, but they themselves are not wholly blameless. Ms. Bulko took on a managerial title, and with her new position came new responsibilities. At a minimum, she should have read the Council report that, in her mind, created the CMO, her position, and the leasing program that she was hired to administer. Lou Pagano was invited to participate in the design of the leasing program. He did ask questions. In a memorandum to Lana Viinamae, he expressed some concern about the proposed leasing procedures, including questions about getting competitive quotes and getting appropriate Council approval before issuing a purchase order. Mr. Pagano asked the right questions, but he didn't follow up to make sure they were answered. If he had, he might have discovered that the leasing program was not intended to be a program at all.

The CMO was administering a nonexistent leasing program, but it was doing it with determination and gusto. The forms and processes for leasing continued to be revised and refined and were posted to the City's intranet site in July 2000. CMO staff had meetings with other City departments and explained the leasing procedures. They created detailed electronic tracking spreadsheets for the leased equipment, including the ITLA form number, vendor, ordering department, equipment description,

date of order, date of delivery, certificate of acceptance number, total cost, and leasing costs.

On the surface, the forms and flow charts made it look like all the bureaucratic i's had been dotted and the t's crossed in the CMO. But it was actually a shambles, and four debacles would show that the office was really flailing about, without expertise, and with no effective supervision.

2. THE SALE AND LEASEBACK MESS

Since late 1998, the City had been buying IT equipment to cope with the pressures of amalgamation and Y2K. By October 1999, the City had acquired approximately \$20 million worth of equipment and had already paid for a good deal of it. The City decided to place the equipment it had already acquired on lease; in other words, it would sell it to MFP and lease it back. It was easier said than done.

Many people in IT were well aware that a sale and leaseback was planned. City Council was not. Council had not expressly approved it, and staff therefore had no authority to execute the plan. They forged ahead with it nevertheless, but no one had thought out the mechanics of the transaction in advance. Neither Kathryn Bulko (who was responsible for the rollout of the Dell desktops across the City) nor Line Marks (who was responsible for invoices for the Y2K Project) had tracked the assets or in some other way identified the equipment that was to be sold to MFP, and there was no easy way to pull that information together. It was basic information—a description of the equipment, the serial number, and the selling price—but it didn't exist in any easily accessible format.

Lana Viinamae gave the massive job of organizing the sale and leaseback to Line Marks, who had no experience in administering such a transaction. It was now up to her, with very little guidance and support, to manage this part of the leasing deal.

Ms. Viinamae had decided that the sale and leaseback would be handled by having the suppliers reissue invoices to MFP. It was Ms. Marks's job to keep track of the invoices. Since the City didn't have the basic information about its equipment in a usable format, it turned to all of the vendors who had sold IT equipment to the City in 1999. The City asked them to "sell" the equipment again to MFP and to issue a credit to the City for what it

had paid. The invoices were to be sent to MFP, and MFP would use the information on them to create lists of equipment for the sale and leaseback. This involved about \$20 million worth of hardware and software.

To say that this created a mess would be an understatement. Line Marks was overextended and inexperienced, and she still had Y2K responsibilities at the time. The mess wasn't her fault. Some of the items on the vendors' invoices shouldn't have been leased in the first place: toner cartridges, laptop carrying cases, power cords. These problems took time to sort out. Some vendors ended up being paid by both the City and MFP and some complained that they weren't paid at all.

Leasing was getting off to a bumpy start at the City. To its credit, however, MFP was there to help. Seeing that Line Marks wouldn't be able to manage the sale and leaseback single-handedly, MFP sent Senior Portfolio Administrator Lee Ann Currie to the City to help, free of charge. Working at first from MFP's offices, she later worked on site at the City from about January to March of 2000. Ms. Currie was a smart and organized young woman, and she did her best to help Line Marks. It took several months, but at least the matter of which items should be on lease was eventually sorted out.

Unfortunately, however, the sale and leaseback had another problem.

When the City acquired the equipment that was eventually sold to MFP and leased back, it paid Provincial Sales Tax (PST) and Goods and Services Tax (GST). When the vendors sold the same equipment to MFP, in the sale and leaseback arrangement, their invoices were, quite properly, net of all taxes. The City's lease payments to MFP for the same equipment were subject to both PST and GST. So the City paid those taxes twice on the same items: once when it purchased the equipment from the vendors, and again when it made the lease payments to MFP. The City's duplicate PST payments totalled \$1,882,372.73.

Since City Council hadn't expressly authorized the sale and leaseback and wasn't specifically asked to consider it, Council didn't know about the potential for this increased tax liability associated with the sale and leaseback transactions. Of course, Council likewise never had the opportunity to consider this tax issue when it decided to award the leasing contract to MFP.

To mitigate a double tax burden, both the provincial and federal taxing authorities permit an organization like the City to claim a refund.

Fortunately, the City was able to recover its GST overpayment. However, to claim a PST refund from the Province, the City had to demonstrate that it had intended to lease the equipment at the time of purchase. The Ministry of Finance determined that the City had not demonstrated that intention and denied all but \$200,000 of the claim. Although the City appealed the decision, it remained burdened with more than \$1.6 million in tax overpayment. The appeal was still outstanding at the time of the inquiry.

The tax implications of the sale and leaseback didn't dawn on anyone at the City when they planned the transaction. Brendan Power, the outside consultant who was supposed to have leasing experience, missed it. So did Jim Andrew, Lana Viinamae, Wanda Liczyk, and the many other staff in Finance and IT who were involved in the decision to lease. This was just one more costly instance where City staff failed to consider the implications of leasing and failed to take steps to protect the City's interests by having the necessary expertise in place or hiring outside experts.

Rob Ashbourne of MFP said he told Jim Andrew about the potential double taxation in discussions with him before Dash Domi took over the City account. He mentioned it to every client contemplating a sale and leaseback. Jim Andrew, though, said it never occurred to him that there could be a PST or GST problem. Later, after MFP won the tender, there is evidence that MFP's Rob Wilkinson, who didn't claim to be an expert in PST, was aware of the potential double tax and raised the matter at a meeting on August 12, 1999, with Lana Viinamae and others. He told them they should make sure they applied for a PST rebate.

For a host of bureaucratic reasons, it wasn't until Paula Leggieri accidentally discovered the problem in early 2000 that the City started acting on it. For another host of bureaucratic reasons, the City didn't apply for a refund until December 2001.

3. MFP'S LEASE RATE FACTORS: NO QUESTIONS ASKED

Before the beginning of each quarter, MFP sent the City lease rate factors for anything to be put on lease in the following three months: a cost per \$1,000 for hardware and a cost per \$1,000 for software. These lease rate factors went first to the CMO, where they were organized for signing by the appropriate officer. Lana Viinamae signed most of them, and Wanda Liczyk

signed at least one. The CMO could proudly point to the fact that the right person signed on the right line.

Lana Viinamae signed the first equipment schedule on October 1, 1999. She noted the lease rate factors and asked Brendan Power about them. He told her that they were competitive, and consistent with MFP's bid. But how could he possibly have known that? The RFQ had asked for three-year rates. By now, the lease term was five years. Neither MFP nor any of the other bidders on the RFQ had ever quoted on five-year rates, so how could he say they were competitive?

Were MFP's rates competitive? How did they compare with the City's own borrowing rate? No one asked those questions. Jim Andrew knew that the City could negotiate the lease rate factors, but he didn't review or analyze them, nor did he provide any guidance for the criteria to be used in reviewing or analyzing them. Did Finance do any quantitative analysis or compare the rates to any external benchmarks? Mr. Andrew, Mr. Power, Ms. Bulko, Ms. Leggieri, and Ms. Viinamae all assumed that someone in Finance would do so. But how would anyone in Finance have known that the CMO expected such an analysis? No one could explain that. In fact, among all the forms and procedures developed for the supposed leasing program, there was no procedure for sending the lease rate factors to Finance for analysis. Nadir Rabadi had done an analysis of the rates for the report to the Policy and Finance Committee in July 1999 before MFP was awarded the contract, and another analyst did the same in 2001 when questions were raised about the photocopier lease, but in between, no one in Finance performed any analysis of any of the rates offered by MFP. They weren't asked to do so. Each quarter, either Kathryn Bulko or Paula Leggieri would simply compare the lease rates with the previous quarter's. Never once did they compare MFP's lease rate with the relevant bond or other external benchmark rates.

Mike Garrett said he would have expected staff to negotiate the rates with MFP each quarter, or at the very least, he would have expected to find a memo to file showing that the rates had been checked against competitors' rates and that MFP's had been as good or better.

It was almost a caricature of bureaucracy in action. Flow charts were created, and business rules and forms were designed. Procedures were in place and they were being followed. But no one gave any thought to whether

those systems actually protected the City's interests or whether they reflected what Council had authorized.

4. COUNCIL BYPASSED ON APPROVAL FOR ITS OWN COMPUTERS

MFP got its foot in the door at the City in 1997, on the eve of amalgamation, with the lease for the councillors' computers. Thereafter, councillors would ask from time to time for additional equipment for their offices. These further acquisitions were placed on the original lease. While some might even question the authority to lease the original equipment, there was certainly no basis for adding another \$100,000 of new equipment to the lease, as was done.

The original councillors' computer lease was for three years, coinciding with the elected term of Council. Jim Hart was at that time Director, Council and Support Services, and he was responsible for the administration of the Clerk's office and Council. Toward the end of 2000, he knew that the lease was about to expire. Mr. Hart's actions are a refreshing contrast to those of the CMO.

The CMO had (wrongly) told Mr. Hart that all equipment had to be leased. But Mr. Hart wasn't prepared to accept that at face value without conducting his own due diligence. His first order of business was to instruct his staff to prepare a business case for the replacement of the computer equipment, including qualitative and financial analysis of the end-of-lease options and the appropriate term for the new lease. The document was detailed and thorough, and Mr. Hart concluded that it made sense to return the old computers to MFP and lease new ones for a three-year term. In the end, some of the councillors purchased the old computers, either out of their office budgets or for their personal use.

Mr. Hart didn't stop at the business case. There was the question of budget allocation for the new computers. He sorted that out through discussions with staff from Finance and the Clerk's office, with Jim Andrew, and with Councillor Lorenzo Berardinetti, who was then Chair of the Administration Committee. With the budgeting matter resolved, Mr. Hart believed that he still needed Council approval for the new lease. He understood the importance of Council authority.

Mr. Hart instructed his staff to draft a report to the Administration Committee, to be signed by Jim Andrew and the City Clerk, recommending the new three-year lease. Mr. Hart testified that, when the time came to finalize the report, Jim Andrew gave his staff to understand that the report was unnecessary because Council had approved the leasing program in July 1999 and MFP was the vendor of record.

Mr. Andrew agreed that he had discussions with Mr. Hart's staff. He said that he believed this acquisition to be just another schedule to the MFP contract, so it didn't have to be reported to Council. The contract was already in place, he said, in the same way that the contract for the 1999 leases was already in place. But Mr. Andrew got it wrong and Mr. Hart got it right.

Like other IT staff, Jim Andrew mistakenly believed that Council had approved a leasing program, and therefore no approval was needed for leasing the councillors' computers or any other new equipment. That was an error, but for the CMO and Jim Andrew, it was business as usual. On January 1, 2001, without the approval of City Council, the City entered into a new lease with MFP for the councillors' computers, for a 36-month term, at a cost commitment of \$720,908.

5. NEITHER FORM NOR FUNCTION: THE JULY 2000 LEASE REWRITES

The rewrite of all of the City's leases in July 2000 is the most egregious example of the mismanagement of the MFP leases, not only by the CMO and IT staff but also by Wanda Liczyk. It also illustrates MFP's questionable business practices at the City of Toronto.

On July 1, 2000, all of the City's hardware leases with MFP were collapsed, and the assets were restructured into five new leases organized by equipment category: desktops, monitors, laptops, printers, and servers and networks.

The new leases each had a term of 57 months, starting from July 1, 2000, and ending on March 31, 2005. That meant that the equipment already in place would be on lease for between 63 and 66 months. Another \$623,860 worth of new equipment was added to the new leases.

MFP increased its original aggressively low lease rates considerably, without any discussion with the City, on the assumption that the City would

decide for itself whether it agreed with the terms. The lease rewrites cost the City an additional \$2.5 million, and the benefits were virtually nonexistent. MFP, on the other hand, profited by \$2 million, and Dash Domi collected a commission of \$420,000 on the lease rewrites.

Rewriting the leases was a significant decision, but who made the decision and who authorized it was murky, to say the least. The reason for rewriting the leases was equally unclear.

The City used “non-program accounts” for corporation-wide expenses such as debt charges and insurance payments. IT leasing costs also fell into a non-program account. Led by Finance, City staff wanted to be able to allocate the costs to individual departments. It sounded like an easy task, but it wasn't. It needed good asset management, but the sale and leaseback transaction showed the City's weakness in that area. Simply put, without knowing where each piece of computer equipment was and how much it cost, it was impossible to determine to which department it should be charged. MFP offered a solution: rewrite the existing leases by asset class.

Rob Wilkinson said he had discussed cost allocation with City staff (the soon-to-be CMO staff of Lana Viinamae, Kathryn Bulko, and Line Marks) and perhaps Brendan Power as early as September 1999, and again later in 1999. The text of his presentations to staff didn't survive, but he said he talked about the benefits MFP offered in asset management and cost allocation. Mr. Wilkinson believed that City staff viewed his proposals favourably and “reiterated their wish to move forward with an asset management and cost allocation plan in conjunction with a lease/financing model that would reflect and support the plan.”

That may have sounded good, but it wasn't at all necessary to collapse leases and place the assets on new lease schedules in order to meet the City's cost allocation objective. Rob Wilkinson and Peter Wolfrain conceded as much. Moreover, if the true objective of the lease rewrites was to help the City with asset management and cost allocation, MFP had already committed to doing so, at no additional cost, in its response to the RFQ: “Schedules for the leasing of equipment/software described in this RFQ will provide details of equipment/software and costs by client department within the City.”

The lease rewrites needed approval from the Chief Financial Officer and Treasurer, Wanda Liczyk. Rob Wilkinson testified that he made a presenta-

tion to Ms. Liczyk, alone, in her office, at some point between February and May 2000, but the date was unclear from his evidence. He swore in his affidavit that the outcome of the meeting was positive and showed a “high degree of continuing interest on the part of the City in proceeding with the restructuring of the leases.”

Wanda Liczyk said that the meeting was at Metro Hall, not in her office, and that other City officials attended, including Lana Viinamae and Ken Colley (from Accounting Services). Both of them denied being present. Ms. Liczyk gave the impression that she wouldn’t have met with a supplier alone, but doing so was in fact consistent with her approach to the TMACS file, when she regularly met consultant Michael Saunders alone and her staff would find out about the meetings only after the fact.

In any case, Ms. Liczyk recalled that Mr. Wilkinson brought with him a binder, prepared for another MFP client, showing computer assets divided by department. According to Ms. Liczyk, the documents were in the form of reports, not leases, but she liked what she saw. She testified that she told Mr. Wilkinson “This is perfect; this is what I’m looking for. Please deliver this.” She was pleased, she said, and wanted to know how quickly it could be done. “The sooner the better,” she told him.

Did her approval of the concept constitute authority for MFP to rewrite the leases? Not according to Wanda Liczyk. She categorically denied giving MFP approval to move ahead with lease rewrites. In her affidavit, she said, “At no time was there any discussion by any attendee of the meeting about the need to ‘rewrite’ leases or to change lease rates or lease terms.” At no time did she “ever give any written or oral instructions to anyone from MFP, either Dash Domi or Rob Wilkinson, to re-write the leases to extend the lease terms or change the lease rates.” Ms. Liczyk said her consistent focus was on allocating the computer leasing costs to individual City departments and she did “not in any way understand why the leases were re-written to be allocated by asset type.” She supported her position by saying that IT was the department to benefit from a rewrite like this, not her Finance department.

Ms. Liczyk categorically disagreed with Mr. Wilkinson’s statement that there was a high degree of interest “on the part of the City in proceeding with the restructuring of the leases.” If Mr. Wilkinson interpreted her reaction this way, maybe it was because he never told Ms. Liczyk there would be any cost. In any case, Ms. Liczyk said that she wouldn’t expect any vendor to take the

polite nods of City staff at a meeting as direction to draft a contract. She expected that any reasonable vendor would prepare a written proposal and obtain sign-off from City officials before drafting a contract. In fact, there was neither a proposal from MFP nor a clear sign-off from any City staff. Neither the City nor MFP could produce a single document that confirmed the City's instructions to MFP to move ahead with rewriting the leases.

Nonetheless, Mr. Wilkinson claimed that by late June 2000, he was informed that the City wished to proceed, and that MFP was directed to group the leased assets into asset pools, with each pool as a separate lease with a common term. However, Mr. Wilkinson couldn't recall how he got those instructions: "I did not know who at the City gave this direction, or exactly who was involved in the City's decision-making process." He speculated that Dash Domi might have told him, but Mr. Domi denied receiving any such instructions from the City and stressed that the discussions were between Mr. Wilkinson and Ms. Liczyk.

No one from the City could explain how the lease rewrites originated, but they were hardly a secret. Lana Viinamae claimed that she didn't know about the restructured leases until November or December 2000. Kathryn Bulko and Paula Leggieri knew in July 2000, but both were adamant that they didn't give MFP the direction to rewrite the leases. Jim Andrew swore that he had no involvement in the lease rewrites, nor was the matter brought to his attention. He said he first learned about it from the KPMG investigators when they interviewed him. But Lana Viinamae said that she told Mr. Andrew that Ms. Liczyk had signed the rewritten leases, and his response was that she had the authority to do so.

The origin of the lease rewrites was unclear, but so was consideration of the potential cost. During the MFP presentations, the subject of the cost to the City didn't come up. Wanda Liczyk said that she didn't expect the cost allocation to cost the City anything. In her view, the task was neither difficult nor complex, and MFP had indicated that it had the software to generate the necessary reports. She correctly maintained that the onus was on MFP to raise the issue of costs, particularly if the effect of the transaction would end up costing the City an amount like \$2 million. MFP countered that the City was hardly a neophyte and could have asked questions and conducted its own analysis. In any event, MFP didn't offer, and City staff didn't ask.

Given that no one seemed to know who gave the go-ahead or what it would cost, it might be expected that getting approval for rewriting the leases would have been difficult. Not so. The rewritten leases were duly executed by Wanda Liczyk in her capacity as Chief Financial Officer and Treasurer.

Ms. Liczyk remembered that Dash Domi brought a box of documents from the CMO to her office in July 2000 and asked her to sign them. She was “very certain” that she asked him what the documents were and his response was “administrative re-organizations.” Mr. Domi denied saying that, since he was “not an expert on the lease program or the creation of it.” He explained that he was simply acting as a “courier” for the CMO. Needless to say, if that is what happened, it was hardly standard procedure for signing leases. Usually, leases went through CMO and were then vetted by Ms. Liczyk’s assistant. It was no part of the process for Dash Domi to act as courier. Ms. Liczyk said that she had assumed someone had checked the documents, and Mr. Domi was “trying to be helpful.” She didn’t believe “there was anything untoward.” His presence in her office raised no red flags.

Indeed, this wasn’t the first time Mr. Domi had bypassed the CMO by taking documents directly to Ms. Liczyk. So often had he done this that Paula Leggieri spoke to him about it on more than one occasion and sent him e-mails about it. He persisted, so she contacted Lee Ann Currie at MFP to ask her to ensure that equipment schedules were couriered to the CMO, not delivered by Dash Domi.

In any case, Wanda Liczyk conducted no due diligence. She didn’t read or even scan the documents; she simply scrawled her name on the signing pages.

By now, Ms. Liczyk had developed a friendship with Dash Domi. She had already attended the Tie Domi charity dinner at his invitation. She had attended an MFP-sponsored Christmas concert at Massey Hall and had a Christmas lunch with Mr. Domi. She had played golf with him, Jim Andrew, and Councillor Tom Jakobek. She had been Mr. Domi’s guest at three or four hockey games in the private box at the Air Canada Centre and at a playoff game in Ottawa (for which she reimbursed him \$700). She had allowed him to suggest she could get her hair done differently, and he set her up with one of the best hairdressers in Toronto. She had invited Mr. Domi to her 40th-birthday party. They had talked on the telephone numer-

ous times. And she had appeared in a testimonial for MFP in its 2000 annual report.

Ms. Liczyk had let her guard down. For a supplier, Dash Domi had an unusual and inappropriate level of access to her and to other City staff, especially in the CMO. In hindsight, Ms. Liczyk conceded that she never had the sense that it was a supplier who was bringing her documents to sign. She had never permitted any other supplier to do this. She agreed that when Mr. Domi brought the contracts to her office, she should have considered it unusual, and she shouldn't have signed them without being certain that they had gone through her normal process. She shouldn't have allowed Mr. Domi to jump over the City's process.

By this point, though, her relationship with Mr. Domi had compromised her judgment and she paid no attention to the system her assistant had put in place. Ms. Liczyk signed the documents, and Mr. Domi undertook to return them to the CMO. The lease rewrites were complete.

What did the City gain from the lease rewrites? An independent expert I hired testified, "It is not apparent that the City received any benefit from re-writing the leases." And it cost the City approximately \$2.5 million. MFP countered that the City had the opportunity to use the equipment longer, but given that the life span of the asset was about three years, hanging onto it longer was of dubious benefit. Moreover, it was inconceivable that the City would be able to return or replace all of its tens of thousands of pieces of computer equipment on the same day, when all of the leases came due. The only explanation given for rewriting the leases was that it was part of matching computer hardware and software to user departments, but it wasn't necessary even for that.

Who is to blame for the lease rewrites? In my view, both MFP and the City bear the responsibility.

First, MFP: It was highly suspicious that MFP had so little documentation about the lease rewrites and MFP witnesses had no recollection of who authorized them. Although Mr. Wolfrain testified that the lack of supporting documentation wasn't unusual for his industry, I would have expected MFP to be more careful to ensure that it knew who authorized the deal, if only to protect its own interests.

Because of the lease rewrites, all the lease schedules now had a common termination date, which effectively increased the 60-month leases (already

extended without Council authority) to 63 and 66 months. MFP did this without any specific discussion, direction, or instruction from the City. Instead of telling the City what he had done, Rob Wilkinson simply presented the lease terms to City staff and waited for them to react. This was not appropriate. There should have been a letter, as Mr. Wolfraim conceded, describing the effect of the restructuring. Neither Rob Wilkinson nor anyone else at MFP should ever have done anything that cost the City \$2.5 million without first informing them of the cost of such a transaction and then getting specific written approval for it. Rob Wilkinson said there had never been any discussion about cost. Why not? Surely he didn't expect the City to pay an additional \$2.5 million with no questions asked. He had an obligation to disclose all relevant information that might have affected the City's decision. This is clearly stated in the Code of Ethics of the Canadian Finance & Leasing Association, of which MFP was a member and Peter Wolfraim was a past director. In any case, it would be expected of a company that described itself as a "partner" of the City.

Second, the City: The lack of oversight on the part of City staff is unacceptable, but unfortunately, it wasn't surprising. I have already referred to Ms. Liczyk's compromised position. What about the staff in the CMO? When they learned that the leases were being rewritten (and there is evidence that CMO staff knew that something was afoot in July 2000), they should have made some basic inquiries: Who authorized this? Why is it being done? Will the computers be past their useful life before the end of the leases? What will it cost the City?

Why didn't they ask those questions? One could suggest that they, too, let their guard down. Paula Leggieri testified that she was uncomfortable with the close relationship between Dash Domi and the CMO. She felt that he wasn't being treated as an arm's-length supplier and seemed to have an unusual level of access to their secure area. She thought Kathryn Bulko's relationship with Dash Domi was getting in the way of leasing decisions. Ms. Bulko was so friendly with him that she jokingly referred to him as her "boyfriend." Lana Viinamae, Kathryn Bulko, Paula Leggieri, and Line Marks liked Dash Domi so much they sent him a cookiegram for his birthday. All four had, by this point, attended a number of hockey games in the MFP private box at Dash Domi's invitation. The charmer, Dash Domi, had worked his magic, and the lack of professionalism in the CMO allowed it to happen.

B. SAP: GOOD SYSTEM, BAD INPUT

At the time of amalgamation, each of the amalgamating municipalities had its own financial system. It was impossible to obtain consolidated financial data, and that made financial monitoring and budget planning very difficult. A unified financial system for the new City was a priority. In 1998, after a competitive process, SAP was selected as the City's new financial system. It was intended to amalgamate the legacy financial systems of the former municipalities and to ensure Year 2000 readiness.

SAP wasn't an off-the-shelf solution; the system had to be built to each client's needs. Installing SAP for an organization the size of the City of Toronto would usually take about three to five years. The City didn't have that kind of time. It needed at least a functioning financial system in less than one year, particularly since some of the existing financial systems were not Y2K-compliant.

Hundreds of City staff set to work and got it done in eight months. On June 28, 1999, the accounting and materials management (purchasing) modules of SAP went "live" in Etobicoke, East York, York, and Scarborough. By the end of August, Metro and the City of Toronto were converted to SAP. Full implementation, in phases, took years and required the work of hundreds of City employees and millions of dollars of the taxpayers' money.

SAP was to be the state-of-the-art financial solution for the new City. So why didn't it catch the discrepancy between the more than \$80 million the City had committed to MFP and the \$43 million City Council authorized? The short answer is human error. To understand why SAP didn't catch the overage on the MFP contract, it is necessary to understand a little bit about how the SAP system works.

For some contracts, the City had an overall spending cap, with the actual spending taking place over time. For example, City Council would authorize an amount to be spent on road salt over the course of the winter. Quantities of road salt would be ordered, as needed, over a period of months, but the total cost was not to go over the amount Council authorized. The total authorized amount for road salt would be entered in SAP. Each new order for road salt would need a "contract release order" and would be documented in SAP as a commitment against the contract. As

each invoice for road salt came in, it would be checked against the corresponding contract release order. At any time, it should have been possible to see, on the SAP system, the amount of the authorized contract, the amount committed to date, and the amount paid. The SAP system was also designed to issue a warning once the authorized amount was reached. But the warning could be overridden by staff, and there was no early warning mechanism to show that spending was getting close to the authorized limit.

For SAP purposes, the computer leasing deal with MFP was similar to a contract for road salt. City Council authorized spending \$43.15 million on leasing, and that is what should have been entered as the contract amount. As each new lease was signed, the total commitment—that is, the total amount owing to MFP over the course of the lease—should have been “released” through a contract release order. As each invoice was received, it should have been entered into the SAP system and paid. As soon as the lease commitments to MFP exceeded \$43.15 million, the SAP system should have issued a warning. That is not what happened.

First, the contract with MFP wasn’t entered into the SAP system until September 2000, which was more than a full year after Council authorized the leasing transaction. When it was entered, it went into the system as \$40 million in authorized spending over five years, not the \$43.15 million over three years that Council had actually authorized. Most significantly, as each new lease was signed with MFP, the full amount of the commitment over the term of the lease wasn’t entered in SAP. Instead, a contract release order was issued for the amount on the current invoice and the invoice was paid. Thus, at no time was it possible to see the City’s total commitment to MFP on the SAP system. It only showed what had been paid to date. So when the leasing program was frozen in the fall of 2001 because of questions about the photocopier leases that led to investigation by the City and further investigation on its behalf by KPMG, the SAP system showed that the City was authorized to spend \$40 million on the MFP contract but had only spent about \$25 million. In reality, the City was already committed to paying more than \$80 million to MFP.

Complicating matters even further, many MFP invoices weren’t paid using a contract release order at all. Under the sale and leaseback arrangement, MFP was to pay the City for equipment it was buying from the City and leasing back. The sale and leaseback was an administrative mess, and the City didn’t

pay any MFP invoices until it was sorted out. At that point, the amount the City owed MFP was offset against the amount MFP owed the City.

SAP didn't fail. Human beings failed to input the right information. In fairness, the system was very new. It went "live" very shortly after Council authorized the leasing transaction, and staff had no SAP training until late 1999 and early 2000. On the other hand, at no time did staff in Finance or IT discuss how the City's financial commitments to leasing should be entered into SAP. Staff in the CMO were certainly aware of the importance of record-keeping. They created detailed electronic spreadsheets for keeping track of equipment that was ordered, the ITLA form, and so on. However, they don't seem to have considered the kind of record-keeping SAP would need. For their part, the staff in Finance didn't raise the issue with anyone in IT. Proper SAP record-keeping wouldn't have prevented the misconceptions about the leasing program, but it might have alerted someone to the problem sooner.

C. CITY COUNCIL IS EXPECTED TO READ BETWEEN THE LINES

The City had exceeded the \$43 million worth of hardware and software authorized by Council, but that was no secret in the IT Division. IT staff believed that they were administering a leasing program, and that the \$43 million wasn't a cap or a limit. All along, they had intended to lease an undetermined quantity of equipment from MFP until the three-year leasing contract term ended.

Some staff in Finance were also aware that more than \$43 million had been spent. Ken Colley in Accounting Services knew, but he hadn't been involved in the report to the Policy and Finance Committee and City Council recommending the deal, and he later relied on the explanations the CMO gave him. He and his boss, Al Shultz, were responsible for reconciling the payments to MFP for the sale and leaseback and later for transferring money from department budgets to pay the leasing costs. They both knew that more than \$43 million of equipment had been leased, but they sounded no alarms.

Len Brittain did understand that Council had authorized leasing of only \$43 million, and he knew that the amount leased was over the limit.

However, Lana Viinamae initially misled him about the amount of the overage. He noticed, in late 1999 or early 2000, that the annual budget for leasing costs had been exceeded and asked Lana Viinamae for an explanation. Ms. Viinamae told him that the annual lease costs of \$11.5 million arose from the “initial lease request of \$43.15 million,” and an additional \$4.7 million arose from “items not included in original lease estimate.” Mr. Brittain followed up. Ms. Viinamae told him in an e-mail on January 7, 2000, that “committed funds to date” were about \$48 million. (Actually, by January 2000, the amount on lease was approximately \$61 million.) Mr. Brittain might be expected to have raised the alarm when he saw Ms. Viinamae’s figures. However, he was approaching the cost increase from a budget perspective only, and for the City, on a transaction of this size, a difference of less than \$5 million was within an acceptable range of variation.

Wanda Liczyk knew that Council had authorized leasing of only \$43 million worth of equipment. And certainly by 2001 she knew that much more than that was actually on lease. It was up to Ms. Liczyk, because she knew that staff had exceeded Council’s authority, and because of her position as the Chief Financial Officer and Treasurer, to clearly report to Council. She didn’t.

By the time MFP and the City signed the first lease on October 1, 1999, there was already \$38 million on lease. By the end of 1999, there was \$57 million. Throughout 2000, CMO staff administered the leasing program, putting more equipment on lease with MFP. In July 2000 came the lease rewrites. By the end of 2000, the City had leased more than \$78 million in assets through MFP. (By the time the City halted the leasing program in June 2001, \$84 million worth of hardware and software had been put on lease with MFP. An expert I hired, who met with both City and MFP representatives, testified that total payments for lease payment obligations would end up being more than \$100 million. This includes the additional PST liability mentioned above, interim rentals, and late payment charges.)

In late 2000, as Wanda Liczyk prepared for the 2001 budget, she realized that the leasing costs were significantly over budget. Lana Viinamae explained to her that more than \$24 million worth of software had been added to the lease with MFP. So there can be no doubt that by late 2000, Ms. Liczyk knew that City staff had leased significantly more than the \$43 million worth for which authority had been granted by Council. She also

realized that IT was treating MFP as a vendor of record, without any justification or authority to do so. She called a meeting with City staff and MFP.

On January 17, 2001, Wanda Liczyk met with Lana Viinamae, Kathryn Bulko, Rob Wilkinson, and Dash Domi. Everyone present agreed that Ms. Liczyk was upset, but the City staff and the MFP representatives remembered the reasons for her consternation differently. Ms. Liczyk testified that she wanted explanations for the budget overages and wanted to know why the leasing costs hadn't been allocated to user departments. She also said that she raised the issue of Council authority and clearly told the assembled group that nothing further was to be leased. Everyone else who was at the meeting remembered that Ms. Liczyk was upset about being over budget, but no one remembered that she brought up the matter of Council authority.

Given the events that followed, it is difficult to believe that Ms. Liczyk admonished City staff for exceeding Council authority. For one thing, for the balance of 2001 (until the leasing program was frozen), the CMO continued to lease from MFP.

Lana Viinamae sometimes showed a disregard for proper process, as she did in dealing with the Oracle transaction discussed later. Nevertheless, there was no plausible reason why she, Kathryn Bulko, and other City staff would continue to flout Council authority if Wanda Liczyk told them to stop spending on leasing. Indeed, when the matter of leasing photocopiers arose in May 2001, Ms. Viinamae's explanations to Council were consistent with her (mistaken) understanding of the leasing program. It is highly doubtful that she would have relied on that understanding if Ms. Liczyk had issued a "cease and desist" order in January 2001.

Whether or not Wanda Liczyk gave that order in January 2001, she was still faced with reporting to Council about what she knew. She knew that leasing was significantly over budget, much more equipment was leased than Council had authorized, and staff were treating MFP as a vendor of record without authority. What would she tell Council? As little as possible.

Buried in the March 2001 report to the Budget Advisory Committee, Ms. Liczyk made the following cryptic disclosure:

Under the City's Y2K project, \$43.0 million of hardware and system software was acquired with leasing costs totalling \$13.5 million being budgeted in 2000. In order to support the expanded infrastructure, soft-

ware licenses for products such as office automation tools... were required as part of the Y2K platform. The costs for these software products totalled \$24.35 million with total leasing costs of \$5.0 million required, bringing the 2001 request to \$18.5 million.

She didn't point out that Council only authorized leasing of had \$43 million. She didn't say that significantly more than \$43 million of hardware and software was now on lease. She didn't explain that staff had mistakenly created a leasing program without authority from City Council. She didn't explain that MFP was getting all of the City's leasing business because it was being treated as a vendor of record without authority. Ms. Liczyk's explanation for these omissions was that the experienced members of the Budget Advisory Committee would have understood the meaning in her words and, in any event, they didn't question her.

Ms. Liczyk's explanation falls short of what City Council and the public would expect of the City's Chief Financial Officer and Treasurer. They have a right to expect reports from staff to be forthright and complete. They shouldn't have to read between the lines to discern the true meaning. Ms. Liczyk had been deliberately vague.

From beginning to end, the administration of the MFP leases was replete with misunderstanding and obfuscation. Not only did City staff exceed their authority, they also failed to exercise effective stewardship of public money. City staff, particularly Jim Andrew, Lana Viinamae, Wanda Liczyk, and Kathryn Bulko, must bear responsibility for the shoddy administration of the leases. They were senior City staff and collectively had many years of experience. Each of them should have respected the authority granted by City Council. And they should have ensured that the staff who reported to them were qualified to do their jobs. In short, they should have protected the City's interests. Each of them, in his or her own way, fell woefully short.

D. WAS IT A “BAIT AND SWITCH”?

After the inquiries were over, many of the witnesses and parties with standing gave me written submissions. I have not explicitly acknowledged each of the many, many issues they raised, but I found them very helpful in writing my report, and many of the submissions are implicitly dealt with in my

report. The City, though, made an especially serious allegation against MFP which needs to be specifically addressed.

In its submissions, the City effectively said that MFP went into the 1999 computer leasing RFQ dishonestly, offering a temptingly low bid to win the deal. Once the City took the bait and accepted the artificially low offer, MFP intended to switch the terms and slip a much more expensive contract past unsuspecting City staff. Hence the term “bait and switch.” MFP cynically continued taking advantage of the havoc of amalgamation and Y2K, the lack of integrity of some of the City’s staff, and the lack of leasing expertise of some others to continue benefiting from the bait and switch. This allegation suggests that MFP never intended to comply with the terms of the bid it submitted, intending all along to change the terms of each subsequent contract. MFP vigorously denied the City’s allegation.

The Supreme Court of Canada has repeatedly instructed commissions of inquiry not to behave as though they were courts. During the course of the hearings, on many occasions I emphasized that a judicial inquiry is neither a criminal trial nor a civil action for the determination of liability. My findings flow from the inquiry’s rules of procedure, which are not the same strict rules of evidence and procedure applicable in a courtroom. The Supreme Court has also cautioned commissioners to avoid setting out their findings of fact in terms that are the same as those used by courts to express findings of civil liability. And, quite properly, my opinion as commissioner of a public inquiry does not bind a court that is considering the same subject matter.

The City and MFP sued each other before this inquiry was called. Throughout the inquiry, I was regularly confronted with allegations that one side or the other was using the inquiry to shore up its case in the courts. The lawsuits are still before the courts. Most recently, the City won the right in court to try to prove that a bait and switch took place. In other words, a court is now poised to deal with exactly the same issue. That is where this allegation should be dealt with, and that is where I shall leave it.

As a commissioner, however, I have investigated thoroughly all the circumstances surrounding the computer leasing transaction. And from that investigative perspective, as opposed to a legal perspective, I conclude that the transaction, and all the deeds and misdeeds associated with it, cannot be reduced to a one-dimensional theory of conspiracy and deceit. Of course, nothing will preclude a court from taking a different view of the evidence

before it, and I do not say that a court could never find that a bait and switch took place. However, there are aspects of this complex transaction that simply do not fit neatly into a bait and switch theory:

- MFP didn't turn a \$43 million RFQ into a deal worth more than \$80 million by alchemy. The City's own IT department saw the deal as being worth much more than \$43 million. Five months before the RFQ was released, Jim Andrew told two MFP representatives that the potential volume of business in three-year leases could be as many as 15,000 computers, or about \$80 million worth. Once the RFQ was released, different MFP executives could see that the real size of the deal was still unclear, but they estimated it to be up to \$100 million. I need look no further than MFP's competitors to corroborate the pre-RFQ prediction. From the outset, other bidders, major companies in the industry including Bombardier and Dell Financial Services, saw that this deal was worth far more than the \$43 million mentioned in the RFQ. Rob Simone of DFS, for example, told Jeff Lyons he thought the deal was worth \$150 million. Mr. Lyons testified that he asked for a success fee from DFS based on his late discovery that the deal was potentially worth up to \$150 million. It appears that the only people who thought the deal was limited to \$43 million were Finance staff and City Council. The City must bear the responsibility for their misapprehension.
- There is no doubt that MFP intended to go in with a low bid and then look for ways to enhance its deal along the way. Experience had taught MFP that such an approach was profitable. MFP knew that circumstances would probably arise during the term of the lease that would change the terms, and each change would create potential for MFP to enhance its deal. One of MFP's competitors, Bombardier, fully understood MFP's business approach, and did its best to expose the strategy. In Bombardier's bid, quoting lease rates higher than MFP's, it warned of the dangers of making a decision based solely on lease rates: Throughout the deal, there might well be a number of "gotchas" that would increase the real price. In hindsight, this was sage advice. The City didn't heed it, rejected it as sales puffery, and made a decision based on lease rates alone.
- In this report, I recount in detail that, time after time, at many stages of the transaction, City personnel who should have been protecting the

City's interests through careful analysis simply failed to do so. It was an astounding series of failures that no one on the outside could have imagined, much less expected. In other words, MFP, expecting the City to do its due diligence, could not have expected to get away with a bait and switch scheme on such a grand scale, where a series of contractual decisions were to be made over time. MFP was entitled to look out for its own best interests. The City should have been looking out for its interests and the best interests of the taxpayers.

- The bait and switch theory all too conveniently recasts as helpless victims the City staff who, in reality, failed to do their jobs. The City and MFP negotiated at arm's length. Both had negotiators, and both had legal advice—although the City's negotiator approached that advice as mere “legal scrubbing.” Further, the City had a pre-existing master lease agreement with MFP and therefore should have been well aware of the likely contractual arrangements.
- Most City staff involved in this transaction were decidedly ill informed on leasing, no match for the aggressive and knowledgeable people at MFP. But there is a big difference between being the victim of a bait and switch, as the City alleges, and simply being outmatched.
- Dash Domi was a central figure in MFP's aggressive sales strategy. He was ethically challenged, no doubt, and he lacked even the most rudimentary understanding of appropriate professional sales boundaries. While he may have been capable of other deceptions, he lacked the wherewithal and sophisticated business knowledge to pull off the sustained and complicated deception necessary for a bait and switch on the scale the City alleges.
- The City's bait and switch allegation also casts too wide a net. It necessarily implicates too many people at MFP: for example, lawyer Kim Harle. I watched and listened carefully as Kim Harle testified, and I do not believe she was party to any such conspiracy.
- The absence of a paper trail at MFP might be suspicious in combination with other suspicious circumstances, but by itself it means very little. Right from the start, record-keeping was woefully inadequate at both MFP and the City. But this appears to be sloppiness and a lack of professionalism, not deceit.

MFP certainly has much to answer for in the aftermath of this computer leasing deal, and I have taken it to task in this report. But the City, too, has much to answer for, as it appears to have acknowledged in its submissions. Ultimately, though, in the context of a judicial inquiry, it would be far too simplistic to press the series of events into a neat little bait and switch package. Whether a legal case can be made for a bait and switch in the course of the very different proceedings in a courtroom is a question I leave to the presiding judge.

MFP hired Dash Domi to be a hunter at the City, and its strategy of relationship building paid off. Its corporate *modus operandi* was to befriend and build trust with clients. It worked. Dash Domi had the run of the office, even delivering documents to the City's Treasurer for signature, which Wanda Liczyk didn't even feel the need to read. And those were the lease rewrites, which MFP presented for signature with no clear request from its customer and without ever disclosing the \$2.5 million cost. Some might say let the buyer beware, but it is only honest business practice to tell the customer what the deal really is. In that sense, MFP is far from blameless.

XVI. THE MAKINGS OF A MYSTERY

ON FRIDAY, OCTOBER 29, 1999, MFP deposited close to \$100,000 into Dash Domi's bank account. It was the second large installment on what would add up to \$1.2 million in commissions on the computer leasing deal with the City of Toronto.

The following Monday afternoon, November 1, Mr. Domi went to the bank and withdrew \$25,000 in \$1,000 bills. At 3:46 p.m., he called Councillor Tom Jakobek's cellphone. The call was answered and a 90-second conversation took place. At 4:45 p.m., he called again. Again, Mr. Jakobek's cellphone was answered. They were connected for about 20 seconds. Two minutes later, at 4:47 p.m., Dash Domi drove into the sprawling underground garage beneath Nathan Phillips Square, next to City Hall, and took his parking ticket from the machine. Thirteen minutes later, he was at the exit booth, the one leading to Chestnut Street, nearest to City Hall. He handed the ticket to the attendant, took his receipt for \$1.50, and drove out of the garage.

The next day, November 2, Ursula Jakobek, Tom Jakobek's mother, visited three different bank branches in Toronto's east end. She carried out a series of eight transactions resulting in three certified cheques, payable to American Express and totalling \$15,000.

The day after that, November 3, someone took the three certified cheques to the American Express office in the Royal York Hotel, along with

\$6,000 in cash, and paid \$21,000 into Tom Jakobek's American Express credit card account.

From Mr. Domi's bank records and parking receipt, his and Mr. Jakobek's cellphone records, and the financial records of Mr. Jakobek and his mother and his grandmother, that much of what happened on those three days is certain. Those facts seem simple, but seeking to discover what happened during the 13 minutes Mr. Domi's car was in the underground garage led the inquiry into an intensive investigation, complicated by deceit and obstruction, through a tangle of byzantine banking transactions, lost and found credit card records, cryptic numbers on a scrap of paper, a trip to Disney World, family debts, and family loyalties. And as each piece of evidence was unearthed, the Domi family and the Jakobek family told ever-shifting and changing stories.

A. A MONUMENTAL DAY: A DEBT REPAID, A SPECIAL BIRTHDAY, AND A BIRTHDAY CARD

The Domi family was close. Growing up in small-town Ontario, Dash Domi and his brother, Tie, four years younger, were fiercely loyal to each other. Tie Domi would go on to be rich and famous, a Toronto Maple Leafs hockey star. Dash⁵ didn't fare as well and over the years he struggled to find his way in the world, from hairdressing to a frozen-yogurt shop, a fitness club, and other endeavours. Tie would from time to time help his older brother with a loan. In Dash's own estimation, the loans from his brother totalled about \$40,000 between 1993 and 1996. Dash would say that in Tie's eyes, it wasn't really a debt. However, he said, "I just always felt that I would repay him . . . when I made money." Now, he was making money, and again it was because of Tie's assistance, because Tie had helped him in another way: he got him the interview with MFP that had put him on the road to becoming a millionaire.

Dash Domi agreed that November 1, 1999, the day he withdrew the \$25,000 in \$1,000 bills, was monumental because he had just received a

⁵ This chapter tells a story of two families. Most of the major characters have one of two surnames. Therefore, to avoid confusing the reader, I have departed from my practice of referring to individuals by their full names or surnames.

very large commission cheque. It was also his brother's 30th birthday. Although he couldn't recall when he decided to do it, it occurred to Dash to repay \$25,000 of the \$40,000 debt to Tie for his birthday. He agreed that it was an important thing for him to do: "I just wanted to get it off my chest."

So it was a monumental and significant day all around—a huge amount of money in his bank account, a milestone birthday for an idolized brother, and the long-awaited chance to show that his brother's help had not been in vain. It might be expected that Dash would vividly remember the details of that day, such as what he did with the \$25,000 in cash after he left the bank, how they celebrated the milestone birthday, exactly where they were when he triumphantly handed his brother an envelope containing \$25,000, or the look on Tie's face when he opened it, perhaps. Strangely, Dash remembered little about that day with any certainty, and neither did Tie.

"They're using my brother as a punching bag," Tie Domi had told *The Globe and Mail*, long before he himself testified. Dash was being kept in the inquiry witness box because of the famous Domi name, he said. When Tie stepped into the witness box, he did his best to corroborate Dash's story, but it is often difficult for two people to concoct exactly the same story, try though they might.

November 1 was indeed Tie Domi's 30th birthday. The testimony of the Domi brothers certainly agreed on that much. There were several points, however, on which their stories were either equally vague or different when it came to important facts. And by that point in the inquiry, Dash Domi had already demonstrated his willingness to warp the truth.

Where did Dash store the 25 \$1,000 bills he withdrew from the bank that day? "I'm not going to walk around with that in my suit pocket," he said. This was the first time he had even seen a \$1,000 bill, let alone withdrawn 25 of them from the bank. But he couldn't remember what he did with the cash between the time he left the bank and the time he handed it to Tie. In the witness box, he conceded the possibility that he had it with him when he drove into the underground garage at City Hall.

How much did Dash Domi owe his brother? Dash said loans from Tie between 1993 and 1996 totalled about \$40,000, of which he paid back \$25,000 on Tie's birthday. Perhaps not surprisingly between brothers, there

was no documentation to back up the loans, but Dash couldn't remember any specific dates or amounts, nor could he recall how he used any of that money, beyond saying he used it to live, operate his fitness club, pay bills, and buy things. If his financial troubles were serious enough that he needed money just to live on, it might be expected that he would remember some details about what was surely a miserable time in his life, when he was repeatedly bailed out by his rich younger brother. Tie seemed quite shocked to hear that Dash thought he owed only \$40,000. He had thought it might be as much as \$80,000.

On what day did Dash give his brother the important present? Neither of the brothers seemed certain about the day. Tie Domi said in his affidavit that Dash gave him the money "on or about" November 1. By the time he got to the witness box, he was more certain that it was on the day of his birthday. Dash wavered initially, saying, "I don't know if it was on actually the first." Under further questioning, he said he "believed" he gave Tie the money on that day, then finally settled on November 1 more certainly. Even taking into account the erosion of memory over time, the significance of the day and the uniqueness of the gift might be expected to be unforgettable.

Where and how did he give his brother the monumental birthday present? Dash Domi equivocated on where they were. First he wasn't sure if it was in his own home, where he lived with his mother and sister, or Tie's place. Then he was sure it was at his house, but he couldn't remember which room. He said he pulled Tie aside, away from the rest of the family, and handed him the money, possibly in a birthday card. He told him he appreciated his help over the years. Probably he said a lot more, but he couldn't recall what. No one else in the family saw him present the gift, because, he said, "It was none of their business." This seemed an odd description of a significant birthday event in a close family. Tie's recollection was different. He said he was in Dash's house, lying on a couch in the living room while his sister and mother were trying to keep his children quiet. His mother and sister had already given him birthday cards which lay, unopened, on the coffee table. Dash walked in and, with a smirk, handed him a thick envelope. He said "Happy birthday" with a big smile on his face, but nothing more. Tie tossed the envelope, unopened, onto the coffee table with the others. Then he tried to go back to sleep.

How did they celebrate Tie's 30th birthday? Dash wasn't certain if there had been a birthday cake, but Tie remembered that his children blew out the candles. Dash said, "I do not remember if we had a party or not. It is possible there was a party. We had a get-together. I do not have a specific party recollection." Once he became certain that the family had been at his house on Tie's birthday, Dash remembered more, such as who was present. He recalled that his mother and sister were there. And Tie was there, with his wife and children. But Tie said his wife wasn't there. Dash had not remembered that on his 30th birthday, his brother had been temporarily separated from his wife.

How did Tie react to the gift? It would have been a poignant moment, surely, yet Dash couldn't remember his reaction. He couldn't even remember if Tie opened the envelope or knew what was in it. Possibly he put it in his coat pocket. Tie said he just put the card next to his mother's and sister's and tried to go back to sleep.

How much was in the envelope? Dash was unequivocal on that point. He said he gave Tie precisely \$25,000 that day. Tie was not so sure. First he said that he couldn't recall the exact amount of money, then he agreed with Dash, then he wasn't sure again. He said he counted the money when he returned home, but couldn't say whether it was \$25,000 or around \$21,000. He acknowledged that it could have been higher or lower than that and was only sure that it was in the twenty thousands. So, despite his admittedly fallible memory, Dash recalled the amount precisely, but Tie swore he couldn't recall the precise amount. Tie had failed to corroborate his brother's story on another critical point.

Was the gift in \$1,000 bills? Thousand-dollar bills are not widely circulated, to say the least. Many people have never seen one, including Dash up to that point. But Tie was not sure about the denomination of the bills Dash gave him, and then he was sure it was mostly, but not all, \$1,000 bills. He put the money in his apartment safe when he got home, where it got mixed up with other cash.

For the Domi brothers, November 1, 1999, had not been a particularly memorable day, apparently, and much of what they did remember, they remembered differently. But one element in the stories of the two brothers seemed entirely consistent: a monumental event, on a monumental day, had been an anticlimax.

B. SPENDING MONEY

Dash had just received his second really big paycheque. He withdrew 25 \$1,000 bills from the bank—something he had never done before. It was Tie's 30th birthday and the day Dash chose to make an important gesture to show his brother that he was back: he had found his financial footing and had succeeded on his own.

In his affidavit he stated that before November 1999 his income levels had never permitted him to repay his brother for any of his generosity. That was not true. Nine months earlier, on January 31, 1999, MFP had deposited \$57,457 in Dash's bank account. Had he chosen to, he could have begun repaying him at least some of the money at that time.

Strangely, it was not a gesture he would make again, at least up to the time he testified at the inquiry. Dash estimated that he owed Tie \$40,000, but he had paid back only that \$25,000 in a single payment. Despite becoming a millionaire, he hadn't paid back the remaining \$15,000. So what did Dash Domi do with his newfound wealth?

In April 2000, Mr. Domi bought a house and had extensive renovations done to it. He said that between April 2000 and the summer of 2002, he spent approximately \$300,000 in renovating and improving his property. Legitimate building trades have long fought rumours that they skirt the rules by asking for payment in cash. A substantial amount of cash, mostly in \$100 bills, came out of Mr. Domi's account during the renovations, and he said he sometimes paid for the work in cash, but he couldn't remember the name of any of the dozens of people who worked on his house. He did produce a handful of cancelled cheques payable to one contractor, but otherwise he had no invoices and no receipts. A renovations appraiser looked at Mr. Domi's house and prepared a report for the inquiry. The expert estimated the cost of the renovations, including adding a swimming pool, at approximately \$313,000. Mr. Domi had begun working for MFP in late 1998. Over the next two years he withdrew thousands and thousands in cash from his bank account. The renovations plausibly accounted for much of it, but not all of it.

Cash is difficult to trace, but our investigation followed the money trail as well as possible. Hindering our efforts was the fact that Mr. Domi had been the victim of a fraud at his bank. His account was compromised in an

amount between \$100,000 and \$150,000. To be completely fair to Mr. Domi, therefore, the inquiry's forensic audit of his account concentrated on only those withdrawal slips that bore his signature, and which he agreed were in fact legitimate withdrawals. However, the fraud occurred at least five months before the renovations began. Mr. Domi had not yet bought the house.

What did Tie Domi do with the \$25,000 (if that was the amount) in cash? He said he spent the money on "personal things," but could show no invoices, bills, or the like to support his claim, nor did he give the inquiry much assurance that he had tried to find any. While preparing Tie's affidavit, Dash's lawyer had asked Tie what he spent the money on. Tie told him it was none of his business.

It seems unusual that he wouldn't co-operate with his own brother's lawyer, especially since he had publicly expressed such concern about how Dash was being treated at the inquiry. In his affidavit he said that he had co-operated with the inquiry, and before he testified, he issued a press release through his lawyer: "My client has cooperated fully with requests of commission counsel to date and will continue to do so in the future." Did he really?

Clearly, he didn't assist the inquiry by producing evidence for how he spent \$25,000 in cash. It wasn't until he testified that the inquiry heard his version of how he spent the \$1,000 bills. As they did with all witnesses, commission counsel offered to interview him before his appearance at the inquiry. Recognizing the scheduling challenges with so many of the Leafs games being out of town, commission counsel offered to do this at his convenience. He said his lawyer advised him to meet with commission counsel, but he decided not to. He didn't have to, but had he done so and discussed the fate of the cash in an interview, inquiry investigators could have looked into his spending before he testified. Tie conceded as much himself. He was summonsed to give evidence at the hearing and bring with him any relevant documents, but he showed up without a single document to help support the rather cursory statement in his one-page affidavit about how he used the money. He offered a recollection of spending the \$1,000 bills on clothing, at restaurants, a jewellery store, and the odd high-end grocery store, but the inquiry's attempts to find confirmation for him produced nothing helpful.

So there was not a shred of evidence to support any part of their stories, and the Domi brothers were variously unsure about or disagreed on the whole money story: how much Dash owed Tie, how much he paid back and in what denomination, when and under what circumstances the cash changed hands, who was in the house at the time, and what Tie did with the money. Thus, their attempt at an innocuous account of the \$25,000 cash withdrawal failed on close examination. Thread by thread, the story unravelled. So if that account wasn't true, what did happen to the money?

C. ENTER TOM JAKOBEC, AGAIN

How did Tom Jakobek get involved in a story about Dash Domi and \$25,000 in cash? The inquiry had already delved into the relationship between Tom Jakobek and Dash Domi in uncovering the Philadelphia story. Their efforts to conceal the connection between them by lying about the fact that Tom Jakobek went on that trip in May 1999 failed. And they both lied about how well they knew each other, in an attempt to put distance between them. Then there was the question of whether Mr. Jakobek's long-time friend, Jeff Lyons, told DFS that "Tom says it's worth one hundred and fifty grand," and that MFP and others would pay it, in connection with the computer leasing deal. Now, the possibility that Dash Domi met Tom Jakobek in an underground garage about six months after the Philadelphia trip, and the holes in Dash Domi's account of what happened to the \$25,000 he withdrew from the bank that day, would lead the inquiry into yet another of Mr. Jakobek's webs of deceit.

People generally lie for a reason, and the reason often has something to do with avoiding consequences. Tom Jakobek and Dash Domi lied to conceal the extent of their relationship. Mr. Jakobek also lied about his relationship with Jeff Lyons, and Mr. Lyons lied, too. Why all the lying? Was it to cover up improper conduct? Had something untoward occurred involving an elected official and a supplier of services to the City? My terms of reference told me that the inquiry had to try to answer those questions, and we investigated. Two pieces of paper surfaced which, taken together, seemed to point to yet another possible connection between Dash Domi and Tom Jakobek. One was Dash Domi's November 1, 1999, parking receipt from the underground garage at City

Hall. The other was Tom Jakobek's November 1999 American Express credit card statement.

When Dash Domi was recalled to testify, he admitted that he wouldn't have parked at City Hall unless he was going to see someone there. He also said it was "very likely" he was going to see Tom Jakobek on the day his car spent 13 minutes in the underground parking garage at City Hall. He conceded it was "possible" he had the \$25,000 in cash with him at the time. Tom Jakobek first said he "didn't have a clue" where he was that day. Later, he recalled that he had spent the morning in his constituency office, dealing with complaints about a noisy waterfront night spot. In the afternoon, he said he went to the waterfront location to assess the situation. He said he had "quite a heated discussion" with the people there, and then went home. However, his lawyer conceded no one at the night spot could confirm that Mr. Jakobek was with them when Dash Domi entered the parking garage.

D. RELATED EVENTS IN THE FALL OF 1999

On October 1, the City concluded its computer leasing deal with MFP, and as we have seen, it was not the deal Council approved in late July 1999. The City agreed to five-year leases, not the three-year leases approved by Council. Staff attributed these extra two years to Councillor Jakobek's July amendment. Councillors thought they were voting on a \$43 million transaction, but City staff thought there was no cap on it.

On October 29, MFP paid sales representative Dash Domi \$94,000 of what would eventually be \$1.2 million in commission on the computer leasing deal.

On November 1, Dash Domi withdrew 25 \$1,000 bills from his bank account. Later that day, his car spent 13 minutes in the City Hall underground garage.

Also on November 1, Tom Jakobek charged \$14,000 to his American Express card for a trip to Disney World for himself and his family. (They left for the holiday on November 6.)

On November 2, Tom Jakobek deposited \$3,400 to his bank account. It was not a payday for City councillors.

On November 2, Ursula Jakobek certified three cheques payable to American Express.

On November 3, a total of \$21,000 was paid into Tom Jakobek's American Express credit card account, in four separate payments of \$3,700, \$4,000, \$6,000, and \$7,300. November 3 was three weeks before the account was due. In the preceding two months, Mr. Jakobek had paid his account on the last possible day. Inquiry investigators asked Mr. Jakobek to sign a consent for American Express, to permit the inquiry to examine more of his American Express bills, get a clearer picture of his payment habits, and ascertain whether it was all that unusual for him to make his payment long before it was due. On the advice of his lawyer, Mr. Jakobek refused.

This could be a series of coincidences.

The \$3,400 Tom Jakobek deposited on November 2 and the \$21,000 paid into his American Express account on November 3 added up to \$24,400. That's only \$600 less than the \$25,000 Dash Domi withdrew on November 1. That could easily be a coincidence, too. But by his prior conduct, Mr. Jakobek had shown himself to be a calculating, strategic, and almost habitual liar. The coincidences had to be investigated.

E. LAST-DITCH EFFORTS TO AVOID THE WITNESS BOX

If these events turned out not to be coincidence, the implications for Tom Jakobek could be very serious indeed.

Dash Domi was questioned about the 13 minutes in the underground garage and the fate of the \$25,000 in cash on April 19, 20, and 21, 2004. It was at this point that Mr. Domi disclosed for the first time that it was "very likely" he went to City Hall to meet Mr. Jakobek and acknowledged that it was "possible" he had the money with him when he went there.

Mr. Jakobek had been served with a summons to return to testify. His wife, Deborah Morrish, was also summonsed. On April 22, Mr. Jakobek's counsel wrote to the Chief of the Toronto Police Service to invite an investigation, simultaneously declaring that any allegation of wrongdoing against Mr. Jakobek was baseless. Then, the following Monday, April 26, Mr. Jakobek and Ms. Morrish brought separate motions before me, argu-

ing that it was constitutionally impermissible for me to hear new evidence that should instead be turned over to the police. Through his counsel, Mr. Jakobek told me that he had just now found documents that “completely destroyed” any assumptions of impropriety. Inexplicably, he refused to turn them over to the inquiry, but he was willing to give them to the police. Mr. Jakobek well knew that, unlike a public inquiry, a police investigation could not be conducted in public. Ultimately, the police declined Mr. Jakobek’s invitation, partly because they do not launch investigations when the very person asking for one insists that no crime has been committed. Essentially, Mr. Jakobek’s letter told them an investigation would be a waste of time.

In substance, I dismissed the motions, but since both Mr. Jakobek and Ms. Morrish applied to the Divisional Court of the Superior Court of Justice for judicial review, as was their legal right, I agreed to adjourn the hearings pending the Court’s ruling. In their applications to the Court, they argued that the inquiry was now investigating allegations of bribery and the propriety of certain payments, and that only the police could properly carry out such an investigation. They asked for the summonses issued to them to be quashed. The Court ruled against both of them, and the summonses stood. (Ultimately, Ms. Morrish swore an affidavit and was not required to testify.) The Court made a further ruling requiring them to pay costs. In that ruling, the Court characterized their challenge of my ruling as “an effort to avoid testifying before the Inquiry.”

Commission counsel had informed Mr. Jakobek of the expected evidence well in advance of the first recall witness. He could have applied for judicial review then, but he waited to see what Dash Domi would say in the witness box. Ever the tactician, he didn’t want to signal his concern until it became absolutely necessary. Mr. Jakobek denied that this was the motive behind the curious timing.

Mr. Jakobek delayed the inquiry while we awaited the Divisional Court’s decision, but he didn’t stop it. The investigation continued in the interim, and in the roughly four months between his application to the Court and his return to the witness box, the inquiry uncovered more information that was not helpful to Mr. Jakobek. His stalling tactics backfired, and he had even more to explain by the time he testified.

F. INNOCENT EXPLANATION: A RICH FATHER-IN-LAW

As a City Councillor, Mr. Jakobek earned \$63,915 (a third of it tax free) annually. But, he said, his family was not dependent on his salary, and he had an innocent explanation ready for the \$21,000 paid into his American Express account. In a pair of brief affidavits dated October 15, 2003, and December 2, 2003, Mr. Jakobek said the money came from his father-in-law, former Scarborough politician Ken Morrish. Mr. Jakobek said that, on his salary, he couldn't have afforded the expensive trip to Disney World for his family that was charged to his American Express card on November 1, 1999. He said, "Any kind of major expenditure or major thing that we had, the source of funding would either directly or indirectly come from my father-in-law. We didn't have that kind of money."

The explanation seemed plausible, on the surface. Mr. Morrish was a wealthy man. In 1989, he bought a house for his daughter and her husband, Tom Jakobek, for \$1.4 million. Mr. Jakobek and his family still live in this house. In today's real estate market, there is no doubt the house is worth considerably more than it was in 1989. Sadly, Mr. Morrish was not in a position to confirm that he paid the money into his son-in-law's American Express account for the trip to Disney World; he had suffered a stroke in 2002 that rendered him unable to testify before the inquiry. Mr. Jakobek's wife, Deborah Morrish, acted as power of attorney for her father.

In his sworn affidavits, Mr. Jakobek observed nebulously that the payments from his father-in-law were in the form of "cash, bank drafts or cheque." Mr. Morrish's financial records, summonsed by the inquiry, failed to confirm any such payment. But those records revealed one interesting thing, unrelated to the events of November 1999. Mr. Morrish had indeed given his son-in-law quite a bit of money before. Mr. Jakobek had a line of credit, which on one occasion was paid off by Mr. Morrish. The paper trail for that instance of Mr. Morrish's generosity to his son-in-law was very clear. The contrast between Mr. Morrish's detailed record of paying down Mr. Jakobek's line of credit and the absence of a single supporting record for the American Express payments was troublesome. The innocent explanation was now on slightly shaky ground, but it was still within the realm of possibility.

Then, without warning, the shaky ground collapsed.

G. THE STORY COMES APART, BUT MR. JAKOBEK STICKS TO IT

At first, American Express was unable to find any documentation behind the statement showing the November 3 payments. Mr. Jakobek knew this, because he had asked American Express if it could find any backup records and was told it was impossible. That was before he gave the inquiry his sworn affidavits. So when Mr. Jakobek attributed the \$21,000 payment to his father-in-law, he believed American Express would find no records, and he knew his father-in-law was not able to testify.

Soon after Dash Domi testified in April 2004, and after Mr. Jakobek had sworn his two affidavits in 2003 but before he returned to testify, American Express found the impossible-to-find records. Only \$6,000 of the \$21,000 in payments had been made in cash. The records included microfiche copies of the cheques used to pay the remaining \$15,000. The cheques didn't come from Mr. Morrish. They came from Mr. Jakobek's own mother and grandmother. The record didn't reveal the source of the \$6,000 in cash.

When Tom Jakobek re-entered the inquiry witness box to address the very serious questions about the money trail, he was a changed man. Gone was the aggressive former budget chief with impressive grasp of the smallest financial detail. Gone was the man who said he had an IQ of 142 and boasted to a newspaper reporter of his "phenomenal memory." Gone was the abrasive, condescending demeanour of his previous appearances. Drifting from one lie to another in a performance worthy of Pinocchio, he tried, as he had done before, to deflect questions by spinning off in different directions. His phenomenal memory now conveniently failed him entirely. Yet he stuck to his original story as best he could, considering the facts now uncovered.

Even after he saw copies of his mother's and grandmother's certified cheques, Mr. Jakobek continued to say that at least some of the money for the Disney World trip came from his father-in-law. When he had said in his affidavit that the payment was from his father-in-law, he speculated that the payment might have been in cash. Now he claimed that the cash portion of the payments to American Express came from Mr. Morrish: "Until I saw these documents in the last several weeks, I believed the source to fund [this] American Express payment [was] my father-in-law...As to what I recall now, seeing the cheques—I believe the \$6,000 is from my father-in-law, and

that's the cash. I have no recollection of the three cheques, other than a faint recollection, and I don't know whether it was this trip or another [trip]." His mother had joined his family on a number of trips, he said, twice to Disney World. He hesitantly suggested that, since she insisted on paying her own way, one of the cheques might have been her payment for one of those trips.

"How sharper than a serpent's tooth it is / To have a thankless child!"⁶

According to Tom Jakobek's mother, Ursula, \$11,000 of the American Express payment was a gift from Tom Jakobek's grandmother Maria Michie, and \$4,000 was his mother's contribution to the November 1999 trip.

Mrs. Jakobek testified that, without knowing how much a trip to Disney World might cost, her mother, Ms. Michie, had instructed her to certify cheques totalling \$11,000 as a contribution to the trip for her great-grandchildren.

Mrs. Jakobek, likewise not knowing how much her portion of the trip would cost, certified a cheque for \$4,000 to pay her own way. This was a special occasion. Neither she nor her mother had paid for such a trip before. Yet instead of giving the certified cheques to her son, Mrs. Jakobek said she gave them to her son's father-in-law, Ken Morrish, when he happened to drop by. She recalled that when she told her son about her own \$4,000 contribution, he said, "You're crazy, Mother." He had been appropriately thankful. She thought her son would certainly have thanked his grandmother for her unprecedented gift of \$11,000 toward the trip.

Was he asking the inquiry to accept his word that he had no recollection of the three cheques that made up the gift? "Absolutely," he said.

Tom Jakobek's parents lived in a modest way—certainly not in a "splendid home," as their son characterized his own. His grandmother lived in a subsidized apartment complex for seniors, on a pension. Could he really have forgotten such generosity from them and mistakenly attributed it to Mr. Morrish? He "just didn't recall" how he could have forgotten it when he swore those affidavits.

It seems clear that he didn't forget—he lied. He lied because he knew that his father-in-law's paying for the trip was plausible and this explanation might

⁶ *King Lear* (I.iv.312)

forestall further investigation. But he had to have known that if the inquiry somehow found out that the money had not come from Mr. Morrish, it would be uncomfortable for him. He would, once again, be called upon to seem contrite. When he was caught in a lie about the Philadelphia trip, he apologized for repeatedly lying, and he had to set the record straight on his lawyer's letter to the *Star* and clear up his comments about his friend Harold Peerenboom. This time, he knew that if the truth came out, his elderly parents and grandmother would very likely have to be involved in the investigation, with all the stress that would entail for them. How would they, of such modest means, be able to explain those certified cheques for such large amounts? Would they have to testify? That possibility would bother the conscience of most people, but Tom Jakobek had a remarkable ability to rationalize his behaviour and disregard everyone's best interests but his own.

What did he do? He gambled again, as he had about the Philadelphia trip, that the truth wouldn't come out. Apparently, the chance that he could explain away the coincidences with a lie, and perhaps keep the investigation from digging further, was worth the risk of getting caught in a lie again. He gambled and lost, and his own mother was thrust into the spotlight to face questioning in the witness box and the scrutiny of a skeptical press. The most charitable interpretation was that Tom Jakobek was a shamefully ungrateful son and grandson. Why would he cast himself in that ignominious role? To be worth the gamble, the consequences of telling the truth from the beginning had to be worse.

H. THE EBB AND FLOW OF MONEY

To reconstruct the money trail, the inquiry summonsed the bank account records for Mr. Jakobek's parents and grandmother. A team of forensic accountants pored over them, line by line. What they found was startling.

In 1999, Ursula Jakobek retired. Her husband, Thomas Z. Jakobek, and her mother, Maria Michie, had retired years before. According to their income tax returns, their 1999 net incomes were approximately \$32,000, \$20,000, and \$15,000 respectively.

In October and November 1999, Mr. Jakobek's parents and grandmother received into their collective bank accounts over \$25,000, in cash, mostly in \$100 bills. That cash accounted for more than two thirds of the value of deposit activity in the accounts during that period. Pension and

interest income made up the remaining third. Also during October and November, \$34,500 went out of these accounts to Tom Jakobek's direct benefit, either by transfers to his bank account or through the cheques payable to his American Express account. In other words, cash was flowing into these accounts—extraordinary amounts compared to the incomes of the account-holders—from sources unknown. And just as quickly, it was flowing out to Tom Jakobek. To the forensic accountants, this persistent pattern suggested the conclusion that Tom Jakobek appeared to be influencing or controlling his parents' and grandmother's accounts.

Tom Jakobek's memory loss continued into questioning about the money his parents had transferred to his benefit in October and November 1999, some \$19,500 in addition to the American Express payment. He said his parents didn't just give him money and he acknowledged that he didn't need money from them. His parents were repaying him, he said, "for things I had done or things that they had received or whatever." He was unable to remember any convincing details about precisely what things he had done, or what his parents might have received that might account for almost \$20,000. Nor was he able to provide any supporting documentation, even though the inquiry was clearly interested in anything that would have supported these claims.

The money trail proved consistent with a deliberate attempt to mask the source of the funds.

Between the beginning of October 1999 and late December 2000, in addition to his salary, \$27,877 in cash went into Tom Jakobek's bank account, 83 per cent of it in \$100 bills. Mr. Jakobek's claim that his father-in-law gave him that money is called into question by his similar claim with respect to the American Express payments. Another \$60,000 in unidentified deposits went into his account during that time. So where did all that money come from? Mr. Jakobek suggested that they included proceeds from the sale of a property or possibly a payout from the City after he left, but couldn't be more helpful than that.

I. A COMPLICATED WAY TO GIVE A GIFT

Following Tom Jakobek's recall evidence, his 71-year-old mother, Ursula Jakobek, was first into the witness box for the family. She did her best. She

tried very hard to present the circumstances of the American Express payment story in the most innocent light possible. But her son's lies, already on record, made that impossible. She tried to help him, but it should be a surprise to no one that she failed.

Mrs. Jakobek was facing the impossible task of deploying a fresh explanation to overcome her son's false account of the American Express payments. But there was more. She would also be asked to explain the convoluted money trail, winding through a complicated series of transactions involving numerous Jakobek family bank accounts, on the way to those payments.

Despite their apparently modest income, Ursula Jakobek and her husband, Thomas Z. Jakobek, maintained a complex web of personal accounts at six different financial institutions. They were scattered all over Toronto.

Maria Michie, Tom Jakobek's grandmother, aged 86 in 1999, had five personal accounts, likewise spread around various financial institutions. By that point, she was not doing her own banking. Her daughter, Ursula Jakobek, did it for her. Out of three of the accounts held by his parents and grandmother came much of the money to pay Tom Jakobek's American Express bill on November 3, 1999.

At 7:33 a.m. on November 2, 1999, Tom Jakobek called his mother from his cellphone. He had used his cellphone to call her before, but infrequently. Thirty-six hours after that phone call, his American Express bill would be paid. Later that day, Mrs. Jakobek visited her mother, as she did most days. The story was that her mother wanted to contribute to a trip to Disney World for her great-grandchildren. She had never paid for a large trip before, nor had she ever done anything this extravagant for her great-grandchildren. Ursula Jakobek said that on her mother's instructions, she filled out two cheques and her mother signed them. Later, Mrs. Jakobek went to three different financial institutions and did a lot of banking. She couldn't remember the order in which she made her banking stops that day, but the aim of it all was to obtain certified cheques to pay into her son's American Express account, three weeks before payment was due, as it turned out.

At the CIBC at Danforth and Coxwell, Mrs. Jakobek did three things:

- She deposited \$1,000 in \$100 bills to one of her mother's accounts.

- She immediately transferred \$5,200 from that account to another of her mother's accounts at the same branch.
- She certified the cheque her mother had signed earlier, drawn on the second account, payable to American Express for \$3,700.

Mrs. Jakobek explained that she certified the cheque at her mother's insistence. Mrs. Michie had once written a cheque that bounced, so she wanted the cheque for her grandson "stamped." She added, "Tom would never have taken the cheque if it wasn't certified either," because he wouldn't have wanted his grandmother to pay. This was an odd comment, given that Tom was never going to see the cheque anyway, as it was destined to go straight into his American Express account.

Two weeks later, she would return to this CIBC branch and deposit \$4,200 in \$100 bills to the first account. The balance in the account before the transfer on November 2 was \$4,267.76. After this later cash deposit, the balance returned to exactly \$4,267.76.

Still on November 2, Mrs. Jakobek went to Canada Trust at Eglinton Square in Scarborough.

She performed three transactions at this branch:

- She deposited \$1,000, in \$100 bills, to her mother's account.
- She transferred \$1,600 into her mother's account from a joint account Mrs. Jakobek held with her husband at the same branch. These two deposits brought the balance in Maria Michie's account from just over \$4,000 to a little under \$7,500.
- She certified the second cheque her mother had signed that morning, payable to American Express for \$7,300, leaving less than \$200 in the account.

Three weeks later, she would deposit \$3,000, in cash, into the same account, but she would do it from a branch on Queen Street, near her home.

Still on November 2, Mrs. Jakobek visited a Toronto-Dominion Bank branch near her home in the Beaches:

- She deposited \$1,000 in \$100 bills to her own account.

- She certified a cheque from that account for \$4,000, payable to American Express.

Two days later, she would deposit \$2,100 in cash to this account, including \$1,500 in \$100 bills.

Mrs. Jakobek said she had been simply following her mother's instructions, without question, in carrying out the elaborate series of deposits and transfers at different banks to arrive at Mrs. Michie's \$11,000 contribution to the Disney World trip. She said it was "no big deal." In between bank visits, she stopped for coffee and did "this and that." Alone, with thousands of dollars in cash in her purse.

The three cheques certified on November 2 rested safely somewhere overnight. Presumably, Ursula Jakobek took them home with her.

The next day, November 3, the three certified cheques travelled downtown to the American Express office in the Royal York Hotel where, along with \$6,000 in cash, they were finally paid into Tom Jakobek's American Express card account. There were no \$1,000 bills in the cash part of the payment. The threshold triggering the requirement, under Canada's money-laundering laws, to record the name of the person making a cash deposit and his or her address and occupation is \$10,000. Thus, there is no record of whether it was actually Mr. Morrish, as Ursula Jakobek had said, who made the payments to Tom Jakobek's account that day.

But why pay the gift into Tom Jakobek's American Express account? Ursula Jakobek said she never discussed it with her son. She didn't know whether he still had an American Express card. She knew he had other credit cards but assumed he would use his American Express card to pay for the trip because she had seen him use that card to pay for things at Disney World on a previous trip.

Ursula Jakobek had tried her best to support her son's story, but it simply wasn't plausible that she and her mother had contributed \$15,000 to his American Express account, without telling him, without knowing for sure whether he would use that card to pay for the trip, and with no idea of what such a trip would cost. Mrs. Jakobek remembered that her son had been appropriately thankful for the gift, which made it implausible that he didn't remember receiving it.

Mrs. Jakobek said her mother, though a pensioner, had plenty of money in cash. That explained how she could give a gift of \$11,000. If that was true, it was puzzling that she had transferred money from her own account to her mother's to cover the certified cheques. Mrs. Jakobek had no explanation.

It seemed implausibly convenient that her son's 80-year-old father-in-law materialized at her house just in time to take the three certified cheques downtown to the Royal York Hotel and pay them into Tom Jakobek's American Express account. It was the first time he had performed such an errand, and there had been no prior discussion of the need for it. And presumably he had with him when he dropped by, or picked up on his way downtown, \$6,000 in cash to bring the payment up to \$21,000, rather than writing a cheque.

The allegations that the American Express payments were made with money from Dash Domi were in Toronto's newspaper headlines in April 2004. Mrs. Jakobek saw those headlines. She commented that the "papers don't tell you the truth always... Papers twist things in order to sell the newspapers." Her son was being accused of serious wrongdoing. She would maintain that the money couldn't have come from Dash Domi because it came from her and her mother. Yet, inexplicably, she didn't remember reminding her son of a fact that would have gone a long way toward clearing him of suspicion.

J. A STRANGE WAY TO PAY A DEBT

Mrs. Jakobek did no better in trying to explain the other unusual cash activity in the family accounts. She said all that cash flowed into their accounts and out to Tom Jakobek because, in addition to reimbursing Tom for things he arranged or bought for them, they were helping another son, Joe, to repay a real estate debt he owed Tom. Joe would pay them when he could, but they would pay Tom faster.

This was a new explanation, never mentioned by Mr. Jakobek in his account of why his parents were giving him money. And there was no detail available to lend it credibility. Mrs. Jakobek was unsure about when she began to pay Tom, and about when Joe made payments to her. She didn't keep track of how much she paid, leaving that to Joe, nor did she know how much was outstanding. Oddly, though, it appeared that Joe began to repay

his parents for their payments to Tom even before his parents had yet made one payment.

In any case, Mrs. Jakobek got critical details of the real estate transaction all wrong. For example, she said the debt originated when her son Joe used the proceeds of the sale of a house owned jointly with Tom (although, as it turned out, only Joe's name was on the title of that house) to buy a second house instead of paying Tom his share. Title searches would show that Joe bought the second house two years before the sale of the first house, so Mrs. Jakobek's explanation was impossible.

Even if true, the story that there was a real estate deal contradicted Tom Jakobek's sworn testimony that the money from his parents' accounts was only reimbursement for vague things he had arranged or bought for them. Apparently forgetting how different her son's evidence was from her own, Mrs. Jakobek even said that Tom knew his parents were paying his brother's debt to him. As with the Domi brothers, this discrepancy illustrates how difficult it is for people to collectively stick to a consistent made-up story.

Tom Jakobek had not remembered any of the things he had done for his parents that would account for the money flowing to him from their accounts, but Mrs. Jakobek tried to fill that gap. Her son had taken his parents' car for repairs and had arranged for various work around the house. He would pay for all of these things, and Mrs. Jakobek or her husband would ask him how much it had cost and reimburse him, but they had never asked for the invoices or receipts.

Where did all this Jakobek family cash, for the American Express payments and the real estate debt repayments, come from?

Maria Michie, Tom Jakobek's grandmother, lived in subsidized housing on a net income of just over \$1,200 per month. Her daughter said that, to a certain point, Mrs. Michie "wanted to be careful with her money and get interest wherever she could." That was why her mother had instructed her to move money around various accounts on November 2—to keep earning that little bit of extra interest on a savings account as opposed to a chequing account as long as possible.

Nevertheless, Ursula Jakobek also claimed that Mrs. Michie kept stores of cash, the existence of it known only to her daughter and the quantity unknown even to her, in a shopping bag hung on her bedroom door, under her housecoat, where it obviously earned no interest at all. She had other

cash around her apartment, too, in a locked suitcase. This made no sense to Mrs. Jakobek, she said, but it made sense to her mother, so she didn't question it. Mrs. Jakobek's mother and father had lost their bank savings during the war, and that was explanation enough. Yet Mrs. Michie maintained five bank accounts.

According to Ursula Jakobek, every month, her mother sent her to the bank for cash and never used the money in the shopping bag hung on the bedroom door. Yet Mrs. Jakobek said her mother must have given her the \$2,000 in \$100 bills to deposit on November 2, because she had no reason to give her mother money to cover the certified cheques. She had no explanation for why she had transferred money from her joint account with her husband to her mother's account. Her mother didn't need the money.

Ursula Jakobek said that she and her husband, too, had great stores of cash which, despite their many bank accounts, they kept around the house. She herself had squirrelled away about \$25,000 over the years. Yet, despite having ready access to that cash in her house, she instead embarked on her complex series of banking transactions. This information became public at the inquiry, and as a result Mrs. Michie and the elder Jakobeks stopped keeping cash in their homes.

The forensic accountants had determined that tens of thousands of dollars were necessary to conduct the cash transactions in the Jakobek family bank accounts in October and November of 1999 alone. Interestingly, all the cash deposited, mostly in \$100 bills, went not to their son the teacher, nor to their other son the police officer, but to their very wealthy son who never claimed an expense in two decades at City Hall, who lived in a mansion, and who had a wealthy father-in-law who paid his debts for him and paid for trips and other luxuries.

If the money that went to Tom Jakobek came from cash stashed around his parents' home or a shopping bag on the bedroom door of his grandmother's apartment, why put it through a complicated series of transfers, deposits, certified cheques, and credit card payments? Why not just give it to him in an envelope, as Dash Domi claimed he had done for his brother's birthday? Why not write him a cheque and give it to him directly? Why obscure the source of a grandmother's generous gift or reimbursement to a son for out-of-pocket expenses in the course of helping his parents?

Ursula Jakobek said that how her mother dealt with her money made no sense to her. The same could be said of the entire family.

Mrs. Jakobek left the inquiry witness box with her head held high. She had tried gamely, but vainly, to prop up her son's stories and offer an innocent explanation for the bizarre and suspicious-looking money trail. Despite her brave face right to the end, it was sad to see a dignified woman pushed so far out on a limb by her selfish and shameless son. She freely chose to try to support her son this way, but even so, his lies had put her in that position.

Tom Jakobek's brother Joe was a different story altogether.

K. LAST-MINUTE ADDITION: ANOTHER MR. JAKOBEK ASKS TO BE HEARD

Tom Jakobek's brother Joe was a last-minute addition to the inquiry's witness list. He appeared at his own insistence, which was rare in the inquiry. He was eager to testify. After his mother's attempts to tell the debt repayment story fell hopelessly flat, he resented the City's lawyer's suggestion that his mother was merely telling a "story" about the repayment arrangements between himself, his parents, and Tom.

He should have resisted the impulse to ride to the rescue. By then, the evidence of Tom Jakobek and his mother had presented the inquiry with a matrix of lies, irreconcilable discrepancies, obfuscation, and fantastic implausibility. Joe Jakobek's performance brought the Jakobek family to new lows in credibility.

From the outset, he was prickly. He tried to take control of the examination by insisting that questions be put to him in a specific order. Apparently, he had expected a gentle ride through his evidence because he appeared voluntarily, and he pouted openly when challenged. His demeanour did nothing to aid the credibility of his testimony.

By contradicting important elements in Tom Jakobek's story, Ursula Jakobek had made things worse while trying to clean up her son's mess. Now, in trying to clean up the mess his mother had made of the real estate debt story, Joe Jakobek made things worse yet.

Joe couldn't explain why Tom made no mention of the debt in his evidence, but he did his best to explain the debt his parents were ostensibly

paying back to Tom for him with the money the forensic accountants traced from October and November 1999. He corrected the obvious errors his mother had made in the history of the real estate transaction.

What he couldn't do, however, was explain why, if the story of the debt was true, some of the debt to Tom, and most of Joe's consequent debt to his parents, remained outstanding. He had ample opportunity, and money, to pay it off. He had bought and sold two other properties, including a property Tom bought from him at a price well above its market value.

Joe Jakobek said that the sale of the property he owned jointly with his brother, where the debt in question originated, netted a profit of about \$200,000 over the purchase price. After deducting \$30,000 in renovations for which Joe had paid, they calculated the net profit at \$170,000, or \$85,000 for each of them. Owing to his financial situation at the time, Joe couldn't afford to pay his brother his share. He thus owed him \$85,000. He wanted to conceal the debt from his parents but eventually told them when they asked him about the sale. They were upset about it and undertook to pay Tom, with Joe paying them back at a slower rate. Later, when Tom learned that his parents would be paying back the debt, he reduced it to \$50,000 and told them to forget the rest. Their parents left it to Joe to keep a record of the debt repayment. This is how he did it:



According to Joe Jakobek, his parents would call him when they made a payment to Tom and tell him how much they had paid. This happened irregularly, perhaps two or three times a month. He would jot that number on a piece of paper. Later, he would update the running total, which was on another scrap of paper kept in a drawer by his bed. One such scrap of paper, the one shown above, was preserved for five years as Joe Jakobek moved from residence to residence. It was the only record of the debt repayment scheme between himself, his brother, and their parents.

Each time he updated the running total, he said, he discarded the scrap of paper showing the previous total. Since the scrap of paper shown above was said to be five years old, the elder Jakobeks had apparently repaid \$72,000 of the original \$85,000 debt by 1999 and then abruptly stopped paying. He kept track of his payments to his parents on the same scrap of paper. By 1999, he had repaid \$15,000, and then nothing until, within a month before testifying, he paid them \$2,000. This he entered on the five-year-old scrap of paper, rather than writing the new running totals on a fresh scrap of paper, as had been his practice.

Joe Jakobek said that his parents had been adamant that Tom should be paid every penny of the \$85,000, not the \$50,000 Tom agreed to when he learned that his parents were going to pay him back. Why did they pay their son \$22,000 more than he wanted? And if they were determined that he should have the full \$85,000, why did they stop at \$72,000?

Joe Jakobek was well educated. He held a B.A. from the University of Western Ontario and an M.B.A. and a B.Ed. from the University of Toronto. He was a former police officer, and thus an experienced courtroom witness. He taught introductory law at high school.

He viewed with great suspicion a photocopied land title document because it was not a "certified true copy," even though it had been provided by his own counsel, who told him he need have no concern about its authenticity. Later, when he was questioned about the scrap of paper, commission counsel suggested that, short of forensic examination, there was no way to determine when it was written. Mr. Jakobek replied that he had not been in the forensic unit of the police, so he couldn't comment on that. Curiously, at the end of his testimony, when commission counsel made the routine suggestion that this dog-eared little triangular scrap of paper be retained by the inquiry as an exhibit, as was the practice with original

documents throughout the inquiry, Mr. Jakobek objected vigorously: “I absolutely want that back,” he said, because he needed it as a record of the running total. Initially, he emphatically rejected the offer of a photocopy of it and wanted the original for “safekeeping.” Ultimately, he did allow the paper to be duly filed as an exhibit when I said I would ensure that it would be returned to him at the end of the inquiry.

Was Joe Jakobek worried that if the inquiry submitted that piece of paper to forensic examination, it would prove not to be as old as he said it was? Possibly. In any event, the lack of credibility in his account of the real estate debt made forensic examination superfluous.

Joe Jakobek was the last witness to give evidence about the Jakobeks’ perplexing money matters. The family’s many overlapping and undercutting stories had done nothing to dispel concerns about what happened in City Hall’s underground garage.

L. THE STORIES HAVE BEEN TOLD—WHAT DO WE KNOW?

In solving a mystery, any number of theories might fit the facts. Here is how a story might be written to fit with what we know.

Councillor Jakobek’s motion at the Policy and Finance Committee gave MFP great flexibility to enhance its deal with the City. When Dash Domi got his big commission payment, it was time to secretly reward the Councillor whose influence he had been aggressively courting for months. Mr. Domi went to the bank, got \$25,000 in cash, and called Tom Jakobek to set up a meeting in the underground parking garage. He called the Councillor again an hour later, as he was entering the garage, perhaps saying something like, “I’m heading in now. Come down and meet me.” Councillor Jakobek hurried downstairs, met Mr. Domi, and took the package. Only 13 minutes elapsed from the time Mr. Domi entered the garage to the time he left.

In the two days that followed, Tom Jakobek put \$3,400 of the money in his bank account, and gave the rest to his mother to cycle through a tangle of cash deposits, carefully kept under the \$10,000 threshold that requires financial institutions to generate a detailed transaction record under federal money-laundering laws, until it ended up credited to his charge card.

A story like this connects the coincidences. It has the benefit of fitting the facts we know.

On the other hand, the facts we know could all be chalked up to an unfortunate coincidence of timing. A story could also be written like this:

Dash Domi withdrew \$25,000 in \$1,000 bills to give to his brother, Tie, on his birthday. A serial cellphone caller, he happened to call Councillor Jakobek twice that day for no particular reason. Just as he was making one of those calls, he happened to be driving into the City Hall parking garage on an errand of some kind that took 13 minutes. Two days later, a doting grandmother with an eccentric way of dealing with money, a loving mother who wanted to pay her own way, and a generous father-in-law prepaid almost the same amount into Tom Jakobek's American Express account for a family trip to Disney World. The Councillor was a busy man and had simply forgotten that they had done so. None of the banking transactions, nor any of the credit card payments, nor any of the money deposited to Tom Jakobek's accounts was in \$1,000 bills. The timing of Dash Domi's calls and the timing of the financial transactions were both coincidence; case closed.

Those are two theories that fit the facts, but theories are conjecture, and of little value without proof. After theories comes the much harder work of determining the truth. Fairness demands that the people affected be given every opportunity to explain. Then those explanations must be carefully and impartially analyzed.

Dash Domi and Tom Jakobek were given every opportunity to refute the theory that a sales representative had made an improper payment to a City Councillor. In normal circumstances these two would have made unlikely friends; in these circumstances, their relationship made no sense at all. They presented their explanations. But nothing they offered withstood critical scrutiny. They were both proven liars. The stories of both were inconsistent and implausible. They both seemed to forget many critical details when it best suited their strategic purposes. They both relied on their families. These families, understandably intensely loyal and partisan, were their only support. Yet the stories of the family witnesses didn't tally with the objective evidence or their original testimony. They simply couldn't fill the gaping holes in the stories.

We knew from the Philadelphia story that Dash Domi and Tom Jakobek lied in concert to conceal their trip and their relationship. We now knew

that they also lied separately in recounting their roles in the movement of mysterious money. Whether they acted in concert or independently, the consistency of their lies gives credence to the theory that Dash Domi made, and Tom Jakobek accepted, an improper payment of \$25,000.

One further important point must be made regarding this theory: There is no evidence to demonstrate that Tom Jakobek had any connection with anyone at MFP apart from Dash Domi, so this theory does not include the company or any other of its officers or employees.

My terms of reference specifically directed me to examine the relationships between staff, elected representatives, and MFP. We drafted our rules of procedure in a way that encouraged witnesses to come forward. Our rules told witnesses that the law offered protections to encourage them to come forward and give full and forthright evidence to an inquiry. As a commissioner of a public inquiry, I consistently encouraged the public to keep an open mind to the very end, and I did so myself. I was always fully prepared to accept reasonable or believable evidence. I encouraged witnesses to provide evidence that might help to explain seemingly compromising circumstances. Insofar as Mr. Domi and Mr. Jakobek are concerned, I gave them numerous opportunities to provide me with credible evidence to support their versions of events. They provided me with no such thing. Worse, they lied repeatedly.

So I am left with these two questions: Is there enough credible evidence here to reach the conclusion that Dash Domi gave Tom Jakobek a payoff? Yes, there is. Has either Mr. Domi or Mr. Jakobek provided me with any believable evidence to refute that? No, they have not.

XVII. ORACLE: BIG MONEY, NO RECORD

ONE SPECIFIC, AND EXPENSIVE, example of mismanagement following the leasing contract with MFP was the way Oracle software was put on lease with MFP.

The inquiry looked for answers to basic questions: How was the decision made to acquire the Oracle licences and to put them on lease with MFP? Did staff follow City policy? Were their actions reasonable? Most important, if anyone made mistakes, what lessons can be learned?

Our investigations found virtually no documentation to support the need for \$11 million worth of Oracle software, no financial analysis of the Oracle proposal or the effect of leasing the acquisition, and no clear chain of authority for spending that much of the taxpayers' money. We did find a stunning lack of basic information, a haphazard approval process, hit-or-miss record-keeping, selective amnesia about attending relevant meetings, dubious use of a special Y2K procurement approval mechanism, and minimal involvement of legal counsel.

This many years later, it is impossible to determine how many or what type of Oracle licences the City really needed in 1999, or the optimal level of technical support to go with them. The City didn't attempt to compile that information until 2002.

Oracle didn't seek standing at the inquiry. It did co-operate with the inquiry and provided all of the documents requested.

A. WHAT DID THE CITY BUY?

On December 31, 1999—the very eve of Y2K—the City of Toronto entered into a contract with Oracle for the purchase of 10,000 Oracle enterprise licences, along with “silver” level technical support, for five years. The net cost was \$11,336,651. That included a \$1,558,836 credit for Oracle licences the City already owned and \$481,691 for prepaid support fees. The whole amount was put on lease with MFP.

What did the City get for its money?

Various types of licences were available from Oracle. The City acquired “enterprise licences,” also known as “named network licences.” An enterprise licence is assigned to one specific user and cannot be shared. That user can access any number of Oracle-based applications. The software can be used on multiple server operating systems and can be moved freely among servers. This option allows great flexibility, but it is the most costly. Each enterprise licence (not counting technical support) cost approximately \$444. To upgrade licences of other types already owned by the City to enterprise licences cost \$288 each.

One other type was “run-time” licences, which are restricted to one Oracle-based application. They are generally bundled with other vendors’ applications and cost about \$150. A third type was “concurrent” licences, which allowed multiple, non-specific users access to any one Oracle-based application, so long as the maximum number of simultaneous users was not more than the number of concurrent licences owned. Concurrent licences are especially well suited for a large number of occasional users. They are generally less expensive than enterprise licences, but more expensive than run-time licences.

B. THE ELUSIVE APPROVAL

The paper trail leading to the City’s acquisition of 10,000 enterprise Oracle licences was cold: Virtually no documentation existed to show a need for the acquisition, no evaluation or analysis, and virtually no record of the negotiations with Oracle.

Oracle was not new to doing business with the City of Toronto. Several of the former municipalities had been using its products, and Oracle had

Type of Licence	Users	Applications	Approximate Cost per Licence (excluding support)
Enterprise (or Named Network)	One specific user	All applications	New: \$444.00 Upgrade:\$288.00
Run-Time	One non-specific user; bundled with other software	Specific to one application	\$150.00
Concurrent	Multiple, non-specific users; number of simultaneous users not to exceed the number of licences	One application	More than run-time; less than enterprise

twice tried to sell enterprise licences to the City—once in 1997, before amalgamation, and again in 1998.

After consultation with City staff, in its 1997 proposal Oracle projected that the amalgamated City would need 17,320 enterprise licences by 2002. The City certainly appears to have considered the proposal. Then-Commissioner Margaret Rodrigues went so far as to prepare a draft report for the Corporate Services Committee based on it, but there must have been second thoughts because the report never went to either committee or Council.

The 1998 proposal was prompted by the City's SAP project. SAP had been approved as the City's financial, purchasing, payroll, and human resources system. It would be run on an Oracle platform and it needed Oracle licences. The City had the option of buying run-time licences from SAP, a reseller of Oracle licences. Meanwhile, Oracle made another proposal to sell the City enterprise licences directly. In the end, with tight deadlines for the SAP project and no budget approval for the more expensive enterprise licences, the City went with run-time licences from SAP.

By the fall of 1999, program areas were asking the Y2K Project office for Oracle software. With the spectre of Y2K looming, many had developed or

purchased software to replace non-Y2K-compliant applications. They needed Oracle software to run them. Their requests went to Lana Viinamae. The Y2K Steering Committee approved several of these requests, adding up to at least 2,000 new licences. Ms Viinamae said that Jim Andrew and Wanda Liczyk, members of the Y2K Steering Committee, agreed that these new licences were needed for SAP. Ms. Liczyk couldn't recall a discussion about 2,000 licences. There was no mention of it in the minutes of the Y2K Steering Committee—but, as it turned out, those minutes were not necessarily complete.

Oracle first appeared in the minutes (but not the agenda) of the October 7, 1999, meeting of the Y2K Steering Committee. This notation was under the heading "Oracle licences":

A question was asked on what are is being doing Corporate Wide regarding Oracle licences. This is being looked at and will be part of the capital budget for next year. Now that the City is leasing, the possibility of getting multi-use licences is being investigated. Generic platform prices are being obtained. Using schedule with the Master Contract agreement is also being looked at.

Ms. Viinamae said that, at this meeting, she was directed to begin exploratory or investigative discussions with Oracle for new Oracle licences. Wanda Liczyk and Jim Andrew both agreed that they told her to explore the idea with Oracle. The minutes were not a model of clarity, but it seems clear that by October 1999, Ms. Viinamae had been given the go-ahead to approach Oracle about new licences.

Ms. Viinamae did go ahead, as she recalled in her affidavit:

By the December 9, 1999 meeting of the Steering Committee, I had a proposal from Oracle based on a figure of \$11.3 million, and I presented a comparison of the costs that would result from two scenarios, both of which had to be put in place by December 31, 1999: supplementing the existing need for 6300 run-time licenses by adding 2000 enterprise (network) licenses to satisfy the Y2K needs of priority one business cases (cost: \$13.1 million), or acquiring 10,000 enterprise (network) licenses (cost: \$11.3 million)....

I made notes and prepared spreadsheets that I used in my presentation to the Y2K Steering Committee on December 9, 1999, but I do not

believe that those documents have been produced or entered into the Inquiry database.

The proposal Ms. Viinamae mentioned was the third from Oracle, and again forecast the City's Oracle licence needs for the next five years. These 1999 projections were remarkably similar to the first two, particularly the pre-amalgamation one from 1997.

The matter of the Oracle licences had vanished from the minutes of the Y2K Steering Committee after the October 7 meeting but reappeared in the minutes of its December 9 meeting, where it was lumped in with these points under the subheading "The Y2K Pressure on Operations":

- The Project included the acquisition and first year maintenance. Subsequent years will be covered under operating.
- Legalise software usage will save the City from future lawsuits.
- Oracle enterprise Licence Agreement
- System management software
- TNG software to inventory assets for reconciliation with MFP
- Contact Frank Spizarsky re disposal of PCs. Provide Council report reference.
- Under the Y2K Project, Oracle will save money, 6 million, legalize and save ourselves from future suit.

There was nothing in the minutes from the December 9 meeting to show that Ms. Viinamae was actually given authority to negotiate with Oracle to acquire 10,000 enterprise licences.

On New Year's Eve 1999, City Hall was a hive of activity. The final countdown to Y2K had begun. Although the City was confident that it had taken all necessary steps, no one knew what would happen at midnight. Instead of getting ready for parties, senior staff cancelled their vacations and were standing by, under a ticking clock. There was no time for interoffice mail. Lana Viinamae and Jim Andrew walked the Delegated Approval Form to Mike Garrett's office. The document they showed him said nothing about new licences. It looked routine—a consolidation of existing licences previously obtained from third parties—and he saw that it had already been signed by Jim Andrew and Wanda Liczyk. He signed it, the contract was

signed the same day, and the acquisition of 10,000 Oracle enterprise licences was a done deal.

According to Ms. Viinamae, the Y2K Steering Committee had approved the deal at a meeting the day before. Both Mr. Andrew and Ms. Liczyk denied being at that meeting, but the minutes say they were there. Committee chair Councillor Dick O'Brien was certainly not there. There was no sign of the approval in the minutes, but the minutes of the January 6, 2000, meeting seemed to fix that:

The minutes were approved with the following addition:

The Steering Committee approved the leasing of the Oracle enterprise Licences for 5 years at a cost of \$11,000,000.

Line Marks, who took the December 30 minutes, said she had simply missed the point in both her handwritten and typed notes, hence the need for the correction in the January minutes.

What really happened at that December 30 meeting is obviously critical. Both Ms. Viinamae and Ms. Marks insisted that the list of attendees, which showed that Mr. Andrew and Ms. Liczyk were present, was accurate. Mr. Andrew and Ms. Liczyk were equally adamant that they were not there—or if they were, they didn't approve the transaction at that time. Ms. Liczyk speculated that Ms. Viinamae assumed she had "tacit approval" and stretched that into authority to carry on with the deal.

I do not accept that Mr. Andrew and Ms. Liczyk were not at the December 30 meeting, or that they didn't approve the acquisition. Without their presence, there would have been no quorum, especially as Councillor O'Brien was not there. No decisions could have been taken at all. Mr. Andrew produced mileage documents, apparently in the hope of showing that he was not at Metro Hall that day. They showed the opposite. As well, there were checkmarks and handwritten notes on his copy of the agenda. Ms. Liczyk insisted that an \$11 million transaction would have been so significant that she would have vivid recollection of whether she approved it, and she had no such recollection. Further, she said, even if she had been there, she wouldn't have approved a transaction of this magnitude without seeing more documentation and having a full discussion about it. Nevertheless, she signed the special Y2K Delegated Approval Form based

on the same information—or lack of it. Ms. Viinamae told her the next day that the Y2K Steering Committee had approved the deal, she said, so she signed it. Ms. Liczyk was notorious for being a hands-on manager. It seems uncharacteristic of her to accept unquestioningly Ms. Viinamae's word for it, especially given her testimony about the magnitude of the transaction.

In any case, Mr. Andrew and Ms. Liczyk were definitely at the January 6 meeting where the December 30 minutes were read and corrected. If the list of attendees was wrong, or the Oracle transaction had not been approved at the meeting, they could have spoken up then, or when they saw the January 6 minutes.

C. WHERE WAS THE BUSINESS CASE?

There was no bylaw or policy requiring a business case for every purchase, but it was the norm at the City. The person or department with a business need prepared the business case, which explained the need and analyzed options that might fill it. Typically, it included financial analysis of those options. However, detailed business cases were mandatory for priority requests to the Y2K Project, of which Ms. Viinamae was the Director. Without them, even small projects—considerably smaller than \$11 million—were rejected. Ms. Viinamae considered the Oracle licences a Year 2000 matter, so it would be expected that she would follow her own department's protocol. Both Mr. Andrew and Ms. Liczyk said they assumed she had.

She didn't prepare a business case. If she had, she might have considered how many licences the City had, who used the software, who needed it, who was likely to need it in the future, and what kind of technical support was needed. She might have shown how it might be financed, including the leasing option.

That would have been time-consuming. The City would have had to do an inventory of its existing Oracle licences (something it didn't start doing until 2002, years after the licences had been leased) and estimate its future needs. Administrative tasks like taking inventory or forecasting were more difficult in the wake of amalgamation. Nevertheless, the difficulty of a task does not justify leaving it completely undone.

With so much of the taxpayers' money at stake, Ms. Viinamae's rough calculations of the City's current needs (starting with one Oracle licence for each City computer and subtracting numbers apparently pulled out of a

hat) show a lack of the most basic due diligence on behalf of the City. An inventory would have been time-consuming but necessary.

Ms. Viinamae relied solely on Oracle's projections of the City's future licence needs. She accepted, *holus bolus*, the projections of a self-interested third party. Oracle is in business to make money, and there is nothing wrong with that. Naturally, it is in its interest to sell more licences rather than fewer, and more expensive ones rather than cheaper alternatives. It is the customer's responsibility to weigh the sales pitch against known needs and budgets. The customer in this case, the City, failed to do that. It was reasonable to consider Oracle's information, but it was Ms. Viinamae's job to verify its accuracy. Again, it would have been time-consuming but necessary. And, despite her assertion to the contrary, there was no crisis at hand demanding expediency.

Without that business case, it was virtually impossible to evaluate whether the Oracle acquisition made business sense. What alternatives did the City have to meet its needs? How much would they have cost? What were the financing options? Answers to these questions would have alerted Ms. Viinamae to other necessities, such as hearing from the users of the software about their needs and making sure they understood how the new licences would affect them. She didn't ask any of those questions and didn't do any analysis. That falls well below the standards expected of someone in her senior position.

The responsibility for sidestepping the business case rests with Ms. Viinamae, but one would also have expected Mr. Andrew and Ms. Liczyk to take an \$11 million commitment seriously. If they assumed she had written a business case or was following proper Y2K protocols, why did they not ask to see the business case or the supporting documents?

D. MISUSE OF THE Y2K DELEGATED AUTHORITY

The Y2K Delegated Authority, and the accompanying Delegated Approval Form, was a special mechanism created to allow fast approval of urgent, Year-2000-related projects. It was not designed to circumvent the usual purchasing process.

The Oracle acquisition went through the Y2K Steering Committee, so it might seem obvious that it was crucial to averting chaos on January 1, 2000. This was, in fact, Ms. Viinamae's rationale. She warned that many City employees were using unlicensed software. She said it was impossible to be sure of the numbers because of sketchy record-keeping in the seven municipalities. Some municipalities had not paid their maintenance fees before amalgamation. If they didn't fix it by December 31, and Y2K-related failures occurred, the City would have no recourse against Oracle, she said. Councillor Dick O'Brien, chair of the Y2K Steering Committee, remembered being concerned about that, but was unsure of the exact date.

Again, there is very little in the Steering Committee minutes or in any other documentation to support Ms. Viinamae's predictions of impending doom. In fact, at the inquiry there was considerable evidence to the contrary. Stephen Wong, Director, Information and Application Services, in the IT division, reviewed the Oracle transaction in 2002. He found nothing to support the idea that the City had to have 10,000 Oracle enterprise licences to guarantee business as usual on January 1, 2000, nor did he find any other Y2K rationale for acquiring them. Larry Griffith, the Account Manager from Oracle who dealt with Lana Viinamae at the time, said that Oracle was not aware of any licence non-compliance at the City, nor was Oracle taking any steps to audit the City for such possible non-compliance. He also said that the City's existing licences had maintenance agreements in place, so the City already had access to the latest versions of the Oracle software, which included all upgrades, patches, and software "bug" fixes as they were developed by Oracle. Oracle had also told its customers, including the City, which versions of its software were certified Y2K-compliant.

Wanda Liczyk, Brendan Power, Stephen Wong, and Larry Griffith all said they didn't share Ms. Viinamae's view that Oracle acquisition was a Y2K issue. Indeed, the Y2K Delegated Approval Form showed the Oracle deal as "a consolidation of licences that were previously held by third party vendors." There was no mention of the use of unlicensed software, or the need for more technical support by December 31, or any other Y2K-related rationale.

Unlicensed use of software is a serious matter. If Ms. Viinamae believed that the acquisition was needed because of it, one would have expected a detailed discussion of the issue to show up in the minutes of the Y2K Steering Committee meetings—and in a business case, had there been one.

If it was true that the City was using non-Y2K-compliant Oracle software, one would have expected that to be documented, too. Even if 2,000 new Oracle licences were a genuine Y2K-related need, not all 10,000 enterprise licences fell into that category. Approval should not have been fast-tracked through the Y2K Steering Committee. It follows that the acquisition should not have been approved under the Y2K Delegated Authority.

E. NO COMPETITIVE PROCESS

There was no competitive process for this acquisition. Many business applications at the City of Toronto use relational database software, but Oracle is not the only supplier. One would have expected Ms. Viinamae, as an experienced IT professional, to consider competitive products. She had options available to help her do that, such as a Request for Information (RFI) or an RFP. At a minimum, if Ms. Viinamae believed that Oracle was the only supplier that made sense for the City of Toronto, there should have been clear documentation rationalizing why Oracle was to be the sole-source supplier.

F. LACK OF BASIC INFORMATION

Upgrading to enterprise licences was a big change, with implications for database administrators across the City. Ms. Viinamae or her delegate should have talked to them, and to senior IT staff, both before and after the Oracle acquisition. Michael Franey, then Acting Director, Computer Operations and Telecommunication Services, knew only that Oracle was promoting a licence deal for the City, but he didn't know any details. Stephen Wong, another Director in IT, knew nothing of the Oracle acquisition until it was a *fait accompli*.

Lana Viinamae should have asked database administrators to help develop an inventory of existing Oracle licences and an estimate of usage. No such inventory was done. Mr. Franey carried out the first analysis of Oracle use in early 2002, more than two years after the acquisition. Without the inventory, how could Ms. Viinamae figure out whether the acquisition made sense? Without talking to the database administrators, how could she predict the impact on existing systems?

An inventory before the acquisition would also have avoided more mistakes after it. Without it, some of the implications of the upgrade fell through the cracks. For example, the City went on paying SAP for technical support for the defunct Oracle run-time licences while at the same time also paying Oracle for the enterprise licences. A little communication would have prevented that. The inventory would have shown who was using the Oracle software and thus who should be asked about it.

G. LAWYERS' CONCERNS IGNORED

Neither the City's lawyers nor external counsel really looked at the deal. They were not given a chance to do so. Neither Brian Loreto, the City's lawyer, nor Mark Fecenko, the external counsel, saw the final copy before it was signed.

Once again, the City had left it to a consultant, Brendan Power, to protect its interests. Mr. Power negotiated with Oracle on behalf of the City. Shortly before the contract was to be signed, he started asking for legal advice on the terms, leaving the lawyers little time to respond—and virtually ignoring them when they did. He didn't reveal the full scope of the deal to either Mr. Fecenko or Mr. Loreto. He didn't ask either of them whether he needed approval from Council. When Mr. Loreto asked him about that, he didn't get an answer. Several of Mr. Fecenko's concerns were still up in the air when time ran out.

Months earlier, when Mr. Power negotiated the MFP master lease agreement, he had treated the advice of legal counsel as mere "legal scrubbing," apparently not something to be taken seriously. He applied the same philosophy when it came to the necessity for legal review of the Oracle contract. Mr. Power treated legal advice as a formality rather than as an opportunity to get good advice. He ignored questions from both lawyers, which is especially troubling considering the dubiousness of the approval.

H. WHY PUT ENTERPRISE LICENCES AND MAINTENANCE CONTRACTS ON LEASE?

The full cost of the 10,000 Oracle enterprise licences, along with maximum support fees for five years, a total of \$11,336,651, was put on lease with MFP. Why? It made no sense to do that. A lease composed only of software

is unusual, since software has no residual value at the end of the lease. Compounding that by putting maintenance contracts on lease makes even less sense. By placing the entire Oracle acquisition on lease, Ms. Viinamae committed the City to making payments for maintenance and support before the payments were actually due, thereby increasing the cost of these services. Support was billed annually, one year in advance, not payable upfront for five years. The City made quarterly payments on five years of support, even though Oracle billed, and MFP paid, only a fifth of that at the beginning of each year.

So why did she do it? Did MFP encourage or suggest it? Not at all. It had nothing to do with the City's decision to place the Oracle acquisition on lease. MFP simply received a request from the City to place the Oracle software on lease after the City had already made its arrangements with Oracle. So MFP did what the City wanted. And by doing so, MFP was able to obtain the City's money upfront, reinvest it, and make almost \$600,000 on this simple transaction—all because Lana Viinamae didn't know what she was doing. Not until the start of the inquiry did she understand that the City wouldn't have had to pay the entire amount of the Oracle contract upfront. Presumably, she never knew that not only did Oracle not have a contractual entitlement to the entire support payment upfront, it couldn't even process the payments until the year in which they became due.

According to Ms. Viinamae, leasing the Oracle software and technical support came up at a meeting of Finance and IT representatives on September 22, 1999. She also claimed that the Y2K Steering Committee knew all along that the Oracle software would be leased through MFP. Both Ms. Liczyk and Mr. Andrew denied this. Mr. Power said that he had nothing to do with the decision to put it on lease. He did know that the City wouldn't have had to pay for five years of technical support upfront, but he didn't point that out to anyone. Even if leasing was discussed in September 1999, by her own admission, Ms. Viinamae didn't understand the financial implications.

The arbitrary decision to lease, without considering the implications, let alone the alternatives, happened because Ms. Viinamae didn't understand the consequences. In her hurried approach to the entire Oracle transaction, she cost the City money. At a stretch, putting the software on lease, though

questionable, might have seemed an easy way to finance a large acquisition. But leasing the technical support made no financial sense whatsoever. The City had gained a small advantage because Ms. Viinamae commendably negotiated a cap on support fee increases, but it lost even that advantage by leasing. The fees were not fixed and could have been lower than the amount put on lease.

I. AT THE END OF THE DAY, WAS IT MONEY WELL SPENT?

Maybe Lana Viinamae really did believe she was getting a good deal for the City. She said she thought she was getting thousands of upgrades and all the new software the City needed for less than the cost of the new licences alone. She based that on fuzzy logic. She plowed ahead with getting it done, without doing the math, without asking anyone who knew more than she did about financing, and without even the minimum standard of documentation. She got it approved, though. No one who signed his or her name to a commitment of \$11 million of City money said, “Let me see the business case.”

The end does not justify the means, but were those 10,000 Oracle enterprise licences put to good use?

The big advantage of an enterprise licence is that the user can access any Oracle database. The more applications a user needs, the more cost-effective the enterprise licence. After duplicate names were eliminated, the most up-to-date Oracle analysis (May 2003) showed 5,972 users at the City. The vast majority of those used only one Oracle-based application, and only a handful used four or five. In hindsight, it is not at all certain that the City needed 10,000 enterprise licences. Without a paper trail, however, and more analysis now, it is impossible to be sure.

One thing is sure, though. This is no way to go about spending the taxpayers’ money: flimsy documentation, more guesswork than real evaluation, no competent financial analysis, minimal scrutiny, flouting procedures, seeking legal advice perfunctorily and then ignoring the lawyers’ concerns, relying on outside consultants to protect the City’s interests, and keeping the stakeholders in the dark.

XVIII. THE BALL HSU STORIES

A. THE DISAPPEARANCE OF BALL HSU

IT HAPPENED WITHOUT WARNING. At first, Ball Hsu and his company were fully engaged with the inquiry. They were named in the terms of reference, which means I had been directed by the City to specifically inquire into their activities. Since both Ball Hsu and his company applied for standing to formally participate, I assumed he wished to be involved from beginning to end. But then he changed lawyers. And soon afterward, a letter arrived from his new lawyer. She couldn't get in touch with her client. He was in China and his intentions were unknown. She wanted to be taken off the record as his counsel.

Inquiry investigators tried everything to get in touch with Mr. Hsu. His daughter, Ying Hsu, answered the door at Mr. Hsu's opulent Toronto-area home. She was overtly hostile and slammed the door on the investigators. Ball Hsu's Toronto business address, covertly observed on many occasions after he disappeared, seemed to have been abandoned.

Every once in a while, word came to the inquiry, always through third parties, that Ball Hsu was indeed in China and had called in from there. He was apparently pursuing vaguely described business interests there. But nobody who spoke to him ever got his telephone number.

Nevertheless, investigators served a summons requiring him to attend the inquiry. They served it everywhere they could think of where it might

eventually reach his hands. The summons was worded as both carrot and stick. We offered to do everything possible to accommodate his attendance if he had moved out of the jurisdiction, but at the same time, we let him know that negative inferences might be drawn if he didn't participate. There was no response at all. The powers of a municipal public inquiry gave me no means to compel him to return from wherever he was. Ball Hsu was gone, and he hadn't even said goodbye to his friends.

B. A FOOT IN THE DOOR, AND A RESOURCEFUL WAY TO KEEP IT THERE

In the five years before he left Toronto, Ball Hsu's consulting empire grossed about \$37 million. But he started small.

In the late 1980s, Lana Viinamae was about to go on maternity leave. She was a young first-time mother-to-be, working in IT at an insurance company, and she needed someone to replace her during her maternity leave. Ball Hsu was then an IT consultant, working on his own, and he stepped in to fill her shoes. He stayed on after Ms. Viinamae returned, and the two became acquainted.

By 1991, Lana Viinamae had embarked on the career in City government that would take her all the way to the post of Director of the Y2K Project Management Office. She was now working for the Municipality of Metropolitan Toronto, and her third child was on the way. Her boss, Jim Andrew, asked if she knew anyone who could fill in for her while she was on maternity leave. She did. Ball Hsu was still working on his own, catching consulting jobs as they came along, and he filled in for her again. Ball Hsu had his foot in the door with the municipality.

In about 1995, Metropolitan Toronto Council decided it was no longer wise to deal with individual consultants. It wanted consulting services only from larger entities and set a guideline requiring bidders on IT consulting contracts to have minimum annual revenues of \$1 million. When the new guideline came into effect, there were many individual contractors working for Metro who were not billing anywhere near a million a year, and they all stood to lose their jobs. Ball Hsu was one of them, but he was resourceful. He united the individual contractors under the umbrella of Ball Hsu and

Associates, a company he had incorporated years earlier. Together, the contractors had enough revenue to pass the \$1 million threshold and bid for future Metro business.

C. A MYSTERIOUS UPGRADE FROM B-LIST TO A-LIST

A big contract wasn't long in coming. In 1996, Metro issued a major RFP for IT consulting services to cover 1997, 1998, and 1999. The objective was to create a shortlist of preferred suppliers so that Metro wouldn't need to go to the open market every time it needed a consultant or two. The RFP made it clear that if a consulting company wasn't on the list at the end of the competition, it couldn't get Metro work.

When the dust settled at the end of the competition in late 1996, there was an "A-list" and a "B-list" of winners. The 10 winners on the A-list would enter into three-year umbrella contracts covering all of 1997, 1998, and 1999. For those three years, they would be eligible to bid on all Metro IT consulting work, with no limit on the number of contracts they could win. Metro was supposed to give all 10 of them the chance to bid on every single IT consulting job that came up.

The 14 names on the B-list were consultants with ongoing work with Metro at the time of the competition that didn't make the A-list. Their work had to be completed, and it made no sense to transfer partly finished jobs to new A-list consultants. The B-list companies had specific dollar amounts attached to their names. They had to finish their ongoing jobs in 1997 and bill only up to the dollar amount beside their names.

Ball Hsu didn't make it onto the A-list, but he was on the B-list. He and his recently formed group of consultants therefore had to finish their Metro work in 1997, and only up to a maximum of \$500,000. Things looked bleak for Ball Hsu, but then something extraordinary happened.

The Metro staff report that set out the A-list and B-list winners of the 1996 RFP had to go to Metro Council for approval. That happened in mid-January 1997. The report was approved without any amendments. For all practical purposes, the A-list and B-list names were carved in stone. Yet on the very same day, Ball Hsu entered into a three-year umbrella agreement

with Metro, with no limits. From B-list status, he had somehow graduated to the A-list, and he was not the only one to do so.

Metro Council didn't approve any three-year deals with B-list consulting companies, yet Metro's three-year contract with Ball Hsu certainly exists. It was signed by the Metropolitan Clerk and the Metropolitan Treasurer, and it was approved as to form by the Metropolitan Solicitor. But all those formalities don't add up to Council's authority to enter into the contract. There was great confusion about how this could have happened, but no evidence to explain it.

By this time, Jim Andrew had become friendly with Ball Hsu in a professional way. It was Jim Andrew who had prepared and submitted the A-list and B-list report to Metro Council. Yet he seems to have assumed that certain B-list consultants had in some unexplained way become A-list companies, because, from that time forward, to both his superiors and subordinates, he held out Ball Hsu's company and other B-list companies as A-list consultants. After amalgamation on January 1, 1998, Metro's three-year agreements with these consultants, including Ball Hsu, continued into the new City uninterrupted.

Then came Y2K. Companies and organizations were spending hefty amounts of money to upgrade their computer systems in time to meet the unforgiving Y2K deadline. It was an IT consultant's gold mine. At that point, consultants were in demand, swamped with work, and commanding top dollar. The City had a \$150 million Y2K budget and many computer systems needing urgent attention. Having mysteriously become an A-list supplier of IT consulting services just in time for Y2K, Ball Hsu was now poised to vault into a much higher income bracket.

D. JIM ANDREW NEGLECTS AN OPPORTUNITY TO SET THE RECORD STRAIGHT

In the fall of 1999, Jim Andrew was given an assignment. Mike Garrett, the City's CAO, asked Mr. Andrew to gather information about a number of consulting companies, including Ball Hsu and Associates. Among other things, Mr. Garrett wanted to know how much these companies were

billing the City and the source of their authority to bill. It was a straightforward request for information that any responsible senior manager would want to know.

Mr. Garrett's query ought to have sent Mr. Andrew back to his fall 1996 report, approved by the old Metro Council in 1997. That was the one that put Ball Hsu on the B-list, not the A-list where he had been flourishing ever since. It would have been a dereliction of duty not to refer back to that report, and Mr. Andrew agreed that it was a "reasonable assumption" that he did so. Yet Mr. Andrew's answer to Mike Garrett was this:

The consultants were tendered and approved for three years by the former Metro in 1997.

That was not true.

Mike Garrett had also asked Mr. Andrew how much Ball Hsu and the other contractors were budgeted to bill. The number beside Ball Hsu's name in the 1996 report was \$500,000. Yet in his answer to Mike Garrett, Jim Andrew said it was \$800,000. That was likewise not true, but it was also a huge understatement. By 1999, when Mr. Andrew prepared his answer to Mr. Garrett, Ball Hsu was billing millions.

Was Jim Andrew lying to help Ball Hsu? I suspect it was simply inattention and indifference to accuracy on his part. He suggested that his assistant might have helped him with the numbers, implying that she got them wrong. In any case, Jim Andrew had neglected an opportunity to set the record straight and get the proper approvals. He also assured Ball Hsu's multimillion-dollar income.

E. WHY THE MILLIONS FLOWED TO BALL HSU

The great Y2K demand for IT consulting services was not the only factor in Ball Hsu's fortune. There were six other things happening inside the City that contributed to his ballooning income.

First, there was a hiring freeze. The new City's first Mayor, Mel Lastman, had promised three years with no tax increase. Hiring permanent staff was one of the first casualties in the battle to tighten the City's belt. But the

essential work still had to get done, especially in the lead-up to Y2K, and consultants were paid from a different budget envelope.

Using consultants to circumvent a hiring freeze is a common way of working around political aims while still getting the work done. Politicians who champion cutbacks, hiring freezes, and other belt-tightening measures are applauded in some circles for their fiscal restraint and for streamlining bloated government. But the savings are illusory if consultants are filling in the gaps over the long term, performing essential duties otherwise performed by permanent staff.

Consultants cost more per unit of time than permanent staff do. The economic advantage of consultants is in their short-term use. They can be brought in as needed and it makes sense to engage them for short-term projects rather than hiring an employee where the need might be temporary. But when consultants stay on, performing ongoing necessary functions rather than working on short-term projects, the savings generated by a hiring freeze evaporate. That is what happened in the City of Toronto. Politicians imposed a money-saving hiring freeze, and meanwhile, in some quarters, the City was quietly spending more money than it would have spent without the freeze to get the same job done. For example, many of the consultants Ball Hsu supplied to the City were computer help-desk workers, doing exactly the same work as help-desk workers who were City employees. Large organizations will always need help-desk staff. It is not a short-term need and it won't go away. It was money poorly spent to put the more expensive consultants in these open-ended positions rather than permanent employees. From the taxpayers' perspective, it was money out the window. And it made Ball Hsu a very rich man.

Second, amalgamation came with the operating imperative that staff numbers would go down as a result of merging seven governments into one. Yet at the same time, amalgamation brought IT-related challenges that called for additional expertise. These two factors combined created demand for still more IT consultants.

Third, a consultant could be brought on board quickly compared with a permanent employee. Taslim Jiwa, the bright and articulate Director of IT Productivity and Support Services, explained that she could get a contractor on site in two to three weeks. By contrast, even if the budget for a permanent position was already in place, the hiring process would take

three to four months. And if a budget had to be allocated first, the whole process would take six to eight months. In those circumstances, it is not surprising that managers would meet their departmental needs with consultants wherever possible. Ms. Jiwa told us that the situation has changed dramatically in recent years, beginning in 2001. By the end of that year, there were no consultants working in her department, and there were none at the time she testified.

Fourth, consultants brought in for the short term could, if they were smart, readily assess the landscape. Given the managerial preference for hiring contractors, they could position themselves for the next short-term job before their current ones ended. Ball Hsu was certainly able to do so. He and his company were a continuous presence at Metro and then at the City, from 1992 until his abrupt departure in 2003. Short-term job after short-term job was strung seamlessly together over more than a decade. It was thus contractual truth but practical fiction that Ball Hsu or his consultants were there for a single, short-term project for which it was not economical to hire permanent staff.

Managers were often complicit in the strategy of keeping contractors on in an uninterrupted flow of short-term jobs because they benefited from having workers with corporate memory. The concept of sole-sourcing, retaining a contractor without another competition because of the contractor's institutional knowledge, allowed the manager to say the individual was irreplaceable. Lana Viinamae confirmed that "once a contractor was in, wherever they were from, they were in—unless the quality of their work was lacking or there simply was not a need for work any more." And Ball Hsu's people were good, so they stayed.

Fifth, there were systemic errors. Immediately following amalgamation, approval procedures were complicated by the various routines followed by the seven former municipalities. Some managers just threw up their hands and ignored procedure completely. Lana Viinamae called it a "wartime mentality" that valued results over following time-consuming approval procedures. She suggested that this mentality radiated from her superiors. For her, that was Jim Andrew. Consultants signed contracts with carefully written limits on what they were allowed to bill, but as time went by, no one seemed to be keeping track of the actual amounts billed compared with the contractual limit. For example, in 2000 alone, Toronto had

authorized \$2.1 million in purchase orders for Ball Hsu, but he billed the City \$10 million, or almost five times as much. There is no question that his contractors performed the work for which he billed, but the failure to properly track these expenditures is startling.

What is even more startling is the sixth factor contributing to Ball Hsu's success. Back in 1996, when Jim Andrew drafted the report to Metro Council on hiring IT contractors, he had appended a detailed hiring procedure designed to ensure competitiveness. For example, the guideline stipulated that all 10 A-list suppliers had to be given the chance to bid on every job. A memo had been sent to all Metro department heads. This procedure, approved by Metro Council when it passed the report in 1997, was supposed to have carried over into the amalgamated City of Toronto. Taslim Jiwa, who reported to Jim Andrew, routinely asked him about hiring contractors, yet he didn't tell her about that procedure, which he had written himself. Whenever she needed to hire a contractor, and she needed many, she would speak to Jim Andrew about the requirement. Mr. Andrew would then tell her to speak to Andy Lok, who would get her the contractor. As far as she knew, that was the procedure.

When Taslim Jiwa spoke to Andy Lok about hiring, the contractor would invariably come from Ball Hsu and Associates. Why? Because Andy Lok was himself a Ball Hsu contractor. And, although he tried to distance himself from Ball Hsu at the inquiry, the evidence suggests Mr. Lok was involved at least to some degree in overseeing the other Ball Hsu contractors at the City. Thus, the person directly conducting the City's hiring of Taslim Jiwa's contractors was a contractor from a company that was not even supposed to be bidding.

In sum, there was no competitive process used to acquire contractors in 1998 through 2000, and there was no coherent or effective contract management in place with respect to workers for Ball Hsu and Associates Inc. No one monitored whether the standard forms had any basis in what Council had actually approved. It was as if the standard form carried within it its own spending authority. Meanwhile, as the person in charge, Jim Andrew demonstrated indifference to accuracy. So Ball Hsu wormed his way into the City at a time when the apple was at its ripest and juiciest. His personnel became an extension of the City's work force. The City is very lucky indeed that the contractors he provided did unquestionably good work.

F. ANOTHER OPPORTUNITY TO SET THE RECORD STRAIGHT

The three-year deals Metro signed with the IT consultants in 1997 carried over into the new City and were supposed to expire in 1999, but Y2K intervened and extended Ball Hsu's highly profitable tenure. Y2K posed immense challenges for Toronto that required extraordinary responses in an almost impossibly short time. The City was behind in getting ready for Y2K because of all the disruption of amalgamation, so it had a lot of ground to make up in a big hurry. In the pressure-packed push to prepare for Y2K, one of the City's responses was to delegate from City Council down to senior staff the power to enter into and extend contracts for Y2K-related services. Instead of seeking Council approval for Y2K contracts, staff had to fill out the special Year 2000 Delegated Approval Form and obtain the required signatures.

By 1999, Ball Hsu was a formidable presence inside the City, billing millions per year. He had no difficulty negotiating a Y2K contract extension with staff. The new contract was to run from September 1999 to the end of 2000, with an option to extend for an additional year. In the Year 2000 Delegated Approval Form dealing with Ball Hsu, the following recital appeared:

[Ball Hsu and Associates] had a contract with Corporate Services of the former Metro (reference Council Corporate Admin. Committee Report #1, January 15, 1997....

To anyone signing off on a Year 2000 Delegated Approval Form, those words would look reassuring. Ball Hsu and Associates had a valid and continuing contract with the old Municipality of Metro Toronto, and its consultants were now doing Y2K work that was both good and necessary, so extending the old Metro contract made perfect sense. The problem, of course, was that those words were misleading. The January 1997 report referred to is the one that put Ball Hsu on the B-list only, with very limited contractual rights lasting only until the end of 1997. All the work his consultants did beyond that was unauthorized. No doubt it was good work, and it was necessary, but all of it was unauthorized. The Year 2000

Delegated Approval went up the approval chain, building a contract extension for Ball Hsu upon a foundation that didn't exist.

G. BALL HSU OFFICIALLY MAKES THE PREFERRED SUPPLIERS' LIST—TWICE?

The City of Toronto made it through Y2K without catastrophe, and on June 30, 2001, Ball Hsu's Y2K contract extension expired. It was finally time for Ball Hsu to bid anew on any further City business. After years on the inside track at the City, the outcome of Ball Hsu's bid was never seriously in doubt. But what was interesting was how Ball Hsu won new business. Not content to win it just once, he won it twice.

In the spring of 2001, the City issued an "Invitation to Pre-Qualify" to IT consulting companies. This was much like the 1996 process at Metro that led to the A-list and B-list of winners. The City's aim was to generate a shortlist of preferred suppliers of IT consulting services, so that each time the City needed an IT consultant, they could be reasonably certain of finding a reliable one easily.

Among the 23 winners of the City's 2001 Invitation to Pre-Qualify was, to no one's surprise, Ball Hsu and Associates. New to the list of winners was another company called Andall Technologies Corporation. Whatever the corporate structure of Andall, the company was so closely connected with Ball Hsu and Associates that the consultants who worked through them viewed the two companies as one and the same.

In mid-2001, both Ball Hsu and Associates and Andall were duly signed up by the City as preferred suppliers of IT consulting services until June 2003. Both companies supplied contractors to the City during this time. Some of Ball Hsu's individual contractors were signed up with both companies and would send their bills sometimes to one and sometimes to the other, changing whom they billed at Ball Hsu's direction and for no reason apparent to them. One such contractor testified that he would be asked to bill his services to Ball Hsu and Associates but would later be asked to change it to Andall. All of this gave the impression that the City's preferred supplier list provided less variety than the Invitation to Pre-Qualify intended.

H. AN IT CONSULTANT'S NON-COMPUTER NETWORKING

Is success a function of whom you know or of what you deliver? Ball Hsu paid attention to both. While his contractors all over the City were busy delivering quality services, Ball Hsu himself was also busy cultivating strategic relationships.

On one occasion, City IT staff had a morale-building lunch at a downtown restaurant. The bill was hundreds of dollars, and Ball Hsu picked up the tab. This was highly unusual, and Lana Viinamae did eventually submit the receipt so that Ball Hsu was reimbursed. But the gesture of paying the City's bill for an event he was not hosting and that really had nothing to do with him sends a signal about how deeply entrenched inside City government Ball Hsu had become.

On another occasion, Ball Hsu was in Jim Andrew's office and overheard Jim Andrew's end of a conversation with another City employee who was looking for sponsors for her son's hockey team. Ball Hsu immediately volunteered. The sum of money was small, but it was another revealing gesture. Ball Hsu paid attention to keeping his customers happy in ways that extended beyond the services he offered.

Not surprisingly, given all the years they had been working in the same field for the same City, Ball Hsu was friendly with Jim Andrew. One episode speaks to how much attention Mr. Hsu paid to being in the right place at the right time.

In 1993, Jim Andrew travelled to China and to Hong Kong on business. Throughout his time at both Metro and the amalgamated City, Ball Hsu was known to leave Canada regularly for extended periods, sometimes for months at a time. Jim Andrew recalled that before he left for China in May 1993, Ball Hsu met him at his office and informed him that he would be in Shanghai at about the same time. He arranged to meet at Mr. Andrew's hotel and they went together for breakfast. Later in the year, Mr. Andrew was invited to speak at a conference in Hong Kong. While there, he had occasion to see Mr. Hsu several times, including for dinner.

Ball Hsu also turned his attention to the political side of government. One person worthy of his attention was Tom Jakobek, widely considered the most powerful councillor at the City at the time. Ball Hsu got to know

Mr. Jakobek quite well over the years. It paid off. When Ball Hsu needed help at the City, it was convenient to know Councillor Jakobek. Post-amalgamation Toronto was notoriously slow in paying bills. Communications went out from Tom Jakobek's office inquiring into the status of Ball Hsu's overdue accounts.

The connection between Mr. Jakobek and Mr. Hsu extended to Mr. Hsu's immediate family as well. Mr. Hsu's daughter Ying Hsu volunteered at Mr. Jakobek's office one summer.

Tom Jakobek and Mr. Hsu got together socially as well. On an occasion reminiscent of Jim Andrew's visits to the Far East in the early 1990s, Tom Jakobek met up with Ball Hsu when he travelled to China in 2000. Again, Mr. Hsu was paying very close attention to being in the right place at the right time, meeting Tom Jakobek halfway around the world.

Ball Hsu, Tom Jakobek, and Jim Andrew had lunch together at least once, and on one occasion met to discuss software that could help assess voting patterns. When Tom Jakobek switched careers, moving from City politics to a managerial role at the Toronto East General Hospital, he asked both Ball Hsu and Jim Andrew to look into the hospital's IT environment for him. The three of them were on familiar terms, and the various e-mails they exchanged were addressed to "Jim," "Tom," and "Ball."

Tom Jakobek was not the only politician Ball Hsu cultivated. He attended fundraisers for a number of other politicians, and his daughter Kay Hsu worked as an assistant in Councillor Judy Sgro's office, moving to Ottawa when Ms. Sgro's political path led her to the federal arena.

Ball Hsu's connections with the municipal political scene and, of course, his wealth made him someone Jeff Lyons, the rainmaker, wanted to know.

I. BALL HSU AND JEFF LYONS TALK ABOUT FINANCE AND POLITICS, AND FINANCING POLITICS

Ball Hsu first met Jeff Lyons in early 2000, when Mr. Lyons approached him about buying tickets to his annual "Brother Jeff" charity golf tournament. Introduced by a client of Mr. Lyons's who also knew Mr. Hsu, the two found they shared an interest in skiing. They arranged to meet in

Collingwood, where Mr. Hsu sometimes went to ski and where Mr. Lyons had a chalet.

Over dinner with their wives in a Collingwood restaurant, Jeff Lyons and Ball Hsu talked about finance and politics, and then of financing politics. Mr. Lyons asked Mr. Hsu if he was interested in donating to political campaigns for Toronto's municipal elections to take place the following November. He was.

At the time, Jeff Lyons had been enjoying a long reign as the pre-eminent municipal lobbyist in Toronto. Not coincidentally, he also enjoyed a reputation as an important fundraiser for municipal election campaigns, demonstrating over the years that he could bring in the money. Year after year, he would deliver letters to candidates of strategic interest, usually in person. Enclosed with the letters were bundles of cheques that he had solicited from donors.

The covering letters were airy and brief, full of sunny good wishes for success. But by attaching the funds he had raised to his own letters, and hand-delivering them, Jeff Lyons made the real message clear: "I got you this money. And I can take it away, too." It wasn't typed on the page attached to all those cheques, but the point was plainly made.

Fundraising required a steady supply of fresh donors. Jeff Lyons had once boasted about his contact list, and his convivial dinner with Ball Hsu on a winter evening in Collingwood meant another contact, and another potential donor, to add to it.

Ball Hsu was receptive to the idea of donating to municipal politicians, but there was a bit of a timing problem. He was leaving shortly for another of his extended trips to China. In early 2000, when Ball Hsu and Jeff Lyons first talked about political donations, the November municipal election was nine months away. Many candidates had not yet even declared their intention to run.

Normally, Jeff Lyons would ask donors to make out cheques payable to various candidates, each cheque for an amount equal to or under the legal campaign donation limit. When he had a few cheques for a particular candidate, he would bundle them together and deliver them to the candidate with his usual cheery covering letter. But this early in the election year, he didn't yet know the slate of candidates, so he didn't know to whom Ball Hsu should make his cheques payable. Mr. Lyons certainly didn't want to let a

fruitful source of donations like Ball Hsu slip through his fingers because of something as trivial as timing. But Mr. Lyons was nothing if not resourceful.

Jeff Lyons was working out of a law firm at the time, although by then he was working predominantly as a lobbyist. He suggested that Ball Hsu make out one cheque, payable to the law firm in trust. The money could safely sit there while Ball Hsu went off to China. Once the election campaigns were up and running, Mr. Lyons could issue cheques out of the law firm's trust account to the candidates on Mr. Hsu's behalf. Jeff Lyons thought he had the problem solved.

But another roadblock arose. The cheque arrived from Ball Hsu, but the law firm didn't want to deposit it. The firm didn't want to funnel political donations through its trust account, and Mr. Hsu was not even a client of the firm. Time was running out. Mr. Hsu was leaving the country very shortly, and the window of opportunity to receive his political donation money was closing fast. Mr. Lyons turned to Sue Cross.

Sue Cross was bright, ambitious, and interested in politics. Working for Jeff Lyons in his lobbying business, she often functioned as his eyes and ears: attending meetings with and without him, monitoring issues at City Council, making notes, reporting back, and following up—always under his direction. He described her as “the alter ego.”

The same day the law firm told Jeff Lyons it wouldn't deposit Mr. Hsu's cheque, he instructed Sue Cross to contact Ball Hsu and ask him to make out a cheque for \$15,000, payable to her. She was to open an account and deposit the cheque, and Mr. Lyons would tell her how to make out cheques for donations when the time came.

Still on the same day, Ms. Cross spoke to Natalia Hsu, Mr. Hsu's wife, and explained the situation. Later that day, Mr. Lyons confirmed the arrangement in a letter to Ball Hsu asking that funds be made payable to Sue Cross.

Everything went according to plan. After a follow-up memo to Ms. Hsu, Sue Cross received a \$15,000 cheque from the Hsus, written and signed by Ms. Hsu, and deposited it in the account she had opened for that purpose. Ball Hsu went on his extended trip to China. During the 2000 election campaign, at Jeff Lyons's direction, Ms. Cross wrote political donation cheques to various candidates for Toronto City Council. In all, she wrote 29 cheques for a total of \$13,600. She also wrote one cheque for \$500 to

another of Mr. Lyons's assistants, Navjeet Mangat. Immediately thereafter, Mr. Mangat donated \$500 to a municipal political candidate. At the end of the political donation season, Sue Cross had \$900 of Ball Hsu's money left in the account.

Sue Cross spent the remaining \$900 of Ball Hsu's money on her own legal fees when things later got sticky. In her affidavit, Ms. Cross said, "I am prepared to return this sum to Mr. Hsu, but I do not know how to contact him." As we have seen, the inquiry couldn't give her his current address.

Sue Cross wrote and signed the political donation cheques in her own name, drawn on an account in her name. All but one of the candidates received them at face value, as donations from Sue Cross. Out of 29 cheques, only one hinted that the money really came from Ball Hsu, with the words "Re Ball Hsu" in Mr. Lyons's covering letter. Nobody bothered to collect receipts for Ball Hsu so that he could claim the partial reimbursement of these donations that the City offered. And no one told the candidates who the real donor was so that Mr. Hsu could reap the intangible benefits of being a contributor.

Did Jeff Lyons funnel Ball Hsu's money through Sue Cross and Navjeet Mangat to hide Ball Hsu's identity as the true donor? It is reasonable, although perhaps generous, to give Mr. Lyons the benefit of the doubt on that question. Plausibly, what he did was simply a clumsy solution to making political donations on behalf of Ball Hsu, necessary because Mr. Hsu would be absent at the critical time. After all, Mr. Lyons did try to use the formal trust account of his law firm first, and he turned to Ms. Cross as an alternative only when the law firm refused. One donation was indeed identified in the covering letter as "Re: Ball Hsu," which wouldn't make sense if Mr. Lyons was trying to conceal the fact that Ball Hsu was the real donor. And Mr. Lyons did write to Ball Hsu on occasion to let him know what donations were being made on his behalf. Perhaps most important, the OPP investigated this transaction, decided that there was no basis for charges under the Ontario *Municipal Elections Act*,⁷ and called what happened a mere "technical breach."

But Mr. Lyons's view of the Ball Hsu donations does have its problems. Jeff Lyons was both an experienced lawyer and a veteran political operator,

⁷ *Municipal Elections Act*, 1996 S.O. 1996, c.32, s.74(1)

and he had been managing political donations for a very long time. It strains credulity to think he wouldn't know that making donations under a name other than the donor's might run afoul of Ontario law. (Section 74 of the *Municipal Elections Act* prohibits this: "A contributor shall not make a contribution of money that does not belong to the contributor.") One donation of \$500 was funnelled not once but twice, first through Sue Cross and then through Navjeet Mangat.

And why use Sue Cross? As a lawyer he would know the importance of handling a client's funds received in trust. Yet he never told Sue Cross that she was acting as a trustee. He never told her to open a designated trust account, which can be done quite routinely at any bank. He never told her to make sure the name of the real donor, Ball Hsu, appeared on every cheque; and in 28 out of 29 donations, Ball Hsu's name was absent. When asked why he informed only one out of 29 candidates who got donations from Sue Cross that it was Ball Hsu's money, he agreed that he should have let them know. Mr. Lyons also never made sure that Ball Hsu got a rebate for his contributions through the City's political donation rebate policy.

Mr. Lyons acknowledged that, like other lobbyists, he built up goodwill for himself through donations, both those in his or his firm's name and those from other individuals that he would often deliver himself. Ball Hsu disappeared around the time the inquiry started investigating his case, but not before he gave the OPP an unsworn statement saying that he never authorized Mr. Lyons to put these donations in any name other than Ball Hsu and Associates Inc. When the election donation records were published, and all these donations were attributed to Sue Cross, no one in Mr. Lyons's office made any attempt to suggest that this was a mistake.

Then there were the lies by Jeff Lyons that would lead one to believe that he really did have something to hide. Here is how they came to pass.

By Ontario law,⁸ every councillor is required to declare the amount and source of every donation received, and these declarations are available for public inspection. Journalists, City Hall watchers, and many others mine this data for information: interesting leads for news stories, juicy bits of gossip, or ammunition for the next political battle. The 2000 municipal election was no different.

⁸ *Municipal Elections Act*, 1996 S.O. 1996, c. 32, s. 69(1)

Journalists scanning the public donation records when they were published on May 11, 2001 noticed something odd: Sue Cross, an assistant to Jeff Lyons, had donated almost \$15,000 to 29 different candidates in the 2000 municipal election. Where did she get that kind of money? Was it really hers, or was it more than coincidence that, at the time, she was working for Toronto's most prodigious political fundraiser?

When the story broke, Sue Cross was no longer working for Mr. Lyons. She was executive assistant to City Councillor Jane Pitfield. When the media came calling, Ms. Cross immediately got in touch with her old boss, Jeff Lyons. He counselled her to lie and tell the press it was her own money. She followed his advice, at first. Later, she went to see a lawyer and drafted up a sworn affidavit. It took courage, but she came clean about the whole donation arrangement.

When people started asking questions, Jeff Lyons opted to deny it. "It's not true," he told the *Toronto Star*. "Look, she wasn't some angel. She chose to make some donations. That has nothing to do with me." Why would Sue Cross say such things? "Well, I don't have much to do with her any more. You can imagine." He seemed disappointed in her, apparently, but stopped short of actually calling her a liar. He didn't like to call people names in the press: "I try to be a statesman in this ol' world, but it's hard."

In a move reminiscent of Tom Jakobek's response to the emerging Philadelphia trip scandal, Mr. Lyons had his lawyer write to the *Star* to warn that publishing a story suggesting that he directed Sue Cross to make those donations would be "vile libel without a shred of truth" and he would sue. Mr. Lyons would testify that he had his lawyer write that letter because the reporter had caught him off guard and now he had to stick with the story: "But I'm into it now. I've already told him on the record." The angry letter to the *Star* was a method of damage control, apparently: "I was trying to save my name. And it's a logical thing you would do.... And the other option was to go out there and fight."

To his credit, Jeff Lyons later acknowledged his errors. The letter he had written to Ball Hsu directing that the cheque be made out to Sue Cross had been his Waterloo. With that letter, there was no denying that he was the architect of the Ball Hsu donation plan, and the architect of the deceit to cover it up. In the inquiry witness box, resigned and co-operative, he mused almost philosophically. He explained that the reporter

had caught him off guard, and once he had lied, he was “in it” and he had to “run with it.”

Mr. Lyons seemed chastened in his last appearance in the witness box, yet one wonders if he really got the point. His closing submission to the inquiry summed up the story this way:

With personal and professional sacrifice, Mr. Lyons contributed countless hours raising funds. These efforts have been overshadowed by the relentless media attention paid to an unremarkable event involving Mr. Hsu, Mr. Lyons and Mr. Lyons’ executive assistant, Ms. Susan Cross.

When Jeff Lyons left the inquiry’s witness box, his lobbying practice at City Hall had dwindled.

And what of Ball Hsu? We know that systemic errors, some of them owing to the unique moment when amalgamation and Y2K collided, made it possible for him to become fabulously rich from his dealings with the City. We also know that the services his contractors provided to the City were excellent. But that is all that can be said, since the inquiry never heard Mr. Hsu’s side of any of this.

The Ball Hsu stories underscore the importance of the prosaic elements of public service: proper procedures, documentation, record-keeping, and contract management, all in the interest of responsible stewardship of the taxpayers’ money.

XIX. HAS ANYTHING CHANGED?

IT TOOK MORE THAN THREE YEARS for these public inquiries to examine, in minute detail, some crucial aspects of the amalgamated City's recent past. As I said in the Preface, time did not stand still for the City while the inquiries carried on. The City has been working steadily to lay the foundation for its future.

With this report, my part of the task is finished, but the City's task of growth and renewal will continue. In this volume, I have told the stories of what happened and what went wrong in a series of major IT-related transactions just before and during amalgamation and the dawn of a new millennium. My findings about those specific events are in these pages.

There was a municipal election in 2003. All of the major mayoral candidates in that election talked about ethics, integrity, and restoring public trust. That was a good sign. It was a sharp contrast to other municipal elections in Toronto when these principles were not a significant campaign issue. In 2003, questions of ethics and integrity were given the prominence they must have if the residents of the City of Toronto are to have the government they deserve.

During the hearings, I encouraged the City to continue with necessary changes and not simply to await my recommendations. I was pleased to see that the City did indeed begin implementing improvements, and it has made important headway.

It is important to acknowledge the progress the City has made in certain specific areas since these inquiries began. Many of the conditions that led to the events examined in the inquiries have already been improved. Some have not.

On the first day of the first inquiry, then-Mayor Mel Lastman described relations among councillors right after amalgamation in 1998: “Completely chaotic. [Members of Council are] out to kill each other, out to embarrass one another.” Nearly eight years after amalgamation, even as I wrote this report, I heard of some councillors hurling vulgar insults at one another in the Council Chamber. In his 2005 report, the City’s new Integrity Commissioner wrote that a few councillors identified the behaviour of their peers “as the most obvious integrity issue facing the City at the moment.”

Council thrives in an atmosphere of ideas, and individuals with strong points should assert them forcefully. But that does not preclude civility. Sadly, decorum at Council meetings and councillors’ behaviour toward peers and staff generally are one area where there appears to have been no progress at all. There are still some councillors who have not realized that their conduct reflects not only on them personally but on the civic governance of the City as a whole. Abusive and embarrassing behaviour is unproductive and unacceptable.

As the public hearings in these inquiries drew to a close in early 2005, a disturbing document was brought to my attention. It was a copy of an invitation to Toronto councillors. The invitation offered drinks, dinner, and a professional sports event in an executive suite at the Air Canada Centre, all at the expense of an industry association. The invitation came to me accompanied by a letter from one clear-thinking councillor.

The City had just witnessed public hearings in which the lavish entertainment accepted by public officials had been exposed as deplorable. The public airing of such transgressions ruined reputations and perhaps careers, and it led to an amendment of the City’s conflict of interest policy for the Toronto Public Service. Yet in the last days of the hearings, an industry association was still using the same discredited tactics. Far worse, some councillors actually leapt to the association’s defence. Astoundingly, they could see nothing wrong with attending such an event. They could see nothing wrong with compromising their independence in the eyes of the public. They could see nothing wrong with sending the message to the

vendor community that elected officials are open to persuasion in this way. They could see nothing wrong with using their public office to obtain private benefits. And they could see nothing wrong with setting a bad example for the administrative branch of the City's government, when they should have been showing direction—an ethical compass for staff.

It was as if the inquiries had never happened. Some councillors even echoed the sentiments of people embroiled in the inquiries: politicians exist to be lobbied. Others tried to rationalize their viewpoint and distinguish between such events and the events exposed in the inquiries. There is no difference. There is no difference between a potential supplier attempting to influence public officials with entertainment and a trade association doing the same thing. It is equally inappropriate for councillors or staff to accept these invitations.

Let me be clear: Lobbying in itself is not inappropriate; it is certain lobbying activities that are inappropriate. Lobbying efforts can serve to provide public officials with useful information on goods, services, or issues. But there is no reason why councillors cannot get this information in their offices, where they can concentrate on the matter at hand, instead of on a sporting event or other entertainment.

Elected officials are the public face of City government, but a public service of tens of thousands keeps the municipality functioning. Councillors need to be more aware that they are giving staff tacit guidelines for acceptable behaviour. The taxpayers have to trust public service staff to spend their money wisely, but how can they if the people setting an example for them put self-interest ahead of the public good?

When public office holders, elected or not, accept meals, gifts, entertainment, and other favours from those attempting to influence them, they corrode public trust. Yet the City's Integrity Commissioner noted that one councillor did not even know that a Code of Conduct for members of Council existed and others had minimal awareness of what was in it. In the aftermath of these inquiries, this shows an appalling disregard for the principles that should be guiding those with a mandate from the electorate.

In many other areas, however, the City has made significant strides. Some of those improvements were brought to public attention on the first day of the Good Government phase of the inquiries by Shirley Hoy. Ms.

Hoy was then the City's Chief Administrative Officer. Her post, the top one in the Toronto Public Service, is now called City Manager.

In 2001, City Council asked that the City's purchasing policies be reviewed and assessed for openness, fairness, transparency, and cost-effectiveness. In 2003, the Auditor General produced the Procurement Process Review, with 43 recommendations. By early 2005, the City said it was quite close to completing action on all but five of them.

Among other developments, the City has attempted to clarify the roles, responsibilities, authorities, and accountability of the Purchasing and Materials Management Division and line departments for each step of the procurement process; implemented new training programs; improved management controls; improved guidelines for communications with vendors; and developed a checklist for the tender process.

In accordance with the *Municipal Act, 2001*, the City also developed a new procurement policy, which came into effect in late 2004. Among other things, the policy covered selecting the appropriate procurement process; communication with vendors; identifying and dealing with irregularities in bids; evaluating proposals; dealing with complaints; providing feedback to unsuccessful bidders; and keeping records on the performance of vendors under contract with the City.

The City also approved the use of external "fairness consultants," for high-risk, controversial, or unique procurements. Such a consultant was used on the City's desktop RFP to replace the equipment leased in 1999. The City also adopted a new program to replace the equipment it had leased from MFP.

A conflict of interest policy for staff existed before these inquiries were called. This year, the City amended that policy to require staff to report and document all situations involving entertainment by suppliers, potential suppliers, or their representatives. That policy is now part of the performance review for staff, and non-union City workers must sign a declaration indicating that they have read and understood it.

Councillors also had a code of conduct before the inquiries. In 2004, the office of Integrity Commissioner was established to assist councillors in compliance with the code of conduct and other ethics-related bylaws and legislation. The Integrity Commissioner, who works part-time, is also empowered to receive complaints and investigate instances of possible non-

compliance. Toronto is the only municipality in Canada with an Integrity Commissioner.

The City also has a registry for lobbyists. At the moment, because of jurisdictional issues involving the provincial government, participation in the registry is purely voluntary. Councillors may require lobbyists who visit their offices to sign in, and they can pass that information on to the City Clerk. Only one third of councillors participate in the registry.

In 2004, Mayor David Miller proposed a reorganization of much of the City's administrative structure, and Council approved it. The purpose was to create a "more innovative and nimble" public service, the Mayor said, and it was designed to strengthen oversight capacity. All the Commissioners were replaced by three Deputy City Managers, answering to a City Manager. Among other things, the new structure would support the priorities of Council, encourage innovation, and improve access to City services for residents.

During the public hearings in these inquiries, the Toronto news media gave extensive coverage to revelation after revelation of errors and misdeeds inside City government. This volume has set out those stories in detail, but it would be a mistake to focus only on the relentless parade of bad news. This brief tour of the City's efforts since the first inquiry was called shows that the City has been taking governance matters seriously and has taken action. With the distressing exceptions I have described above, the City has worked hard to accelerate the healing process.

In a sense, the past and present meet in this report. The story of what went wrong has been told, and the City's commendable efforts to prevent a recurrence have been recognized. As I have said, however, the task is never done. The City and its residents are engaged in re-examining the City's basic governance structure even as I write this report. As my contribution to the ongoing process of change and improvement, and to the lively ongoing debate, Volume 2 of my report, *Good Government*, contains my full recommendations and commentary for the City, along with the research commissioned for the Good Government phase of the inquiries.

RECOMMENDATIONS

ETHICS

Codes of Conduct: General Principles

1. The City should expand its current code of conduct for councillors and its conflict of interest policy for staff to include broader ethical considerations.
2. The codes of conduct should go beyond the minimum standards of behaviour and set out the highest ideals and values toward which all public servants should be working.
3. The codes of conduct should be written in plain language that can be understood by all public servants as well as by the public.
4. The codes of conduct should reflect the difference in the roles of councillors and staff without setting different ethical standards.
5. Political staff should be required to adhere to the same ethical guidelines that apply to councillors and City staff. Councillors should have their staff execute an agreement to abide by the City's codes of conduct.

Hiring

6. The City's hiring processes should include appropriate questions designed to elicit some perspective on the ethics of applicants. Applicants' responses to the ethics questions should then be considered prominently in hiring decisions.

7. New City employees should receive immediate training on the ethical dimensions of their particular work.

Training, Ongoing Education, and Monitoring

8. Training on codes of conduct should be mandatory for all City staff and councillors.
9. The City's internal newsletter, *Inside Toronto*, should feature a regular column on ethics and a question-and-answer section where ethical concerns from staff are addressed anonymously.
10. Subject to collective bargaining restraints, all staff and councillors should be required to sign an annual declaration that they are aware of the codes of conduct, are versed in them, and will uphold them.
11. Staff and councillors should meet regularly with their co-workers or colleagues to discuss work-related ethical issues.
12. Staff and councillors should be encouraged to discuss ethical issues that arise from time to time with peers, managers, or the integrity commissioner.
13. The City's codes of conduct should be monitored vigilantly to ensure that they provide appropriate guidance. Change should be made promptly when necessary.
14. The City should promote awareness of the codes among all councillors and staff and provide guidance in complying with the codes.

Relations between Councillors and Staff

15. Both elected officials and staff should understand and honour their respective roles and responsibilities, act only within them, and never blur the distinction.
16. The Mayor in Council meetings, a committee chair, or anyone else in a formal or informal leadership role should immediately intervene in instances of uncivil behaviour and politely remind the person responsible of his or her duty to be civil.
17. Councillors should not ask staff to perform personal services for them.
18. Councillors should not attempt to influence staff behaviour by direct or indirect coercion of any kind, including intimidation, bullying, or alluding to future promotion or employment prospects.

19. Councillors should not ask staff to engage in partisan political activities for them.

Conflict of Interest and Apparent Conflict of Interest

20. Rules about conflicts of interest and apparent conflicts of interest should form part of the City's codes of conduct.
21. Councillors and staff should be made aware that it is unacceptable for them to act on a matter in which they have either a real or an apparent conflict of interest.
22. Councillors and staff should take steps to avoid as best they can both real and apparent conflicts of interest. For assistance, they should seek the guidance of the office of the integrity commissioner.

Some Specific Conflicts of Interest

23. Councillors and staff should not use their positions to further their private interests.
24. Councillors and staff should not concurrently accept employment by an outside interest that is either incompatible with or in conflict with their official duties.
25. Councillors and staff should not ask other City employees to perform work that is unrelated to City business during office hours.
26. Councillors and staff should not divulge confidential information to those not entitled to it.
27. Councillors and staff should not access confidential information if not required to do so for work purposes.
28. Recently departed City employees should not promote themselves as having otherwise unavailable access to City information, processes, or decision-makers.
29. Former councillors and City staff should not accept employment in which they would be dealing with matters or files that they worked on while at the City.

Preferential Treatment

30. Elected officials and staff should take all necessary steps to avoid preferential treatment or the appearance of preferential treatment for friends or family.

Disclosure and Recusal

31. Councillors should not vote on any issue at Council or committee that puts them in a real or apparent conflict with their personal finances. They should declare their conflict and recuse themselves.
32. Councillors should recuse themselves from matters that pose a real or apparent conflict with the finances of their spouse, parents, or siblings.
33. Staff should refrain from any involvement in analysis or decision making on an issue in which they have a real or apparent conflict of interest. Conflicts or apparent conflicts should be disclosed to or discussed with the staff member's supervisor.

Integrity Commissioner

34. A full-time integrity or ethics commissioner should be hired.

Appointment and Tenure

35. To ensure that the integrity commissioner has the independence necessary for the job, he or she should report directly to Council, not the Mayor. He or she should serve for a fixed term and should be removable only by a two-thirds vote in Council.

Advice

36. Senior management should investigate, in consultation with the integrity commissioner, the feasibility of establishing "divisional ethics coordinators." These would be point persons in the various City departments to whom staff could turn for department-specific, confidential ethical advice. They would supplement the work of the integrity commissioner locally in the various departments and on the front lines of service delivery.
37. The City should encourage staff and councillors to consult the integrity commissioner when necessary.
38. The integrity commissioner should offer his or her opinions to all members of Council and staff who request it. These opinions should be given in the strictest confidence. However, if a councillor or staff member makes public part of a commissioner's report on a matter, the integrity commissioner should be free to make all of it public in response.

39. Council should consider expanding the role of the current integrity commissioner to allow confidential review of the personal finances of councillors, at their request, so that the commissioner can advise them on potential conflicts of interest.
40. The integrity commissioner should have enough staff to allow councillors and City staff to efficiently seek advice in advance on matters of ethical concern – issues where ethics policies may be violated in letter or spirit.

Complaints, Investigation, and Enforcement

41. Members of the public should be allowed to make complaints to the integrity commissioner. Complaints can be anonymous and need not be in the form of sworn affidavits.
42. To preserve the necessary independence of the office of the integrity commissioner, no elected official should pre-filter complaints to that office.
43. Councillors and staff should not be allowed to withhold their co-operation from investigations by the integrity commissioner. Sanctions for withholding co-operation should equal the sanctions for ethical breaches, so a clear message is sent that withholding co-operation offers no advantage.
44. To guard against misuse for political purposes of the integrity commissioner's complaint process, the commissioner should be free to dismiss frivolous complaints at the outset, publicly identifying them as such, if appropriate. The commissioner should also be able to identify those who launch bad-faith complaints, and recommend to Council that bad-faith complainants reimburse the City for the expenses of the investigation.
45. The office of the integrity commissioner should have broader investigatory power than it currently has. For example, it should have summons powers.
46. The City should give the integrity commissioner the power to recommend to Council an appropriate range of sanctions for ethical misdeeds by councillors. Sanctions should include public reprimands, public apologies, expulsion from one or more committee meetings, removal from committee posts or committee chair positions, expul-

sion from one or more Council meetings, or, at the high end of the spectrum, a fine or declaration of a vacancy in the councillor's seat.

47. The City should give the integrity commissioner the power to recommend to Council an appropriate range of sanctions for ethical misdeeds by staff. These should be closely modelled on sanctions allowable under prevailing labour and employment law. To emphasize the importance of ethics within the organization, ethical misconduct should be regarded as among the most serious misconduct, and the sanctions should include the most serious penalties.
48. The integrity commissioner should not have powers to impose sanctions directly. Council should rule within a fixed time on the integrity commissioner's recommendations for sanctions.

Education and Outreach

49. The integrity commissioner should have the mandate and resources to participate actively in the development of ongoing ethical education programs or materials for City staff and councillors. Outreach of this type is an important part of ensuring a strong ethical culture.
50. The integrity commissioner should have a website for education, reference, and outreach purposes. The commissioner's office should also be available to provide advice on ethics training as necessary for both councillors and staff.

Review

51. An external auditor should periodically review the operations of the office of the integrity commissioner.

Doing Business with the City

52. The City should require all organizations with which it does business to adhere to the following principles, at a minimum.
 - a. Follow commonly accepted business practices.
 - b. Obey all applicable provincial and federal laws.
 - c. Adhere to the terms of the contract signed with the City, unless amendments are negotiated.
 - d. Conduct business with integrity and in accordance with their obligations under specific agreements.

- e. Keep detailed and accurate records of all contracts and goods and/or services provided to the City.
 - f. Refrain from divulging confidential information.
 - g. Avoid the appearance of conflict.
 - h. Refrain from conduct contrary to the values of the City.
 - i. Treat workers with respect and dignity and ensure that workers are not subjected to any form of physical, sexual, psychological, or verbal harassment or abuse.
 - j. Refrain from engaging in price collusion with other bidders or suppliers.
 - k. Explain clearly the cost to the City of any bid.
 - l. Refrain from contacting anyone but the designated contact person during a procurement blackout period.
53. The City should make its codes of conduct available to all current suppliers, to ensure that they are in no doubt about the ethical imperatives involved in doing business with the City.
 54. The City should include references or links to its relevant codes of conduct in tender documents, as part of the procurement process, emphasizing that all bidders are expected to learn and abide by those policies.
 55. The City should require that all responses to a procurement process include a promise to learn and respect the City's relevant codes of conduct.
 56. The City should include a term in all procurement documents providing sanctions if a business fails to adhere to the City's relevant codes of conduct.
 57. City staff should not publicly state their views of an organization the City does business with, unless requested to do so by Council or other staff. In carrying out such a request, staff should not endorse or appear to endorse any organization.

Contractors and Consultants

58. The City should screen for understanding of ethical issues when hiring contractors and consultants and should consider applicants' performance in this area in hiring decisions.
59. Consultants and contractors should be informed about the City's

codes of conduct before they begin their work for the City and should be required to adhere to the codes as a term of their contract of employment.

60. Consultants and contractors should be required to agree to abide by the following ethical requirements in addition to any that apply generally to all suppliers.
 - a. Disclose any conflict or potential conflict of interest in advance.
 - b. Provide receipts for reimbursable expenses.
 - c. Refrain from claiming entertainment expenses involving elected officials or employees of the City.
 - d. Refrain from billing for work not done.
 - e. Refrain from giving gifts to municipal employees.
 - f. Refrain from possessing confidential material not required for the completion of the services for which they contracted.
 - g. Refrain from divulging confidential information.

Gifts, Entertainment, and Other Benefits

61. The City should permit councillors and staff to accept gifts, entertainment, or other benefits of nominal value, except from lobbyists. The definition of nominal value and other criteria for acceptable gifts should be established in consultation with the integrity commissioner.
62. Under no circumstances should staff or councillors accept gifts or benefits of any value from lobbyists.
63. City staff should not accept meals paid for by commercial suppliers.
64. On the occasions when work demands that City staff and commercial suppliers eat together off-site, the City should permit its staff to expense the meals. City staff should not be out of pocket personally for a work expense. Allowing these expenses to be submitted also allows their frequency to be monitored, so that work patterns can be adjusted if necessary.
65. This policy should be reviewed after it has been implemented for two years.

Gift Registry

66. The City should establish a registry for gifts received by staff and councillors. The registry should be run by the integrity commissioner's office.

67. The gift registry should contain the following details in a searchable database:
 - a. the name of the individual who received the gift and the capacity in which he or she was serving at the time
 - b. a description of the gift
 - c. the person or group who presented it
 - d. the date on which the gift was received
 - e. the occasion on which the gift was given
 - f. the estimated value of the gift, if known
 - g. a running total of the value of gifts received by staff or councillors from that person or group in the previous twelve months
 - h. what the individual intends to do with the gift
 - i. whether the gift should remain with the City if the recipient leaves
68. Councillors and staff should be encouraged to consult with the integrity commissioner about the propriety of accepting or continuing to keep any gift of any value.

Charity Events

69. The City should have a clear policy on when it is appropriate for councillors and City staff to attend charity events.

Elections Financing

70. The City should ask the Province to ban the practice of “bundling” in municipal elections, including bundling through lawyers’ trust accounts.

GOVERNANCE

The Mayor

71. For the Mayor, integrity in government should be a top priority.

Council and Committees

72. Council should urgently address a variety of ways to reduce its workload.
73. Council should delegate the administrative, day-to-day operations of the City to staff and concentrate on matters of policy.

74. Council should consider ways to enhance its effectiveness as a deliberative leadership body.
75. Council should take steps to enhance the openness of Council meetings.
76. Breaches of confidentiality are a serious problem and should be eliminated.
77. With appropriately increased delegation to staff, Council should substantially rationalize and reduce the number of ad hoc, special, and other committees and special-purpose bodies.
78. The term of a Council committee chair's tenure should be tied to the type of work the committee does.
79. Council committee meeting schedules should accommodate the committee's work.

Relations between Staff and Councillors

80. Relations between staff and councillors should always be civil and premised on mutual respect.
81. Maintaining civil and professional relations between councillors and staff should be given ongoing attention.
82. Members of staff, apart from those working directly for a councillor, should remain neutral in their service to all councillors.
83. Staff should have more latitude to speak at meetings of Council.

Hiring

84. The Mayor should be involved in hiring the City Manager and should have limited input into hiring the small handful of officials immediately below the City Manager. Beyond that, all City hiring should be entirely free of any input or influence from the Mayor or individual councillors.

City Manager

85. Although the Mayor can properly be involved in hiring the City Manager, there should be a clear division of responsibility between the Mayor and the office of the City Manager—a separation of the political from the administrative.

Staff Advice on Budgetary Matters

86. Staff should keep Council closely apprised of budgetary matters.

Staff Reports to Council

87. Staff reports to Council should be concise, while remaining scrupulously accurate and containing the best possible advice.

Relations among Members of Staff

88. City staff should act at all times to further the public trust. This duty applies regardless of whether staff functions are visible to the public.
89. Large City projects should have clearly defined roles and responsibilities
90. Staff who have benefited from any form of outside training, or who have attended an event showcasing what is available in the market, should spread that knowledge internally at the City by briefing colleagues with a presentation or report, as appropriate.
91. Communication among staff members should be civil at all times.

E-mail Etiquette

92. City staff should use e-mail with professionalism and courtesy.

Legal Counsel

93. City departments should understand that the City's Legal Services Division is a valuable team member, dedicated to ensuring that projects are conducted according to law at all times.
94. The Legal Services Division should continue to ensure that outside counsel to the City are made well aware of their responsibilities and the reporting structure they should follow.
95. The City should review its retainer policies for outside counsel.

Annual Report by the City

96. The City, through the Mayor, should report to the public annually.

LOBBYING

97. The City should treat lobbying as a potentially helpful practice that should be carefully controlled.

Code of Conduct for Lobbyists

98. The City of Toronto should set out its own code of conduct for lobbyists. That code should set mandatory minimum standards for lobbyists in their dealings with the City. Every lobbyist should agree to be bound by the City's code of conduct before he or she can begin any lobbying activity.
99. Lobbyists should be held to the highest ethical standards.
100. No lobbyist should ever practise influence peddling. Councillors and staff should not risk compromising their positions by accepting any benefits of any kind from lobbyists.
101. Lobbyists should state clearly whom they are representing and why. They should never misrepresent themselves to the people they are attempting to influence.
102. Lobbyists should not be permitted to work for competing or conflicting interests without the written permission of both.
103. Lobbyists should refrain from placing or proposing to place an elected official or City staff member in a conflict of interest of any sort.
104. Lobbyists should be completely familiar with the City's ethics, lobbying, and procurement policies and abide by them at all times.

Limitations on Lobbying Activity

105. Lobbyists' access to councillors and staff should be restricted to regular office hours and locations.
106. Staff reports to Council should list lobbyists who made presentations to staff on the subject matter of the report.
107. There should be no lobbying of any kind at any time during a City procurement process.
108. Legitimate education of decision-makers about the value that a company can offer the City should be considered appropriate; lobbying aimed at influencing the procurement process before it occurs—so

that when it occurs, it favours the lobbyist's client—should be considered inappropriate.

109. Outside of City procurement processes, ethically appropriate lobbying is permitted. However, at no time should lobbying take the form of entertainment or the bestowing of gifts, meals, trips, entertainment, or favours of any kind on staff or councillors.
110. City staff who leave the public service should not be permitted to become lobbyists at the City for at least twelve months after they leave. Former councillors should not be permitted to lobby for twelve months after leaving office.
111. At no time after leaving City positions should former councillors or staff become involved as lobbyists on specific matters on which they worked during their time at the City.
112. Lobbyists dealing with the City should not be permitted to receive contingency fees or any other type of bonus or commission tied to a successful outcome.
113. Professional lobbyists should not engage in any type of political fundraising for candidates or councillors they lobby, beyond making their own donations.
114. City councillors and staff should not under any circumstances endorse or recommend any one specific lobbyist to anyone.
115. The City should maintain a clear distinction between lobbying and charitable events.

Lobbyist Registry

116. The City should establish and maintain a lobbyist registry.
117. The City's lobbyist registry should cover all who are paid to attempt to influence elected officials or City staff on behalf of others for a specific purpose.
118. No one should be permitted to engage in any lobbying activity at the City without first registering in the lobbyist registry.
119. The following information should be collected in the lobbyist registry.
 - a. The lobbyist's name, company or partnership name, and the names of all principals in the company or partnership.

- b. Whom the lobbyist ultimately represents, not just the names of the clients. If the client is an organization or company, the names of the principals or of the CEO and directors should be given. If the lobbyist is working for a coalition of groups, the same information should be given for each group.
 - c. The client's business activities or organizational interests.
 - d. Whether the lobbyist's client is already doing business with the City.
 - e. Who is being lobbied. In the case of City staff, it is not enough to simply list the name of a department. A department could have several divisions and hundreds of employees. The registry should show the name, title, and department of the civil servants the lobbyist proposes to contact.
 - f. The subject matter of the lobbying activity.
 - g. A brief statement of the position taken on the issue.
 - h. The total amount paid to the lobbyist for the lobbying activity. To accord the lobbyist some privacy on financial matters, the amount paid can be a choice of preset ranges: for example, under \$10,000, \$10,000 to \$25,000, \$25,000 to \$50,000, \$50,000 to \$100,000, or over \$100,000. The total amount paid to the lobbyist should include all background work (for example, polls commissioned, research, preparing and producing materials), entertainment, gifts, fees paid to the lobbyist and to third parties, and any other expenses related to the lobbying campaign.
 - i. Whether the lobbyist or client has in the past received money from the City for any purpose, and if so, the amount.
120. When registering, lobbyists should certify that they have not engaged in political fundraising at the City beyond making their own allowable donations.
121. The City should consider whether councillors and staff should also be required to record basic information on their meetings with lobbyists in the lobbyist registry.

Monitoring, Enforcement, Advice, and Education

122. To oversee the lobbyist registry, the City should have a lobbyist registrar.

123. There should be sanctions for failing to register in the lobbyist registry as required.
124. The lobbyist registrar should prepare an annual report.
125. The lobbyist registrar should have an educational role.
126. The lobbyist registrar should work closely with the integrity commissioner.
127. The lobbyist registry should be readily accessible and user-friendly for both the public and lobbyists.

Periodic Review

128. Lobbying practices, the prevalence of lobbying, and the procurement context in which much lobbying may take place all change over time. Therefore, the City should review lobbying policies comprehensively after three years and then at regular intervals: for example, every five years.

PROCUREMENT

BEFORE

Councillors

129. City Council should establish fair, transparent, and objective procurement processes. These processes should be structured so that they are and clearly appear to be completely free from political influence or interference.
130. Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.
131. Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing.
132. Councillors who receive inquiries from vendors related to any specific procurement should tell them to communicate with one or more of the following three people, as is appropriate in the circumstances:
 - a. the contact person in the tender document, in accordance with the contact rules in place

- b. the fairness commissioner
- c. the person in charge of the complaints process, as set out in the tender documents

Central Procurement

- 133. Procurement should be overseen and managed by one City department.
- 134. Since effective procurement is fundamental to the good governance of the City, the head of the central procurement department should be a very senior position.
- 135. The City should consider alleviating some of the great pressure on the Purchasing and Materials Management Division caused by volume of work by raising the threshold for the division's involvement in procurement from the current minimum contract value of \$7,500.

Staff Training

- 136. City procurement staff should receive adequate and ongoing training.
- 137. Training in operational matters for City procurement staff should include the basics of procurement policy as well as training focused on specific sectors.
- 138. Consistent, centrally mandated training in the ethical aspects of procurement should be mandatory for those involved in the procurement process at the City.
- 139. Despite the desirability of central procurement, line departments have an important role to play in determining the City's needs. Therefore, designated staff in line departments should be given time to keep up with market developments in their field.
- 140. Secondments for City procurement staff to work at other organizations in the private or public sector should be considered.
- 141. City procurement staff should engage in regular discussions with their peers at other governments, including the provincial and federal governments, to study their approaches and analyze what works and what does not.
- 142. Some staff view vendor-sponsored events as an opportunity to network with their own City colleagues. The City should consider facilitating this important aspect of work culture by holding its own

internal educational events, thereby avoiding the risk of undue influence from vendors.

143. Each procurement professional in a key City position should have paid membership in at least one relevant professional organization.
144. The Purchasing and Materials Management Division should issue a procurement manual.
145. Senior staff and councillors should all receive training necessary to be able to read and understand financial statements.

Achieving Openness

146. There should be a strong presumption in favour of mandatory competitive tendering for all significant City procurements. Criteria for exemption from mandatory tendering should be tightly defined in advance.
147. The City should make public the training and education materials it provides to its own procurement staff.
148. When the City makes changes to its procurement policies, it should make them public.
149. All potentially interested parties should be made aware of the City's intent to issue a tender.

Project Management, Teamwork, and Expertise

150. The Purchasing and Materials Management Division should work closely with line departments in acquiring goods or services.
151. At the outset of any major City procurement, a project charter should be established to set out the scope of the project, the associated risks, the resources needed, the competencies required, and the tasks to be completed, with due dates.
152. For large City procurements, key documents should be tracked by who has reviewed them, who has had input, and what that input was.
153. Project teams should be carefully assembled for major City procurements.
154. When more than one City department is involved in a procurement, each relevant department should designate a lead individual for the project.
155. The roles and responsibilities of City staff involved in the procurement should be clearly defined in advance.

156. A standard checklist should be prepared indicating all of the elements that should be in place before the City launches a tender.
157. One senior person on the procurement team should be designated as the contact person in case councillors have questions outside the committee or Council process.
158. Managers on large procurement projects should increase reliance on face-to-face meetings, with confirmatory minutes, when it is essential to ensure that communication is clear and that everyone understands their roles.
159. Gaps in in-house expertise essential to any City procurement should be filled by outside consultants.
160. External consultants hired by the City should not help any potential bidder in a forthcoming tender.
161. Consultants who are retained by the City should be accountable for specific deliverables.
162. Council should commit resources sufficient to ensure that the Purchasing and Materials Management Division has the necessary in-house information technology procurement expertise to carry out this significant and permanent part of its work.
163. Council should commit sufficient resources to ensure that the City has the best available IT leadership at all times.

Legal Services

164. The Legal Services Division should be involved in major procurements from the outset.
165. An information bulletin should be sent from the Legal Services Division to all senior managers to clarify signing authority for contracts.

Fairness Commissioner

166. For major, high-risk, controversial, or complex tenders, the City should consider retaining a fairness commissioner.

Pre-Procurement Market Consultation

167. Before issuing a complicated tender, the City should consider engaging in a prerelease consultation.

168. The City should remain vigilant to ensure that lobbying does not persuade the City to design the tender so as to unfairly favour one competitor in a pre-procurement consultation.

Leasing

169. Leasing should remain a viable financing option for the City.
170. The City should not enter into a leasing contract without the expertise to evaluate and implement it successfully.
171. The City should establish and update as necessary a checklist of questions that staff should answer in exploring the viability of leasing.
172. In future leasing arrangements, the City's Finance Department should lead the tender, not the department whose business assets are being leased.
173. The City should establish best practices for setting competitive lease rate factors.
174. The Purchasing and Materials Management Division should be more proactive in the leasing process.
175. The City should require the leasing company to set out clearly the amount of interest payable throughout the term of the lease along with any additional costs to the City of leasing beyond the periodic lease payments.
176. In any lease transaction, the City should not rely on the leasing company to keep track of its inventory.
177. If the City wishes to consider any sale-and-leaseback transactions, City Council authorization should first be sought.
178. Leasing IT hardware and software poses many special challenges. If the City decides to lease IT equipment or software again, it should retain expertise in this leasing subspecialty.

Blanket Contracts

179. The City should standardize and clarify procedures for blanket contracts.

Vendors of Record

180. The City should clearly define its use of the term "vendor of record," to avoid confusion in the way this term is applied.

181. The City should consider whether having multiple vendors of record would prove useful in major procurements.
182. Unless the nature of the contract warrants it, terms for the City's vendors of record should be short.
183. The City should improve its position in contractual relations with vendors of record.
184. The City should post the list of its vendors of record, and the goods and services each provides, on its website.
185. The City should improve its oversight of vendors of record.

Preferred Suppliers

186. The City should take steps to ensure that every person with a place on a preferred suppliers' list is in substance a different business entity.

Tender Documents and Processes

187. Before issuing any tender document, the City should establish criteria and an evaluation process to allow it to determine whether each bidder has the quality, experience, and capacity to deliver what the City needs.
188. The project lead for each City procurement should ensure that the correct request document is used for the tender.
189. In procurements where, by virtue of the dollar value or their contentious nature, Council will make the final decision, the request document should indicate that Council approval will be required and incorporate any criteria or conditions that Council considers necessary.
190. The specifications for a product in the City's tender should be very clearly set out and be kept simple and fair without being simplistic.
191. The Purchasing and Materials Management Division should maintain a library of examples of previous specifications drawn from its own experience and those of other jurisdictions.
192. The City's specifications should indicate a cost range, to assist vendors in tailoring their bids.
193. When setting deadlines for submission of bids, the City should balance the urgency involved against giving vendors enough time to understand the requirements, ask questions, take the answers into account, and prepare their responses.

194. The City should protect the integrity of its own deliberative processes and the need for Council approval by requiring vendors to hold terms in their bid open long enough for Council to make a considered decision and long enough for the necessary contracts to be thoughtfully entered into.
195. On a case-by-case basis, the City should consider whether the final contract that it expects the successful bidder to sign should be attached to tender documents.
196. Bidders should be clearly advised in the tender document that they are not permitted to advance their case by alluding in any way in their bid documents to a relationship with a councillor, the Mayor, or senior staff.
197. The City should hold bidders to the ethical standards set out in the City's ethics policies as applicable.
198. The City should continue to provide all potential bidders with its suppliers' briefing document.
199. Both paper and electronic drafts of tendering documents should state, in large letters on each page, that they are internal City documents and strictly confidential.
200. One individual or one small committee with clear membership should have complete version control and supervision over the draft tender documents for each City procurement.
201. The appropriate times and ways to have contact with a bidder should be carefully designed as part of the procurement process, and made very clear to City staff.
202. The manner and timing of notification to bidders of the outcome of the procurement process should be settled in advance, so that bidders can have appropriate expectations and so that unnecessary and potentially problematic communication between City staff and vendors will be prevented.

Incumbents

203. The City should be vigilant in not favouring incumbents unfairly in any tender process.

DURING

Gifts, Favours, Entertainment, and Benefits

204. All City staff involved in any way in active tenders should be, and be seen to be, beyond reproach. Accepting gifts, favours, entertainment, or benefits of any kind from a vendor or potential vendor should be prohibited.

Designated Contact Person

205. When a tender document is publicly released, it should always state the name and full contact information of the person whom prospective bidders can contact with any questions. The tender document should make clear that this is the only City person bidders may contact regarding this tender for the entire procurement process.

206. Bidders may not use the designated City contact person as a conduit to promote their bids.

207. To ensure that there is no appearance of advantage for bidders who communicate with the designated City contact person, that person should not participate in evaluating the bids.

Blackout Period

208. Every tender document should contain a definition of the “blackout period” when communication between the City and bidders is prohibited.

Confidentiality

209. Any misuse by a bidder of confidential information belonging to the City or to another bidder should be grounds for disqualification from the bid.

Issuing the Bids

210. The City should release tenders on the Internet to allow fair and equal access to them.

Filing the Bids

211. Bids that have been received on a specific City tender should be organized and filed together.

Reading the Bids

212. The City should have clear practices surrounding the reading of bids.

Evaluating the Bids

213. No one involved in evaluating the bids at the City should have a pre-existing relationship with any of the bidders or be influenced in any way by anyone else's pre-existing relationship with a bidder.
214. For major procurements, the City's evaluation committee should be a group that is representative of all areas affected by the procurement. To ensure fairness, no one involved in the pre-procurement phase or the bidding process should be involved in evaluating the proposals.
215. Each member of the City's evaluation team should sign a conflict of interest declaration disclosing any entertainment, gifts, or other benefits, in cash or in kind, received from any of the proponents or their representatives. All members should also declare that they will conduct the evaluation in a fair and objective manner, free from any conflict of interest or undue influence.
216. The City should develop, in consultation with the senior financial staff and the City solicitor, a protocol for treatment of mathematical errors or other obvious mistakes in submissions.
217. Contact with bidders by the City's evaluation team should occur only in accordance with fair principles identified in advance.
218. The weight to be assigned to price in determining the winning bid should be carefully considered and settled upon in advance.

Electronic Tenders

219. When circumstances require a rapid RFP or RFQ for a City procurement, the process can be done electronically: for example, by telephone, fax, or e-mail.
220. Special effort should be made to ensure that rapid tenders for City procurements are public.
221. For tenders with short turnaround times, the City's lead person on the tender should choose a deadline that allows bidders a fair chance to respond.
222. For tenders with short turnaround times, the City's lead person on the tender should make reasonable efforts to ascertain before the tender is issued that prospective bidders are available to respond.

Reports to Committee and Council

223. If there is a deadline in a tender—for example, if a vendor is offering a particular term for only a limited time—committee and Council should be clearly notified, with sufficient time to respond in a deliberative fashion.

Debate on Procurements at Council Meetings

224. During debate on procurements in Council, all councillors should be guided by one principle: what will best serve the public in the circumstances.
225. If Council decides to alter the fundamental terms of the tender after the bids have been submitted, the procurement should be re-tendered, to be fair to all the bidders.
226. When debating procurement decisions, councillors should respect necessary timelines for decision making as set out in staff reports.
227. Wherever possible, Council and committees should make procurement decisions in public.

AFTER

228. The City should maintain a record of when and by whom a bidder is told it has been successful.

Debriefings

229. Following the decision to award a contract, unsuccessful bidders are entitled to a debriefing explaining the evaluation process that led to the City's selection of the successful bidder.

Complaints

230. To demonstrate its commitment to maintaining integrity and transparency in the procurement process, the City should have a comprehensive bidder complaints policy.
231. A bidder should not be allowed to file a formal complaint without having made a post-debriefing submission to the City.
232. Councillors should not act as advocates for aggrieved bidders.
233. The City should adopt a formal two-stage process to manage bidder complaints, to replace the current standing committee/deputation approach.

Altering Contracts or Major Terms of Procurements after Bidding Closes

- 234. Those authorized to sign contracts at the end of a City procurement process should be identified at the outset in the project charter.
- 235. Once a tender process has closed to the bidders, the major terms of the City's tender should not be changed. Major terms of a contract signed with a winning bidder should not be changed either.
- 236. When it is necessary because of error or other circumstances to change major terms in a tender or contract after bidding has closed, staff should report to Council on the reasons for the change and on how the change will be managed.

Contract Management

- 237. The City should treat contract management as an important priority and resource it accordingly. For effective contract management, a well-staffed contract management office is needed.

Accounting Procedures

- 238. The City should put in place procedures to track spending on contracts that affect more than one department.
- 239. Staff should be vigilant in ensuring that all data is entered into accounting systems to permit full tracking of expenditures against approved contract amounts.

OTHER RECOMMENDATIONS

Implementation

- 240. The City should work with provincial officials as necessary to implement these recommendations.
- 241. At the first Council meeting after the first anniversary of the release of this report, the Mayor should report to Council on progress made in implementing the report's recommendations.

Inquiry Process

The recommendations in Volume 3 of this report, *Inquiry Process*, are repeated below.

- 1. A municipal public inquiry should have all of the powers granted to an inquiry under both Part I and Part II of the *Public Inquiries Act*.

2. The *Public Inquiries Act* should be amended to include a mechanism whereby interlocutory matters, including issues related to solicitor-client privilege, could be resolved expeditiously.
3. The *Public Inquiries Act* should be amended to formalize the power to summons the production of documents without the need for attendance by a witness.

APPENDICES

Terms of Reference for Toronto Computer Leasing Inquiry

Being a Resolution to Request a Judicial Inquiry Pursuant to Section 100 of the Municipal Act and to Provide the Terms of Reference Therefor

WHEREAS, under section 100 of the Municipal Act, R.S.O. 1990 c. M.45, a Council of a municipality may, by resolution, request a Judge of the Ontario Court (General Division), now the Superior Court of Justice, to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business;

AND WHEREAS any Judge so requested shall make inquiry and shall report with all convenient speed, to Council, the result of the inquiry and the evidence taken, and for that purpose shall have all the powers of a commission under Part II of the Public Inquiries Act, R.S.O. 1990 ch. P. 41;

AND WHEREAS on approximately January 1, 1998, computer equipment acquired for the newly elected City Councillors' offices was leased from MFP Financial Services Ltd. ("MFP") for a three year term pursuant to a Master Equipment Lease Agreement numbered "784" and subsequently by equipment schedules under the Master Agreement for assets totaling approximately \$1,093,731;

AND WHEREAS there is no written documentation that the procurement of the equipment was lawfully approved or that a competitive process was followed in awarding the leasing contract to MFP;

AND WHEREAS in early 1999 staff were exploring financing options for the large-scale software and computer acquisitions anticipated as necessary to deal with what is commonly referred to as the "Y2K problem" and a Request for Quotations ("RFQ") was issued in May 1999 to solicit bids for computer leasing;

AND WHEREAS pursuant to a report from the City's then Chief Financial Officer and the City's then Executive Director, Information Technology, Council approval was obtained to lease \$43 million of computer and related equipment by the adoption of Clause No. 11 of Report No. 4 of the Policy and Finance Committee at Council's meeting of July 27, 28, 29 and 30, 1999;

AND WHEREAS the report indicated to Council that the bid by MFP was the preferred bid and Council authorized the City of Toronto to enter into a leasing contract with MFP for three years;

AND WHEREAS the report to Council failed to mention that the rates quoted in the responses to the RFQ were only in effect for 90 days and staff entered into a Master Equipment Lease Agreement and a Program Agreement after the 90 day period expired, which agreements contemplated various Equipment Schedules to the Master Equipment Lease Agreement that would identify the equipment to be leased and lease terms and rates in respect of the equipment;

AND WHEREAS in the fall of 1999, staff initiated a sale and lease back transaction with MFP of the City's computer equipment which had been bought prior to the Council authority of July 1999 and there was no mention of a sale and lease back to be bid on in the RFQ and no authorization of a sale and lease back was sought in the report to Council;

AND WHEREAS, through the execution by staff of Equipment Schedules, the City has leased up to \$85 million of computer equipment although the Council approval indicated an estimated cost of acquisition of \$43 million of equipment;

AND WHEREAS with two exceptions, the initial Equipment Schedules were not for three years as approved by Council, but were for longer terms, most commonly five years and in the summer of 2000 a number of the equipment leases were restructured to extend the term of some of the Equipment Schedules beyond even the five year period;

AND WHEREAS the report to Council indicated that the preferred bid by MFP contained an implicit interest rate of 4.6% and the Equipment Schedules executed by City staff contained lease rates with implicit interest rates significantly in excess of the 4.6% interest rate;

AND WHEREAS in or about December 1999, the City's Director of the Y2K Project recommended the acquisition by the City of 10,000 Oracle Database enterprise software licences, the acquisition was approved by the City's then Y2K Steering Committee, with subsequent approval by the City's then Chief Administrative Officer, and the 10,000 licences were then acquired by lease through MFP by the addition of an Equipment Schedule to MFP's Master Equipment Lease Agreement;

AND WHEREAS the acquisition of the 10,000 Oracle licences was a serious miscalculation and it is unclear as to whether such acquisition was co-ordinated with the City's agencies boards and commissions, why leasing was undertaken as opposed to the continued purchase of the licences directly from Oracle and how MFP was selected for leasing of the Oracle software;

AND WHEREAS the concerns of the City in respect of the MFP and Oracle transactions are more fully detailed in the attached reports from the Chief Administrative Officer and City Auditor, dated respectively in respect of the MFP transactions and the Oracle transaction, November 29, 2001 and February 6, 2002 and in respect of the 1998 computer lease numbered "784", the report from the City Auditor, dated January 28, 2002;

AND WHEREAS the public inquiry would permit (i) the Commissioner to investigate the existence of any malfeasance, breach of trust or misconduct, (ii) the Commissioner to make recommendations that would be a benefit for the future conduct of the public business of the City, and (iii) the public to understand and evaluate fully the above noted transactions;

- 3 -

NOW THEREFORE the Council of the City of Toronto does hereby resolve that:

1. an inquiry is hereby requested to be conducted pursuant to section 100 of the Municipal Act which authorizes the Commissioner to inquire into, or concerning, any matter related to a supposed malfeasance, breach of trust or other misconduct on the part of a member of council, or an officer or employee of the City or of any person having a contract with it, in regard to the duties or obligations of the member, officer, or other person to the corporation or to any matter connected with the good government of the municipality, or the conduct of any part of its public business, and
2. the Honourable Chief Justice Lesage, Chief Justice of the Superior Court of Ontario, be requested to designate a judge of the Superior Court of Ontario as Commissioner for the inquiry and the judge so designated is hereby authorized to conduct the inquiry.

AND IT IS FURTHER RESOLVED THAT the terms of reference of the inquiry shall be:

To inquire into all aspects of the above transactions, their history and their impact on the ratepayers of the City of Toronto as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of his inquiry.

And it is further resolved that the Commissioner, in conducting the inquiry into the transactions in question to which the City of Toronto is a party, is empowered to ask any questions which he may consider as necessarily incidental or ancillary to a complete understanding of these transactions;

And, for the purpose of providing fair notice to those individuals who may be required to attend and give evidence, without infringing on the Commissioner's discretion in conducting the inquiry in accordance with the terms of reference stated herein, it is anticipated that inquiry may include the following:

1. an inquiry into all relevant circumstances pertaining to the various transactions referred to in this resolution, including the relevant facts pertaining to the various transactions at the relevant time as contained in the reports dated November 29, 2001, February 6, 2002 and January 28, 2002, the basis of and reasons for making the recommendations for entering into the subject transactions and the basis of the decisions taken in respect of the subject transactions;
2. an inquiry into the relationships, if any, between the existing and former elected and administrative representatives of the City of Toronto and the existing and former principals and representatives of MFP and Oracle at all relevant times; and
3. an inquiry into any professional advice obtained by the City of Toronto in connection with the subject transactions at the relevant times.

Terms of Reference – Toronto External Contracts Inquiry

WHEREAS, under section 100 of the Municipal Act, R.S.O. 1990, c. M.45, a Council of a municipality may, by resolution, request a Judge of the Ontario Superior Court of Justice to inquire into or concerning any matter connected with the good government of the municipality or the conduct of any part of its public business;

AND WHEREAS any Judge so requested shall make inquiry and shall report with all convenient speed, to Council, the result of the inquiry and the evidence taken, and for that purpose shall have all the powers of a commission under Part II of the Public Inquiries Act, R.S.O. 1990 c. P.41;

AND WHEREAS Madame Justice Denise Bellamy was designated as Commissioner for an inquiry established by the Council of the City of Toronto under s. 100 of the Municipal Act by resolution dated February 14, 2002 ("Toronto Computer Leasing Inquiry");

AND WHEREAS Justice Bellamy has appointed Commission Counsel who have been conducting investigations including the interview of witnesses and the review of documents since that time;

AND WHEREAS the Council of the City of Toronto believes it would be fair and expedient for Madame Justice Bellamy to conduct a further inquiry into certain external contracts entered into by the City of Toronto;

AND WHEREAS the Council of the City of Toronto hopes to minimize delay in the conduct of the Toronto Computer Leasing Inquiry by requesting this further inquiry in this manner;

NOW THEREFORE the Council of the City of Toronto does hereby resolve that:

1. an inquiry is hereby requested to be conducted pursuant to section 100 of the Municipal Act which authorizes the Commissioner to investigate any matter relating to a supposed malfeasance, breach of trust or other misconduct on the part of a member of the council, or an officer or employee of the City, or of any person having a contract with it, in regard to the duties or obligations of the member, officer, employee or other person to the City, and to inquire into or concerning any matter connected with the good government of the municipality or the conduct of any part of its public business, including any business conducted by a commission appointed by the municipal council or elected by the electors ("Toronto External Contracts Inquiry" or "TECI"); and
2. Madame Justice Denise Bellamy, a judge of the Superior Court of Justice, be requested to act as Commissioner for the TECI and the judge so designated is hereby authorized to conduct the TECI.

AND IT IS FURTHER RESOLVED THAT the terms of reference of the TECI shall be:

1. To investigate and inquire into all of the circumstances related to the retaining of consultants to assist in the creation and implementation of the tax system of the former City of North York ("TMACS") including, but not limited to whether or not:
 - a. expenditures relating to consultants were accurately reported;
 - b. the need for consulting services was appropriately determined, justified and documented;
 - c. consulting services were awarded based on sound business practices and in accordance with established procurement by-laws, policies and procedures;
 - d. adequate procedures justification existed for waivers from required procedures;
 - e. consulting contracts were effectively managed to ensure the contract deliverables were achieved, expenses incurred were reasonable and justifiable, and "value for money" was obtained; and
 - f. payments were made in accordance with the terms of the contract.
2. To investigate and inquire into all of the circumstances related to the amalgamated City of Toronto's selection of TMACS.
3. To investigate and inquire into all of the circumstances surrounding the selection of consultants to develop and/or implement TMACS at the amalgamated City of Toronto ("Tax System Consultants"), including, but not limited to whether or not:
 - a. expenditures relating to consultants were accurately reported;
 - b. the need for consulting services was appropriately determined, justified and documented;
 - c. consulting services were awarded based on sound business practices and in accordance with established procurement by-laws, policies and procedures;
 - d. adequate justification existed for waivers from required procedures;
 - e. consulting contracts were effectively managed to ensure the contract deliverables were achieved, expenses incurred were reasonable and justifiable, and "value for money" was obtained; and
 - f. payments were made in accordance with the terms of the contract.

4. To investigate and inquire into all of the circumstances surrounding the selection of Ball HSU & Associates Inc. consultants to provide consulting services to the City of Toronto, including, but not limited to whether or not:
 - a. expenditures relating to consultants were accurately reported;
 - b. the need for consulting services was appropriately determined, justified and documented;
 - c. consulting services were awarded based on sound business practices and in accordance with established procurement by-laws, policies and procedures;
 - d. adequate justification existed for waivers from required procedures;
 - e. consulting contracts were effectively managed to ensure the contract deliverables were achieved, expenses incurred were reasonable and justifiable, and "value for money" was obtained; and
 - f. payments were made in accordance with the terms of the contract.
5. To investigate and inquire into all aspects of the purchase of the computer hardware and software that subsequently formed the basis for the computer leasing RFQ that is the subject of the Toronto Computer Leasing Inquiry.
6. To investigate and inquire into all aspects of the matters set out above, their history and their impact on the ratepayers of the City of Toronto as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of her inquiry.

AND IT IS FURTHER RESOLVED THAT the Commissioner, in conducting the inquiry into the matters set out above in question to which the City of Toronto is a party, is empowered to ask any questions which she may consider as necessarily incidental or ancillary to a complete understanding of these matters;

And, for the purpose of providing fair notice to those individuals who may be required to attend and give evidence, without infringing on the Commissioner's discretion in conducting the inquiry in accordance with the terms of reference stated herein, it is anticipated that the TECI may include the following:

1. an inquiry into all relevant circumstances pertaining to the various matters referred to in this resolution, the basis of and reasons for making the recommendations for entering into the subject transactions and the basis of the decisions taken in respect of these matters

2. an inquiry into the relationships, if any, between the existing and former elected and administrative representatives of the City of Toronto, the Tax System Consultants, Ball HSU & Associates Inc., and any representatives of companies or persons referred to in paragraph 5 above at all relevant times; and
3. an inquiry into any professional advice obtained by the City of Toronto in connection with the matters referred to in this resolution at the relevant times.)

WITNESSES

Name	Employment in 2000	Employment When Testifying
Allain, Guy	Manager Human Resources City of Toronto	Same
Altman, Norman Donald Ephraim (Don)	Manager Financial Planning City of Toronto	Same
Anderton, Joan	Commissioner Corporate Services City of Toronto	Same
Andrew, James (Jim)	Executive Director Information & Technology City of Toronto	Vice-President Information Technology Municipal Property Assessment Corporation
Archibald, Susan		Security Department Bell Canada
Ashbourne, Robert (Rob)	Regional Sales Manager MFP Financial Services Ltd.	Same
Bakti, Tyrone Thomas (Ty)	President and Founder NETTEC Associates Limited	Same
Balkissoon, Bas	Councillor Chair of Audit Committee City of Toronto	Same
Barber, Robert	-	Customer Support Rogers Wireless Inc.
Barrett, Deborah (Debbie)	Director Information Technology City of Toronto	Chief Information Officer McMaster University
Barrett, Gordon Ellsworth (Gord)	Senior Executive Newcourt Credit Group On loan to: Dell Financial Services as General Manager	Senior Partner, Captiva Finance

Name	Employment in 2000	Employment When Testifying
Beattie, David (Dave)	Supervisor Client Services City of Toronto	Same
Bench, Mary Ellen	Director Municipal Law Practice Group City of Toronto	City Solicitor City of Mississauga
Birt, Audrey Eileen	Director of Revenue Finance City of Toronto	Tax Consultant Audrey Birt and Associates Incorporated
Boctor, Leslie-Ann	Temporary Administrative Assistant positions to: Councillor David Shiner Councillor Tom Jakobek Councillor John Fillion	No longer with City of Toronto
Brittain, Leonard Scott (Len)	Director Treasury & Financial Services City of Toronto	Same
Brunning, Margaret Lynd (Margo)	Manager Collections/Receivables, Payments, and Regional Customer Service City of Toronto	Not working
Bulko, Kathryn	Manager of Contracted Services Contract Management Office City of Toronto	Same
Carbone, Giuliana	Director Revenue Services City of Toronto	Same
Chan, Clem	Manager Systems Products & Services Information & Technology City of Toronto	Same

452 Appendix B: Participants

Name	Employment in 2000	Employment When Testifying
Clark, Brian	Private Investigator and Process Server Clark Security Consultants Ltd.	Same
Colley, Ken	Manager of Financial Reporting Accounting Services Division Department of Finance City of Toronto	Same
Cowell, Christine (Chris)	Manager of Financing Accounting Systems and Policy Finance Department City of Toronto	Same
Cross, Susan Patricia (Sue)	Executive Assistant to Jeff Lyons The Lyons Group (Morrison Brown Sosnovitch Barristers & Solicitors)	Executive Assistant to Councillor Jane Pitfield City of Toronto
Currie, Lee Ann	Senior Portfolio Administrator MFP Financial Services Ltd.	Marketing Assistant with another leasing company
Deary, Kevin E.	Private Investigator	Same
DeSouza, Edward Luis (Ed)	Interim Tax Lead City of Toronto	Director of Finance and Treasurer Town of Halton Hills
Di Brina, Felix	Clerk Contract Management Office City of Toronto	Same
Domi, Dashnor (Dash)	Sales Representative MFP Financial Services Ltd.	Same

Name	Employment in 2000	Employment When Testifying
Domi, Tie	Professional Hockey Player Toronto Maple Leafs Entrepreneur	Same
Doyle, Harry William Osmond (Ossie)	City Solicitor City of Toronto	Retired
Durling, Bruce	OBN Security and Investigative Consultants Inc.	Same
Fecenko, Mark	Barrister & Solicitor Fasken Martineau DuMoulin LLP	Same
Fillion, John	Councillor City of Toronto	Same
Flanagan, Michael Anthony (Mike)	Senior Vice President Trading & Asset Management MFP Financial Services Ltd.	Senior Vice President Sales and Trading MFP Financial Services Ltd.
Franco David Carnevale (Frank)	President City Hall Group Incorporated	Same
Franey, Michael (Mike)	Director Computer Operations and Telecommunication Information & Technology City of Toronto	Same
Garrett, Michael (Mike)	Chief Administrative Officer City of Toronto	Chief Administrative Officer Regional Municipality of York
Glover, Brenda	Commissioner Human Resources and Labour Relations City of Toronto	Third Year of Law School

Name	Employment in 2000	Employment When Testifying
Godfrey, Paul	President & Chief Executive Officer Toronto Blue Jays Baseball Club	Same
Griffith, Larry Edward	Account Manager Oracle Corporation Canada Inc.	Same
Griffiths, Jeffrey (Jeff)	City Auditor City of Toronto	Auditor General City of Toronto
Harle, Kimberly Ann (Kim)	Corporate Counsel MFP Financial Services Ltd.	Partner Business Law Group Blake, Cassels & Graydon LLP
Hart, James Robert (Jim)	Director Council and Support Services City of Toronto	Director Executive Management Office of the Chief Administrator Officer
Hart, Steve	Building Security Supervisor Central Portfolio City of Toronto	Same
Holmes, David Wendell	Private Investigator	Same
Hull, Chris	Supervisor Technology Asset Management Contract Management Office	Same
Jakobek, Joseph Charles	Teacher Peel District School Board	Same
Jakobek, Thomas R. (Tom)	Chair of the Budget Committee Councillor City of Toronto	Managing family business; candidate for mayor of Toronto
Jakobek, Thomas Z.	Retired	
Jakobek, Ursula	Retired	

Name	Employment in 2000	Employment When Testifying
Jiwa, Taslim	Director Productivity and Support Services Information & Technology City of Toronto	Same
Josson, Pam	Computer Operations Specialist Contract Management Office City of Toronto	Same
Kassam, Karim	Chief Executive Officer Prescient International Inc.	Same
Kelly, David (Dave)	Regional Sales Manager Public Sector for Ontario and Western Canada Dell Canada Inc.	Director Public Sector, Canada Dell Canada Inc.
Kerr, Christopher Charles (Chris)	General Manager Assetlinx Corporation	Same
Lastman, Melvin Douglas (Mel)	Mayor City of Toronto	Same
Leggieri, Paula	Supervisor Contract Administration Contract Management Office City of Toronto	Not working
Leung, Annie	Budget and Accounts Clerk Contract Management Office City of Toronto	Same
Lewis, Margaret	Committee Secretary Clerk's Office City of Toronto	Same
Liczyk, Wanda	Chief Financial Officer and Treasurer City of Toronto	Senior Vice-President and Chief Financial Officer Toronto Hydro

Name	Employment in 2000	Employment When Testifying
Lok, Andy	Contractor Ball Hsu and Associates, Andall Technologies Corporation and Dyna Lync 2000 Inc	Senior Systems Integrator (Senior Technology Advisor) Corporate Services Information and Technology City of Toronto
Loreto, Brian Jerome (Brian)	Solicitor City of Toronto	Same
Lyons, Jeffrey Stephen (Jeff)	Lobbyist—The Lyons Group Lawyer—Morrison Brown Sosnovitch LLP	Lobbyist – The Lyons Group
Mangat, Navjeet	Policy and Research Manager The Lyons Group	Political consultant
Mann, Sheree	Forensic & Litigation Support Grant Thornton LLP	Partner Grant Thornton LLP
Marentette, Scott	Account Executive Dell Financial Services Ltd.	Financial Area Manager (for a large financial company)
Marks, Line	Program Assistant Year 2000 Office City of Toronto	Supervisor Contract Administration, Coordination and Approvals Contract Management Office City of Toronto
Mastroianni, John	General Manager Pusateri's Fine Foods	Same
Morrish, Deborah	Spouse of Tom Jakobek and Power of Attorney for Ken Morrish	Same

Name	Employment in 2000	Employment When Testifying
Mortensen, Bruce Raymond (Bruce)	Account Executive Public West Division Dell Canada Inc.	Regional Sales Manager Large Corporate Accounts Dell Canada Inc.
Nadeau, Pierre Jean	Executive Assistant to Councillor Tom Jakobek City of Toronto	
Neals, Rick	-	Director of Global Security Central and Eastern Canada AMEX Canada Inc.
Ngan, Edwin	Independent Contractor for the City of Toronto and City of North York and Principal Synerware EDP Services Inc.	Senior Systems Integrator Project Management Office Information and Technology City of Toronto
Nigro, Vince	Planning Department, City of Toronto; Sales Representative MFP Financial Services Ltd.	Not working
O'Brien, David	City Manager, City of Mississauga	President and Chief Executive Officer Toronto Hydro
O'Brien, Richard Murrough (Dick)	Councillor City of Toronto and Project Director for the City's Year 2000 Program	Chair Toronto and Region Conservation Authority
O'Neil, Daniel James (Dan)	Director of Sales and Marketing Technology Management Finance Bombardier Capital	President ON&Y Services Corp.
Pagano, Lou	Director Purchasing & Materials Management City of Toronto	Same

Name	Employment in 2000	Employment When Testifying
Parent, Debra Marie	Manager Web Management Services City of Toronto	Same
Parker, Phillip A.	Private Investigator	Same
Payne, Irene	Vice-President Sales MFP Financial Services Ltd.	President and Chief Executive Officer Bucknall Inc.
Peerenboom, Harold (Harry)	Chair Toronto Harbour Commission	Founder and President Mandrake Management
Pessione, Sandy	Business Development Manager MFP Financial Services Ltd.	Project Manager Electronic Service Delivery Ministry of Consumer and Business Services
Power, Brendan	IT Consultant to the City of Toronto and the Year 2000 Project Office	Brendan Power and Associates
Punniyamorthy, Sangeetha	Student, Osgoode Hall Law School	Associate Dimock Stratton LLP
Pupulin, Stella	Administrative Assistant to Councillor Tom Jakobek City of Toronto	Clerk's Office Corporate Services
Quaintance, Wendy	Supervisor Regional Customer Service Revenue Services City of Toronto	Supervisor Customer Service Co- Ordination Revenue Services Finance Department City of Toronto
Rabadi, Nadir	Supervisor Financial Services Works and Emergency Services City of Toronto	Same

Name	Employment in 2000	Employment When Testifying
Ridge, James	Executive Director Information and Technology Division City of Toronto	Same
Ripley, Robert (Bob)	Manager Revenue Accounting, Billings and Meter Services City of Toronto	Treasurer City of Orillia
Rodrigues, Margaret	No long at the City of Toronto (former Commissioner Corporate Services City of Toronto)	President, Senican Consulting Services
Rollock, John Archibald	General Manager of Ontario Government MFP Financial Services Ltd.	Operated own IT manage- ment consulting business
Scarcello, Guiliana	Administrative Assistant to Wanda Liczyk Chief Financial Officer & Treasurer City of Toronto	Administrative Assistant to the Chief Administrative Officer City of Toronto
Schaubel, Jerry Douglas	Director Audit Services City of Toronto	Director Auditor General's Office City of Toronto
Shay, Irit	Co-Manager Royal de Versailles Jewellers Inc.	Same
Shiner, David	Councillor Chair of the Budget Advisory Committee City of Toronto	Councillor City of Toronto
Shultz, Alan (Al)	Director Accounting Services City of Toronto	Treasurer Township of Uxbridge

Name	Employment in 2000	Employment When Testifying
Simone, Robert (Rob)	National Sales Manager Dell Financial Services Ltd.	Vice President of Finance Ontario Power Contracting
Stagliano, Cathy	Administrative Assistant to Stephen Wong Director of Information and Application Services Information and Technology City of Toronto	Same
Stevens, Robert Brian (Brian)	Vice President of Debt Placement and Treasurer MFP Financial Services Ltd.	Same
Stratton, Bruce	Barrister and Solicitor Dimock Stratton LLP	Same
Sutherland, Paul	Member Toronto Transition Team City of Toronto	Senior Associate Municipal Affairs Hill & Knowlton
Thompson, Michael	Executive Assistant to Councillor Lorenzo Berardinetti City of Toronto	Ran his own consulting company
Toms, David (Dave)	Director of Public Sector Dell Canada Inc.	EMC Canada
Viinamae, Lana	Director, Year 2000 Project Director, Computer Operations and Telecommunications Acting Senior Project Director, Master Accommodation Plan Acting Director, Capital Information and Technology Projects City of Toronto	Consultant

Name	Employment in 2000	Employment When Testifying
Vizzacchero, Frank Ennio	Director Management Information Systems City of North York	Consultant Accord Plastics Corp.
Watkiss, Ulli	City Clerk City of Toronto	Same
Wilkinson, Robin Langley (Rob)	Vice President Sales Support and Special Projects MFP Financial Services Ltd.	Same
Wolfrain, J. Peter	President MFP Financial Services Ltd.	Same
Wong, Stephen	Director of Information and Application Services Information and Technology City of Toronto	Same
Wright, John	Director Information and Technology City of Brampton	Commissioner Management and Administrative Services City of Brampton
Zamiara, Emile	Internal Auditor Toronto Parking Authority City of Toronto	Same

PARTIES WITH STANDING AND COUNSEL

Party	Standing In	Lawyers Who Appeared at the Inquiries
Andrew, Jim	TCLI	Hugh M. MacKenzie Patricia Kelly Jennifer Searle
	TECI	Conor O'Hare
City of Toronto	TCLI and TECI	Linda Rothstein Gordon Capern Robert Centa Lily Harmer Andrew Lewis
CUPE Local 79	TCLI and TECI (special standing)	Melissa J. Kronick Josephine Petcher
Dell	TCLI and TECI	Valerie A.E. Dyer Stephanie Kaufman
Domi, Dash	TCLI	Paul J. J. Cavalluzzo Benjamin A. Barnes
Hsu, Ball	TECI	Brian Heller (on motions only)
Leggieri, Paula	TCLI (limited standing)	James C. Orr
Liczyn, Wanda	TCLI and TECI	William D. Anderson
Lyons, Jeffery	TCLI and TECI	Todd B. White Richard W. Auger Rob Mullin
MFP Financial Services Ltd.	TCLI	David C. Moore Kenneth G.G. Jones Fraser R. Berrill
Power, Brendan	TCLI and TECI	Bryan McPhadden
Viinamae, Lana	TCLI	Raj Anand Bay Ryley
	TECI	Robert Brent

INQUIRY STATISTICS

First Day of Hearings	September 30, 2002
Last Day of Hearings	January 7, 2005
Hearing Days	214
Witnesses (some of whom testified in both inquiries)	156
Parties with Standing	22
Lawyers	60+
Participants in the Good Government Phase	41
Pages of Documents	124,000+
Pages of Submissions	2,803
Pages of Transcripts (approximate)	53,000
Budget	Based on our forecast at the time of writing this report, the inquiries will be within the budget of \$11,392,000 approved by City Council in February/March 2005.

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