

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

**REPORT**  
**Volume 4: Executive Summary**

The Honourable Madam Justice  
Denise E. Bellamy, Commissioner

2005

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# 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.

This report covers two inquiries: the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry. The subjects of the two inquiries were intertwined, with some of the same people playing a role in both. For the reader's convenience, in this volume, I have referred simply to "the inquiry."

The events examined in the inquiry were six large IT transactions between the City of Toronto and outside suppliers before, during, and after amalgamation and Y2K. Serious questions arose about all of these transactions. Investigating them thoroughly, calling all the witnesses, and writing this report took the better part of three and a half years, which included 214 public hearing days, 124,000 pages of documents, 156 witnesses, some of whom testified in both inquiries, 22 parties with standing, and over 60 lawyers.

As the stories in this report 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 not yet up to the high standards that the people of Toronto have a right to expect. Some people did not show the leadership expected of them. Lines of responsibility and accountability were unclear or nonexistent. There was poor communication between people who should

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have been talking to one another and excessive communication between people who should have stayed at arm's length.

The six transactions suffered from human failings and systemic flaws, 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.

Judicial inquiries have no power to put people in jail, find them guilty of crimes, fine them, or find them liable to pay damages. An inquiry is simply an investigation, and the commissioner's report is simply findings of fact and statements of opinion, which should not be perceived as findings of criminal or civil liability.

Volume 2 of this report, *Good Government*, contains 241 recommendations, grouped under brief discussions of the broad themes of ethics, governance, lobbying, and procurement. The recommendations are the most hopeful part of this report. They are forward-looking, offered with well-founded optimism that things are getting better and can continue to improve. The good government recommendations are the heart of this report. They are what can ultimately affect the residents of Toronto the most. My recommendations, without the commentary, are also contained in this volume.

Volume 3, *Inquiry Process*, is about how the inquiry worked behind the scenes. It explains the inquiry's procedures and practical details such as setting up an inquiry and dealing with the documents. It is intended to help governments that might call a public inquiry and all those conducting or involved in one in the future.

All of my report is also available on CD-ROM. The entire report will be available on the inquiry's website, <http://www.torontoinquiry.ca>, for a year after this report is released. It is also available on the City's website, [www.toronto.ca/inquiry](http://www.toronto.ca/inquiry), and available for purchase from Access Toronto at 416-392-7410. An on-line order form for City of Toronto publications is available at [www.toronto.ca/publications](http://www.toronto.ca/publications).

# I. A SMALL CRACK REVEALS A BIG PROBLEM

IT WAS ONLY A SINGLE PHRASE, buried in the mountain of paper given to every Toronto City councillor before a 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.

Councillor Bas Balkissoon looked at this staff report with a skeptical eye. He “held” the report, meaning that it wouldn’t be passed by Council without answers to some questions first. It turned out that MFP Financial Services Ltd. was the supposed “current technology lease provider.” It hadn’t been staff’s recommendation, but Council ultimately voted to award the photocopier lease business through a competition. By then, Councillor Balkissoon had been lobbied and reproached by Jeff Lyons, the most influential lobbyist at City Hall, contacted by a displeased MFP sales representative, Dash Domi, and asked by a fellow councillor whether he knew that Dash Domi was the brother of Tie Domi of the Toronto Maple Leafs.

When questions about MFP leases with the City of Waterloo hit the news, the City investigated its own deal with MFP. In June 2001 came the

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stunning revelation: The \$43 million in leases with MFP, which Council had approved in 1999, had ballooned to more than \$80 million. The slow march to this judicial inquiry began. How did the City get into the murky mess exposed by a routine photocopier report? How did the City spend tens of millions more than expected on computer leasing with MFP and on other huge IT transactions?

The story starts with seeds planted over a decade earlier, in 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 signs on every major artery into town. From a bird’s-eye view, this cheery label fit well. For 25 years, the public face of North York was Mayor Mel Lastman, a flamboyant showman who enthusiastically declared North York open for business. It was a happy, family-like place, and the special-events Mayor loved big “family” occasions.

The family atmosphere in North York would be the source of grave problems years later, in newly amalgamated Toronto. But in 1985, when those problems were still far off, into the family circle walked the talented and promising 24-year-old Wanda Liczyk.

Politically sharp, bright, and motivated, Wanda Liczyk delivered what the Mayor wanted. If talent was her ticket to the top, his approval was her passport. She could do no wrong. By 1992, she was the youngest (and the first woman) city treasurer in Ontario, and perhaps in Canada. She thrived in Mayor Lastman’s get-results, damn-the-torpedoes governance culture. The two of them were a great match, and a great liability.

## B. AN INTIMATE RELATIONSHIP

American Management Systems, a Virginia-based company, won the contract to supply a new general ledger system to North York in the late 1980s. With AMS, Michael Saunders came to town. Wanda Liczyk, in her 20s, single, and driven to succeed, spent many late nights at the office. Mr. Saunders was an older married man, an expert in IT (a field she liked), in town alone. Three years after they met, Wanda Liczyk and Michael Saunders started a sexual relationship. She said it ended in 1991. Whether or not it did end then, Wanda Liczyk had an attachment to Michael Saunders for over a decade that compromised her objectivity. Her support for his business dealings with North York and Toronto was inappropriate.

The North York Code of Ethics said that an employee “never uses the position to secure advantages or favours for self, family or friends.” Ms. Liczyk’s contract went farther, prohibiting actual and apparent conflicts of interest. Her wrongdoing was perfectly clear when measured against both standards. It would have been to her credit had she accepted that she’d made a mistake. Instead, she minimized her misconduct and criticized this inquiry for exploring it. This showed her inability—or worse, her unwillingness—to learn from her mistakes.

Michael Saunders worked at North York, and then Toronto, for over a decade. For most of this time, his dealings were secretly mired in repeated conflicts of interest. In 1990, Mr. Saunders left AMS to start his own company, eventually known as Beacon Software. Wanda Liczyk was one of three decision-makers on his first business proposal. She was intimate with him at the time, but she didn’t disclose that to her two colleagues. Mr. Saunders won the contract, but through a decision tainted with conflict.

In 1991, Michael Saunders and David Maxson, another American IT consultant, proposed a customized tax management and collection system for North York called TMACS. They got the contract. Again Ms. Liczyk was a key decision-maker, and again she kept silent about her relationship (no longer intimate, she said) with Mr. Saunders. Compounding that mistake, the contract was not tendered.

Michael Saunders became a fixture in North York. He billed unlimited hours in U.S. dollars, and North York paid for his accommodation, meals, and weekly airfare to and from his home in the United States.

## C. THE CHILL IN THE OFFICE

How did the American consultant, secretly close to the boss, get along with the workers? Badly. How did Ms. Liczyk handle those problems? Badly. Michael Saunders was rude, arrogant, aggressive, unco-operative, and verbally abusive. He was a consultant and the City was his client, but his behaviour suggested that the roles were reversed and that he could dictate the terms. The City of Toronto is now reprogramming TMACS because he refused to program it according to the users' needs.

Managers and staff were reluctant to oppose Mr. Saunders or speak their minds to him. His transgressions went unchallenged for years because staff knew he was close to Wanda Liczyk. His friendship with her resulted in an atmosphere of misery and powerlessness for those who had to work with him.

## D. AMALGAMATION: HOW SEVEN MUNICIPALITIES BECAME ONE CITY

In 1996, Ontario announced it would amalgamate seven municipalities to create a "megacity" of 2.4 million inhabitants. It would be the biggest city in Canada and the fifth biggest in North America. It would have a budget of about \$5.5 billion annually, more than most provinces. The scope of the reorganization was unprecedented.

Amalgamation provoked heated opposition. The most strident dissenter was North York Mayor Lastman—who ultimately became the megacity's first Mayor. When he took up his duties, he expected to walk into what he called a turnkey operation. What he got was near chaos. Michael Garrett, the new Chief Administrative Officer, was an impressive, responsible, and seasoned senior public servant. He said of the new megacity, "We had to build the ship as we were sailing it."

Tempers were frayed among City staff. In many cases, where once there had been seven jobs, there would soon be just one. It was a grim game of musical chairs on a grand scale. For their part, councillors had a much bigger, more complex workload. Mayor Lastman said councillors were "out to kill each other, out to embarrass each other," making "no effort to work together."

Amalgamation was complicated by “local service realignment,” renamed “downloading” by its detractors. The aim was to provide a revenue-neutral exchange of service and funding responsibilities. But Mike Garrett said the City was providing more services without more revenue. The difference was about \$200 million per year. Amalgamation had to be, as he described it, a “Robin Hood” operation: services were evened out across the City by taking from the richer areas to give to the poorer ones. At City Hall, the frustration was palpable.

Against this turbulent backdrop, delivering on Mayor Lastman’s campaign promise of a zero tax increase fell to Wanda Liczyk, now Chief Financial Officer and Treasurer of Toronto. Before and after amalgamation, Ms. Liczyk juggled momentous financial issues with her customary brilliance. But somehow, despite the demands on her time, IT matters—and Michael Saunders—made it onto her agenda regularly

## **E. TWO TAX SYSTEMS, ONE CITY: HOW THE CHOICE WAS MADE, AND MADE, AND MADE AGAIN**

With amalgamation, TMACS would have to compete to become the new City’s tax system. Its only rival was Tax Manager 2000, or TXM, then being developed through a Mississauga-Scarborough partnership. When the battle lines for the tax system were drawn, four of seven participants had already chosen sides. Scarborough, Toronto, and Etobicoke chose TXM; North York planted its flag firmly beside TMACS. With the storm of amalgamation brewing, the combatants were in for a muddy conflict.

Many evaluators of the two systems already held entrenched views. Furthermore, post-amalgamation jobs were on the line. Sparks flew. Vitriol and confrontation reigned. Surprisingly, Wanda Liczyk was deeply involved in even the smallest details. A passionate advocate for TMACS, she made her views heard in every round of the debate. In the end, the evaluators favoured TXM, and the Transition Team, appointed by the Province to oversee amalgamation issues, approved. TXM had decisively won the battle. It lost the war, though.

Wanda Liczyk was angry about the TMACS defeat. Was her attachment to TMACS or was it to Michael Saunders? That is impossible to sort out. Ms. Liczyk made it so by keeping her conflict secret even as she aggressively placed herself right in the thick of the tax system selection process.

TXM had been chosen, but Wanda Liczyk would continue developing TMACS, ostensibly because of the risk involved with TXM. By this time (June 1997), Mr. Saunders had been working on TMACS for six years. It was his livelihood. He and Ms. Liczyk continued to be close friends. In the months that followed, work continued on both systems, more demonstrations of the two systems were arranged, and a series of events took place that eventually led to the downfall of TXM. The TMACS victory was complete in October 1998.

Whenever Wanda Liczyk could favour TMACS, she did. She disparaged TXM and withheld support when it was desperately needed. She took on issues that were not hers and hid the truth from others. She secretly extended Michael Saunders's work proposals, even as TMACS was supposed to be winding down. She put him in charge of implementing TXM, almost ensuring that it would fail. She split contracts in two to stay under her spending limit. Later, she wildly exceeded her signing limit for one of his contracts. She went behind the back of her dedicated and principled subordinate, Giuliana Carbone, who was Mr. Saunders's supervisor. She dangled a promotion in front of another senior manager, seeking his loyalty to TMACS. And she summarily stopped paying TXM's development costs. In short, Wanda Liczyk was a key player in the TMACS victory.

Whatever Ms. Liczyk did for TMACS, she did for her close friend Michael Saunders. Therefore, anything she did was too much. On the surface, the switch from TXM to TMACS was businesslike. Underneath, intrigue had fuelled the tax system fight for well over a year. And the switch from TXM to TMACS should have been reported to Council. It was not.

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

## F. OTHER FALLOUT

Wanda Liczyk's conflict of interest tainted much more than the City's choice of tax software. It made office life with Michael Saunders miserable.

And there was other fallout:

- Proper documentation of Mr. Saunders's contracts was, for the most part, absent.
- Nobody ever negotiated with Mr. Saunders at arm's length. It appears that he got everything he asked for, every time.
- The documents that did survive showed that Ms. Liczyk did not protect the City's ownership of its own tax software.
- Ms. Liczyk did not protect the City's interests by including indemnity and insurance provisions in any of Mr. Saunders's contracts.
- Mr. Saunders's expenses were excessive, and were never challenged. For example, he billed for time he spent golfing and skiing with City staff.
- Mr. Saunders was paid in U.S. dollars, and his fees effectively rose by 25 per cent over the years because of the fall of the Canadian dollar.
- For years, the City's ability to collect billions in taxes depended entirely on just two consultants from the United States. There was no backup expertise if they were to become unavailable for any reason.
- Michael Saunders was paid U.S. consultant rates to act as a project manager. Project management is a task performed well by permanent City staff at a fraction of the cost.
- No one ever asked whether Canadian expertise was available for the same work.
- Michael Saunders won the City's water billing system contract by misrepresenting the project as a module of his own TMACS. Because of his favoured status, no one questioned it.
- When *NOW Magazine* ran an article about the suspicious contracts with Mr. Saunders, Ms. Liczyk sent a memo to the City Auditor to protect herself. The memo said nothing of her close relationship with Mr. Saunders and her conflict of interest. She disclosed her affair to an aide in the office of her political mentor, Mayor Lastman, but not to her boss, CAO Mike Garrett. Her attempt at damage control included strategic divulgence and outright deception of the City Auditor.

Wanda Liczyk was the Treasurer of Canada's largest city. She oversaw a

\$5.5 billion budget. Her duty was to handle public money responsibly and to be seen to be handling it responsibly. Her dealings with Mr. Saunders should have been justifiable and transparent. They were neither.





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

THE WINDS OF CHANGE CAN BRING with them clouds of turmoil, but there is often opportunity in the midst of turbulence. 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 municipalities were to function as one, they would need a solid, fully unified, Y2K-compatible IT foundation. In late 1997, many experts were predicting widespread systems failure when the clock ticked past 11:59 p.m. on December 31, 1999. That didn't happen, but back then, the prospect was chilling.

The amalgamated City would need upgraded technology fast. MFP Financial Services Ltd. saw the opportunity amid the turbulence and seized it.

#### A. AN MFP "FARMER" PLANTS A SEED

Irene Payne was MFP's Senior Vice President of Sales and Marketing. Shrewd and strategy-conscious, she 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, she said, needed both. To Irene Payne, Rob Ashbourne was a farmer.

In the fall of 1997, Rob Ashbourne, MFP's Regional Marketing Manager, met Jim Andrew, front-runner for the position of Executive Director of IT for the soon-to-be City (he got the job in May 1998). Mr. Andrew talked about the problems of amalgamation and Y2K and about what the megacity's IT needs would be. Mr. Ashbourne pitched the benefits of leasing versus buying IT equipment. Jim Andrew was interested in upgrading the City's technology, but he also saw that relieving pressure on the budget would be another plus in leasing. And he wouldn't have to go back to Council every three or four years for many millions of dollars to purchase new computers—he could simply show the lease payments in the operating budget. All in all, leasing would make life easier for City staff.

Meanwhile, the post-amalgamation roster of councillors needed new computers. Within days of meeting Mr. Ashbourne, Jim Andrew proposed to the Transition Team that the City lease 200 computers for three years to coincide with the councillors' three-year term. They were needed fast—Council would meet early in the New Year.

Jim Andrew and Rob Ashbourne met again in early December and Mr. Andrew revealed that the City would need as many as 15,000 computers, about \$80 million worth. But first, there was the matter of the councillors' computers. MFP bid aggressively on the councillors' computer leases to get its foot in the door. The pricing proposed would not make money for MFP—in fact, it would lose money—but MFP was looking to the lucrative long term.

There wasn't time for a formal tender, and though the City kept very poor records, it appears staff made good-faith efforts to get the necessary approvals for leasing the councillors' computers. Buyer Dave Beattie in Purchasing got the urgent call about the acquisition just before Christmas. Because of the extremely quick turnaround needed, he invited leasing companies, including MFP, to fax in their bids.

A week before the City announced the winner, Jim Andrew had lunch with three people from MFP. It was the first of many contacts between City staff and vendors in questionable circumstances.

Around December 30, MFP was announced as the winner. Its bid was very reasonable—which was not surprising, given that it had been calculated using a little red ink in the hope of bigger deals to come. The City signed a three-year lease with MFP for assets valued at \$991,430. The “farmer,” Rob Ashbourne, had his first harvest. And MFP’s foot was in the door.

## B. THE SEED BEGINS TO GROW

Councillors seemed surprised that shiny new computers awaited them 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 them on the hasty acquisition, and that settled things for the moment. Further IT acquisitions for councillors’ offices were put on the original MFP lease in 1998 and 1999. They shouldn’t have been. Many of the later acquisitions were made without the necessary authority.

At the end of the three-year lease, the councillors got new computers again. Jim Andrew believed that the leases for this lot of new computers would be simply another schedule on the City’s contract with MFP, and he told staff they didn’t have to get Council approval. He was wrong.

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’ computer lease renewal to Council. It was a staff error, but at the time, unfortunately, it was also business as usual. There was much mismanagement of the leases with MFP. (That story is told later.) Suffice it to say that by 2000, MFP had far more than a foot in the door of opportunity. It had moved in, and it enjoyed a de facto IT leasing monopoly.

## C. ERROR ON TOP OF ERROR

In leasing the councillors’ computers, the City piled error on top of error. Jim Andrew got 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 didn’t

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get anything in writing. There were no records to show how the decision to use faxed bids was made or how the bidding was carried out. Documentation of the whole transaction was slipshod.

On the other hand, there were mitigating circumstances for some of the errors. Amalgamation was imminent, staff were in flux, lines of responsibility were blurred, and approval processes were nebulous as the old municipalities dissolved into the megacity. In the midst of all that, getting new computers for the councillors was an urgent need. Staff were coping as best they could. On balance, they had the best of intentions in acquiring the councillors' computers and financing them through leasing.

But there were no mitigating circumstances on two points: 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 chaos 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.

## IV. THE DELL COMEBACK FROM NOWHERE

IN 1998, DELL BID ON A TENDER for a huge computer deal with the City of Toronto. Dell was knocked out of the running but came back—seemingly from nowhere—and won. Dell gave the City top-quality computers and excellent service at a great price. But there was one problem: Companies eliminated from tenders are not supposed to win.

The backdrop to Dell's make-over from out-of-the-running bidder to major supplier was the City's preparations for Y2K. Lana Viinamae was the Director of the Year 2000 Project Management Office and reported to Jim Andrew. City Council had approved \$150 million for Y2K readiness, and the spending decisions had to be made quickly. The usual Council approval was too slow for this, so Council created the Year 2000 Steering Committee to oversee the project. Council also approved the use of business cases to justify spending and delegated to CAO Mike Garrett special spending approval powers through a Delegated Approval Form.

Led by Lana Viinamae, the City's Y2K team won the race against time, pulling the City back from the brink of Y2K disaster. But after Y2K, serious concerns arose, and one such concern involved Dell. How had Dell, left off the winners' list after a Request for Proposal, ended up selling the City more than 11,000 desktops? If the seemingly impossible happens, there may be invisible hands at work somewhere. For Dell, the invisible hands started working in earnest when a small victory inexplicably evaporated.

## A. THE CITY BUSINESS SLIPS AWAY

Desktops are ubiquitous, critical cogs in the machinery of City government. By the summer of 1998, it was clear that the City would need thousands of new ones for Y2K. In the past, the City had used “value-added resellers” (VARs). VARs buy computers from manufacturers, customize them, and provide other services like installation. Jim Andrew directed Kathryn Bulko to draft an RFP to select VARs as vendors of record for the City.

Dell’s business model was not widely known at the City in 1998. Computer factories produced and warehoused standard units, which they sold to a retailer or VAR. Dell was not a VAR and didn’t sell to VARs. Instead, it built to order, combining production and customization at the factory, and then sold direct to the customer. Three VARs won the RFP. Dell wasn’t chosen—which wasn’t surprising, since the RFP was directed to VARs.

There was a small victory for Dell, though. Staff evaluating the RFP recommended continuing to buy Dell computers for City departments already using them. But Kathryn Bulko inexplicably left that recommendation out of her report to committee and Council. Dell sales representative Bruce Mortensen wrote in an internal e-mail, “We were toast!”

But all was not lost. Dell had taken advantage of a useful referral from Jim Andrew, and a kaleidoscope of systemic flaws would put Dell back in the running for a deal worth more than \$18 million in less than one year.

## B. MR. LYONS GOES TO WORK FOR DELL

Jeff Lyons was Toronto’s most sought-after lobbyist. Relationships were his stock-in-trade, and cultivating them included handing out countless tickets to all sorts of events. His annual “Brother Jeff” charity golf tournament, attended by City staff, councillors, and movers and shakers, sent a powerful message about his influence at City Hall. He delivered municipal election campaign money to candidates, and he made sure that they knew who had really gotten it for them, regardless of the source.

Government procurement can be a maze to outsiders, and lobbyists can help steer a vendor through it. Jeff Lyons’s lobbying style was different. Understanding his clients’ products didn’t matter. Doing favours for City

councillors and staff was good business, and he didn't apologize for it. He banked on favours to his clients in return. Stripped of embellishments, this was cronyism. Mr. Lyons didn't understand the City's conflict of interest policy, and nobody ever brought it up with him.

Dell needed to understand City procurement and called Jim Andrew for advice in September 1998. Mr. Andrew recommended hiring Jeff Lyons—to lobby Jim Andrew himself! Dell took his advice.

Jeff Lyons proposed a \$7,500-per-month fee, plus a "success bonus" if Dell won any business with the City. The RFP was to close the next day, but Mr. Lyons was clearly saying that it was not too late to affect the outcome. Dell hired Mr. Lyons but rejected the success bonus. Mr. Lyons would later claim that he had also asked another client, Dell Financial Services, for a success fee. But the circumstances of that request were murkier.

Mr. Lyons called Jim Andrew about Dell and found him already receptive. Later, he went to the committee meeting where the RFP report was to be discussed. Seeing him there, Mr. Andrew told Kathryn Bulko that Mr. Lyons was Dell's lobbyist, then steered her away from him. The meeting was public, and he didn't want to be seen being chummy with a powerful lobbyist. But away from the public eye, Mr. Andrew was very chummy with him indeed. He and Mr. Lyons traded valuable inside information.

The committee met on November 9, and Council would decide the RFP winners at the end of November. Dell had very little time, so Mr. Lyons took two Dell people to meet Jim Andrew. Afterward, he concluded that Mr. Andrew would help to reopen the bids so that Dell could be included.

At the Council meeting, by a stroke of luck, the report excluding Dell from the computer business was held. Dell had a window of opportunity. Dell's Bruce Mortensen met Jim Andrew for lunch and called Kathryn Bulko the same day. He thought Dell might have a second chance to bid on a contract when the City released a Request for Quotation for the computers. On November 27, the report passed, amended to request a further report describing the computers the City would buy. Kathryn Bulko started drafting the further report but never finished it.

When Council passed the report selecting three VARs, 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 had lost. Dell wrongly believed that the amendment opened the door to let it bid on the desktops, and Bruce Mortensen wrongly believed that Jeff Lyons had made it happen. Council clearly intended to buy desktops from the VARs. But that is not at all what happened.

### C. THE VARs ARE SIDELINED

In early December 1998, Kathryn Bulko issued an RFQ for up to 4,000 desktops directly to the manufacturers, not to the successful VARs. Unlike the other manufacturers, Dell was allowed to quote its prices directly to the City. The RFQ was written in a way that favoured Dell's direct sales model by cutting out the VAR middleman. Why? Because Dell had asked, in an e-mail on November 30, and Ms. Bulko had listened.

Kathryn Bulko had used outdated specifications when she prepared the RFP. Dell's e-mail had given her suggested hardware specifications, which again favoured Dell's built-to-order model. Kathryn Bulko used those specifications in the RFQ. Thus, Dell defined the conditions for its own success on the RFQ. Mere days after Council had approved VARs, Dell had persuaded the City's receptive, malleable staff to radically alter the direction of a multimillion-dollar procurement process that had taken months. Dell had pulled the rug out from under 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.

Predictably, Dell won the RFQ, beating the next-best bid by nearly \$200 per computer. Given the 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. On December 24, one VAR offered an unsolicited bid that beat Dell's price, but after much anxiety, the City rejected it. The VARs that had initially won a great feast were left with only the crumbs of providing installation services.

The September RFP was detailed and transparent: a 55-page public document, a 23-day response period, a six-member evaluation team, and a major report to committee and Council. In contrast, the multimillion-dollar December RFQ was abrupt. It went out in a one-page e-mail, with no warning and without verifying that the recipients were even in their offices



that day. The responses were due back in 24 hours. Ms. Bulko told Purchasing about the “mini-RFQ” only after it was set to go. A purchase this large needed approval from Council or a Y2K Delegated Approval Form, but there was neither.

The decision to include Dell in the RFQ had to have been Lana Viinamae’s, and lobbying by Jeff Lyons might well have influenced her. Ms. Viinamae also failed to seek the necessary approval. Kathryn Bulko was also responsible: not for complying with Bruce Mortensen’s strategy (she was simply outmatched by more experience in commercial competition there) but for failing to raise the need for approval.

Since Dell’s computers cost almost \$200 less than the competition’s, the City was able to replace more computers than originally proposed without spending more. But Lana Viinamae didn’t report this change to Council, as she was required to do.

In June 1999, happy with Dell, the City ordered 3,500 more computers—without a tender or Delegated Approval Form and without informing Council. Ms. Viinamae may have made the right business decision not to tender, but that is not enough. Spending the taxpayers’ money demands transparency and accountability, which in turn requires the right approvals.

“Yeah Baby!!!” It was a huge win for Dell, and Bruce Mortensen didn’t suppress his excitement as he spread the news in an internal e-mail.

During the inquiry, many details came out about City officials accepting excessive entertainment. Dell offered none of that. In winning a multimillion-dollar contract, it paid for only a few business lunches and one golf game. Dell’s restraint and its deference to the imperatives of public service distinguished it markedly from others in this inquiry.



## V. MFP HIRES A HUNTER

ROB ASHBOURNE HAD WON THE COUNCILLORS' computer leasing business for MFP in late 1997 and had tended the City account in the year and a half that followed. He had met with some IT and Finance staff, but Irene Payne thought he wasn't aggressive enough. He would set up meetings with Wanda Liczyk but she would cancel them. He had not even tried to contact Councillor Tom Jakobek, the City's budget chief. With the leasing business for the City's huge IT acquisition hanging in the balance, Ms. Payne's competitive strategy was to replace Rob Ashbourne, the farmer, with a hunter—someone who could cultivate relationships with the decision makers.

Enter Dash Domi. He was charismatic, energetic, and aggressive, and he had a famous last name. He had been a hairdresser for 11 years and had later dabbled in a few business ventures, but he had no experience in leasing or in working in a large organization. That didn't bother Irene Payne. Technical people were always available to help with the details. She was looking for other qualities in a sales representative. She wanted someone who wasn't afraid to pick up the phone; someone who could get in front of people. In Dash Domi, Irene Payne had found her hunter.

Dash Domi started at MFP with a generous draw of about \$100,000 per year, a car allowance, and an unlimited expense account. But before long, he would collect bonuses totalling more than 10 times his projected annual income, all for a single transaction. He would become a millionaire.

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. Irene Payne deployed him to work on the City account. His job was to find out who the decision-makers were and get MFP in front of them.

With the help of his friend Vince Nigro, a Special Assistant to Mayor Lastman, the targets were identified: Wanda Liczyk, Jim Andrew, and Councillor Tom Jakobek. Dash Domi wasted no time. By the end of March, after just months on the job, he had cultivated contacts that Rob Ashbourne, tending the City of Toronto account for almost two years, had not.

How did he do it? Persistence. He started calling Wanda Liczyk, and when she didn't return his calls, he went to a City committee meeting and introduced himself to her. After that first meeting, he kept calling her assistant for an appointment. He might have invited Ms. Liczyk to MFP's private box for a few hockey games. Still no luck. She was difficult to reach and notorious for cancelling meetings. Then he played the Domi card. He invited her and Jim Andrew to the Tie Domi charity dinner, a chance to rub elbows with the sports elite and other notables, and they both accepted.

After that evening, Dash Domi and Wanda Liczyk grew to like each other and there were more evenings out—though probably not as many as might be supposed from Mr. Domi's notoriously inaccurate expense receipts. While there was no evidence that the relationship was sexual, there is no doubt that she failed to maintain the professional boundaries and distance one would expect of the CFO of the largest city in the country. She even let him make a hair appointment for her with his good friend, whom he considered the best stylist in town. He called her frequently at home, including on weekends and sometimes late at night, and she invited him to her 40th-birthday party at her home.

Dash Domi had easily jumped over the public sector ethics defence line and into Wanda Liczyk's private life. For years before MFP arrived on the scene, she had intermingled personal and public interests in her dealings with Michael Saunders. It is perhaps not surprising, then, that she was willing to do so again with a disarming flatterer like Dash Domi. As she had done before with Mr. Saunders, Wanda Liczyk walked into a conflict of interest with her eyes wide open. As she had done before with Mr. Saunders, she adamantly denied that her relationship with Mr. Domi compromised

her judgment. In both instances, she failed to see that close friendships can compromise decision-making.

Wanda Liczyk clearly knew that boundaries existed, even if she didn't quite get where the line should be drawn. When MFP flew her on a chartered jet to a hockey game in Ottawa, she paid back part of the cost. She turned down MFP's invitation to Hawaii—that was over her line of comfort. But she had no problem accepting meals, hockey tickets, and rounds of golf paid for by vendors with active City contracts (not just MFP). In the summer of 2000, Wanda Liczyk appeared in a testimonial in MFP's annual report, a clear example of her compromised judgment in her dealings with MFP.

Attentiveness and friendship had worked on Wanda Liczyk, but Dash Domi had a different tactic for Jim Andrew: the trough. It overflowed with hockey tickets, basketball tickets, golf games, lunches, and dinners—and it worked. Jim Andrew tried to justify accepting all this largesse as an opportunity to learn about suppliers' products. But that excuse, flimsy at best, collapsed when applied to Dash Domi, who admitted that he probably didn't have the know-how to discuss business. When Mr. Andrew was considering applying for a promotion, Mr. Domi arranged a meeting for him with Paul Godfrey, the extremely well connected former Chairman of Metro Toronto and close friend to the Mayor. Mr. Domi picked up the tab. Mr. Andrew also appeared in the testimonial in MFP's annual report.

Jim Andrew's prodigious appetite for corporate freebies was not limited to MFP's offerings. Between 1998 and 2001, he averaged at least one outing a month courtesy of other suppliers: golf, hockey games, a ski day, parties, lunches, dinners, cocktails. And then there were the big trips. One supplier flew him to the Masters golf tournament in Georgia and paid for his ticket to the tournament, hotel, and meals. Another flew him to England and put him up for two nights, all for a brief meeting at its London office. Knowing his supervisor would not approve these trips, Mr. Andrew didn't tell her. The message he sent by accepting all of this corporate entertainment is clear and troubling: Jim Andrew, a public servant, was for sale.

Key decision-makers at the City were almost pathetically vulnerable to sales tactics in the guise of entertainment and favours. The existing culture offered no resistance. It was about to change. The City implemented a new conflict of interest policy in 2001. Kathryn Bulko described the change as

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culture shock. 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.

In just the three months from the time he was put on the City account to the release of the RFQ at the end of May, Mr. Domi submitted nearly \$20,000 in entertainment expense receipts to MFP related to City people. But Mr. Domi's receipts couldn't be considered in a conventional way; one could not assume that the person shown on the receipt had been present in physical form. If he was thinking of someone while entertaining someone else, he would attribute the receipt to the person he had been thinking about. Sometimes he wouldn't even put a name on the receipts, and someone at MFP just guessed or put in a name at random. Nonetheless, his expenses were never questioned by his superiors.

Despite the unreliability of Mr. Domi's records, he certainly bestowed lavish entertainment and gifts on City people, with the approval and encouragement of MFP. There were hockey tickets in private boxes, chartered jets to games in other cities, dinners, golf games, and gifts. When it came to gifts and entertainment, MFP treated public sector clients and private sector clients alike. This was a crucial blind spot. Mr. Domi was specifically instructed to develop relationships with key City personnel and given an unlimited expense account with which to do it.

For three years, the MFP cash also flowed to charitable events such as the Mel Lastman charity golf tournament, the Mayor's Ball for the Arts, and the Moose in the City initiative. MFP contributed \$2,500 to Mel Lastman's 2000 mayoralty election campaign. Dash Domi alone spent an estimated \$60,000 to \$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

ON MAY 2, 1999, A CHARTERED JET flew six men to Philadelphia for a Stanley Cup playoff game. The host of the evening was Dash Domi, MFP salesman and brother of Maple Leafs star Tie Domi. The Leafs won that night, but Dash Domi scored, too. The salesman's prize guest on the junket was the Budget Committee Chair, veteran City Councillor Tom Jakobek. Yet later, Mr. Jakobek would adamantly, repeatedly, and publicly deny that he was on that flight. Referring to the inquiry, he boasted to one reporter, "They haven't got anything."

The other passengers were Vince Nigro, former aide to Mayor Mel Lastman, Harold Peerenboom, then chair of the Toronto Harbour Commission, Mr. Peerenboom's son Gregg, and businessman Jim Ginou. Mr. Jakobek knew all of them. The sixth passenger was, of course, Dash Domi.

Vince Nigro and Dash Domi both feigned memory loss about whether Tom Jakobek was with them on the plane. The inquiry had the flight log showing that he was.

The commission subpoenaed Mr. Jakobek's cellphone records. A copy of the records was sent to Mr. Jakobek. They showed eight calls from Philadelphia on the night of the game, two to his home. They proved that he was a strategic liar.

When Tom Jakobek stepped into the witness box, he admitted publicly for the first time that he had lied to the press. He had lied to a reporter who had caught him off guard, he explained, and his inexplicably emotional

response had been to deny everything. Then he had had to go on lying—to four more reporters. So, to the press, he had lied and lied and lied and lied and lied. Yet he said he had always intended to come clean when he testified at the inquiry under oath. His story was preposterous. Serial lying for months and then confessing at a public inquiry is a transparently bankrupt strategy, and a veteran politician like Tom Jakobek, then running for Mayor, would know that. He said, “It has never, ever, ever, been my intent to mislead... this inquiry.” That was not merely implausible; it was another lie.

While he was still testifying, the *Toronto Star* reported that Mr. Jakobek had asked his lawyer at the time to threaten to sue the paper for saying earlier that others were telling a different story after he first denied going on the Philadelphia trip. The lawyer’s letter told the *Star* that Mr. Jakobek would testify under oath that he wasn’t there. So he didn’t always intend to come clean at the inquiry after all. He had also been lying to his own lawyer.

Confronted with yet another lie, Mr. Jakobek squirmed and stammered. He danced as fast as he could—deflecting, contorting, backtracking, bending himself into a pretzel to talk his way out of it. And he had another story ready.

Now he said his friend Harold Peerenboom had paid for the trip and had invited both him and Dash Domi. In return, Mr. Jakobek had given Mr. Peerenboom his gold Leafs tickets for another game. He embellished the story with colourful asides about their previous trips together. But there was a gaping hole in his embroidery. If Mr. Peerenboom had paid for the trip, not MFP, why lie about it? On the next hearing day, Mr. Jakobek’s lawyer asked for the opportunity to clarify what his client had meant to say. Mr. Jakobek had only wanted to say that he assumed Harold Peerenboom had paid for the trip, not that he actually had. In fact, he hadn’t given Mr. Peerenboom his gold hockey tickets in exchange for the outing—Mr. Peerenboom had paid him for them and they had nothing to do with the Philadelphia trip.

Before either Dash Domi or Tom Jakobek testified, Mr. Jakobek’s new lawyer had called Mr. Domi’s lawyer and said his client would testify that he was not on the plane. Mr. Jakobek had obviously also lied to his second lawyer.

When Dash Domi was recalled to explain himself, he swore that he still couldn’t remember whether Tom Jakobek had gone on the trip. But he had-



n't mentioned the tip-off from Mr. Jakobek's lawyer in his earlier testimony. Now he claimed that the tip-off, added to Mr. Jakobek's denials in the press, had convinced him Mr. Jakobek wasn't there.

Mr. Jakobek had been revealed as an audaciously slippery operator who thought he could outmanoeuvre the press, forensic accountants, the police, lawyers, and a judicial inquiry. His strategy seemed to be to stall, suppress, lie, and gamble that he wouldn't get caught. He'd talk his way out of it if he were caught. Now he was caught, but he couldn't talk his way out of it.

But why was this trip worth lying about?

Tom Jakobek had set a course of deception about his association with MFP long before the Philadelphia story came to light. From the very beginning, when the City asked KPMG Investigation and Security Inc. to review the MFP leases, until he finished testifying at the inquiry, he lied, prevaricated, stalled, obfuscated, and lied some more. All the strands of his deceit led back to the City's deal with MFP. Tom Jakobek and Dash Domi both lied to the inquiry about the extent of their association. But the link between them exposed by the Philadelphia trip proved that Mr. Jakobek had been lying about his relationship with MFP from the beginning. His efforts to conceal that link failed and ultimately trained the spotlight on other things he apparently wished to hide. Following the strands in his web of lies around the Philadelphia trip uncovered a larger and more convoluted web of deceit, entangling other events involving Tom Jakobek and Dash Domi, and Tom Jakobek and his family. Both Mr. Jakobek and Mr. Domi would later return to the witness box. Both would once again prove to be inept but persistent liars.

Tom Jakobek and Dash Domi were both like the boy who cried wolf. Through their prolific lying, they themselves cast doubt and suspicion on everything they said, unless it was supported by credible sources.



## VII. THE WORD ON THE STREET

BY EARLY 1999, THE WORD WAS ON THE STREET that the City would issue a major leasing tender to meet its far-reaching Y2K computer needs. There would be stiff competition for the business. Two of the companies getting ready to bid were MFP and Dell Financial Services Canada.

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 speed past the competition by hiring a lobbyist. In early 1999, two bidders did just that. Neither of them knew it at the time, but both MFP and DFS, prime competitors for the City's leasing business, hired the same lobbyist, effective the same day. They both hired Jeff Lyons.

Mr. Lyons's DFS documents surfaced only after he testified at the inquiry. He had said under oath that the file had been destroyed. These documents provided insight into an influential lobbyist at work. One memo, for example, made it clear that Jeff Lyons had a mole inside the City, leaking secret information on other City officials' views on leasing. The mole was Jim Andrew.

Jeff Lyons believed that DFS had to get to the pooh-bahs, as he called them. He got DFS a meeting with Wanda Liczyk, knowing from Mr. Andrew that she was opposed to leasing. But Ms. Liczyk had helpfully advised Mr. Lyons to get political backing, and Jeff Lyons knew just the

right pooh-bah: Tom Jakobek, his close friend for nearly 20 years. He took DFS sales representative Scott Marentette to meet him.

This time, the lobbyist extraordinaire had not orchestrated the meeting smoothly. Mr. Marentette came away suspecting that Mr. Lyons was also working for MFP. He was right. But Mr. Lyons had denied working for MFP, and DFS decided to stay the course. Right to the end, DFS benefited from Mr. Lyons's strategic access to internal City processes—but not enough. DFS lost to MFP.

MFP's Irene Payne found out that Jeff Lyons was working for DFS on its bid on the same day as the DFS meeting with Tom Jakobek. Both clients saw it as a conflict, and both were upset that their lobbyist was working for the competition. As it turned out, Mr. Lyons had previously disclosed to her that he worked for Dell and DFS, but Ms. Payne had forgotten or hadn't noticed that part of his letter. She sent him an angry letter and fired him, then pragmatically rehired him three months later. Mr. Lyons stayed with MFP from September 1999 until January 2002, working on various projects, including the photocopier lease.

While the companies were pursuing their pre-bidding strategies, the draft RFQ made a quick e-mail journey. Jim Andrew sent it to Tom Jakobek at his request. The request was unusual, but Mr. Andrew complied without question. Later, he saw that as an error in judgment. It was. Tom Jakobek denied that he had asked for the draft and denied that he had seen it. He lied. Why? Asking for it revealed his interest in the fortunes of MFP. Mr. Jakobek's dishonesty underscored his awareness that he should not have asked for the draft RFQ and discredited his own earlier assertions that he was not involved in this tender.

Mr. Marentette and his boss, Rob Simone, had another meeting with Jeff Lyons before the bids were due. The meeting led to a police investigation, halted the inquiry temporarily, and exploded onto the front page of the *Toronto Star* with a headline screaming, "Bribery Allegation Probed in Computer Contract."

What was the story? During a 10- or 15-minute meeting with Scott Marentette and Rob Simone at DFS, Jeff Lyons said something very odd: "Rob, what is this deal worth to you?" Mr. Simone didn't understand. "Well, Tom says it's worth one hundred and fifty grand," Mr. Lyons said. Mr. Simone still didn't understand. Mr. Lyons explained, "Well, you know,

MFP would pay one hundred and fifty grand. Others would pay one hundred and fifty grand.” Mr. Simone thought if they paid this money, they could bid whatever they wanted. Mr. Lyons said no, they had to be the lowest bidder. “Then why—why do I have to pay this one hundred and fifty grand, if low wins?” Mr. Simone asked. Mr. Lyons did not respond, and the conversation ended.

Mr. Simone and Mr. Marentette reported the conversation to their boss, who wanted to fire Mr. Lyons immediately. Ultimately, with the bid deadline just days away, they decided against firing him.

By chance, many months later, Mr. Simone and Mr. Marentette separately described this meeting to another lobbyist, who later mentioned it to a reporter covering City Hall. Meanwhile, inquiry investigators had also received the information, which led to a criminal investigation by the OPP in which no charges were laid.

When Mr. Jakobek spoke to the OPP, he said he had known Mr. Lyons for over 20 years—as a lobbyist. That response was intended to mislead. He disavowed a close friendship of 20 years.

Police investigations are conducted in private. The inquiry’s investigation unfolded in the blazing light of intense media focus. Some lawyers questioned the witnesses with precision and courtesy. Others harried them mercilessly. For days, the details of the conversation were ripped apart and rolled over and over until every word had been intensely scrutinized for the smallest morsel of meaning. After it was all over, Rob Simone emerged as an honest and fair witness who was ultimately not shaken on the critical points of the conversation.

Mr. Lyons did not fare as well. He said he was trying to negotiate a success fee with DFS, but his story dribbled out, giving the impression that he was making it up as he went along. Much of what he said about the success fee didn’t ring true. His responses were self-serving and raised more questions than they answered.

Was Mr. Lyons shaking down DFS for a success fee? Possibly. If so, he was taking advantage of DFS’s vulnerable position on the eve of the tender to enrich himself. But why would an experienced lobbyist make the rookie mistake of asking for money from two people who couldn’t give it to him? And the timing made no sense, either. Mr. Lyons asked Dell for a success fee at the very outset and Dell refused. If he wanted a success fee from DFS,

why not negotiate with his clients upfront rather than present an all-or-nothing amount near the end and then immediately back off? And if he was negotiating a success fee, why did he never use that term?

Was Mr. Lyons seeking an improper payment for someone else? Mr. Lyons undoubtedly said “Tom” said the deal was worth \$150,000. And he meant Councillor Tom Jakobek. If Mr. Lyons had been 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? Was Jeff Lyons delivering a message for his close friend Tom Jakobek, 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.

The conversation that drew so much attention remained what it was at the beginning: a study in carefully constructed ambiguity. Ultimately, 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.

## 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 don't have to do that. They make a shopping list and interested sellers bid on it. That's how the City of Toronto went shopping for computer leasing services in 1999.

The Purchasing Division was responsible for creating the shopping list, using information from the department making the request. For the computer leasing tender in 1999, the department was IT.

In the aftermath of amalgamation, Purchasing was coping with an unprecedented blizzard of paper. In 1998, with procedures from the seven former municipalities all overlapping and intertwining, the City issued 27,584 purchase orders and contracts for a total value of about \$463 million. In contrast, by 2001, with the documents and policies standardized, the City was able to use slightly over 4,000 purchase orders and contracts to buy goods and services worth \$1 billion.

No one in Purchasing had any meaningful experience with leasing. Nevertheless, they sought no outside expertise before issuing the call document. They thought that this square-peg acquisition could be hammered into a familiar, round-hole purchasing process.

Purchasing and IT were also at cross-purposes about what was being acquired. For example, Purchasing didn't know that 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 that could be leased during that period. Had staff in Purchasing known the facts, the type of tender document issued, its contents, and the evaluation of the bids would likely have been very different.

## **A BAD BARGAIN STARTS WITH A BAD SHOPPING LIST**

The tender document issued by Purchasing was an RFQ, but it should have been an RFP. RFQs are used when the City knows exactly the type and quantity of goods it wants to buy, while RFPs ask bidders to provide a solution to a problem that could be solved in different ways. IT led Purchasing to believe that the acquisition would be a simple question of the best price for exactly the same thing. It was more than that. The tender included hardware, software, and complicated financial considerations like a sale and leaseback.

How did the tender end up being issued as an RFQ? It goes back to IT, the drafting of the RFQ, and the consultant Jim Andrew assigned to work on the computer leasing transaction: Brendan Power. Mr. Andrew and Mr. Power were long-time friends and co-workers, and Mr. Andrew was under the mistaken impression, as was everyone else at the City involved in the leasing transaction, that Mr. Power was an expert in IT leasing. He was not. But he did not set them straight about his lack of experience and became the lead person on the acquisition, including drafting the RFQ. To make things worse, he was virtually unsupervised by senior IT staff.

Finance staff had some limited involvement in drafting the RFQ and made minor revisions and suggestions (some of which were then ignored by Brendan Power), but for the most part, they took a hands-off approach. This was unfortunate. It would have been the first opportunity for staff from Finance and IT to sit together and discuss what they expected leasing in general to accomplish. Had they done so, they could have laid the groundwork for oversight of leasing. 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. That didn't happen.



The result was an inappropriate tender document that was inadequate and riddled with mistakes.

- The City didn't make clear what it was buying. The RFQ didn't say how much the transaction was worth, so the bidders were being asked to bid on financing something without being told how much the product was likely going to cost. The puzzled bidders had to contact the City for clarification.
- While IT's expectation was that the successful bidder would become a vendor of record for an ongoing leasing program, this was not in the tender document. It was not even clear between the City departments drafting the shopping list.
- There was only the merest hint that a sale and leaseback was involved.
- Bidders were required to guarantee their lease rates for 90 days. With all that needed to be done, this was hopelessly unrealistic.
- The RFQ didn't specify any mandatory requirements. So it couldn't specify that any bids not meeting mandatory requirements would be disqualified.
- It asked bidders to describe the mechanism that would be used for changing the lease rate, but it didn't say that there would be consequences for not doing so.
- Brendan Power did not seek advice from outside legal counsel retained by the City specifically to address Y2K issues such as this. Nor did he heed the warnings in the Provincial Auditor's report about leasing mistakes made by the provincial government.

Brendan Power must bear most of the blame for the woefully inadequate RFQ. He knew he was unqualified to draft it and should have said so and made it clear that expert advice was needed. But Jim Andrew is also to blame—first, for assigning Mr. Power to be the lead on the RFQ without vetting his ability to do the task and, second, for failing to supervise him in any way. Lana Viinamae also should have provided more supervision to Mr. Power and should have reviewed a copy of the RFQ when she was Acting Director of IT.

While Purchasing staff had only a limited role in the drafting of the RFQ, it would have taken only a few thoughtful questions to alert them

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to the problems with the tender document, including whether it should have been an RFQ or an RFP. Finance staff also could have taken more initiative with the RFQ and ensured that their suggestions made it into the final version.

The way the RFQ was drafted 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.

## IX. MFP'S RESPONSE TO THE RFQ

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 computer leasing RFQ was unclear about a number of important features, but one question stood out: how much the deal was really worth. Although the RFQ said the bid was worth \$43 million, senior people at MFP had various interpretations. Everyone agreed it was a major deal and most, including MFP's competitors, assumed it would ultimately be worth between \$80 million and \$150 million.

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 day before the bids were due. The memo described the opportunity: an RFQ for 9,000 desktops, 175 servers, and 200 notebooks. He reminded them that MFP had already made inroads at the City with the leases for the councillors' computers a year and a half before. And they had one other advantage, he said. They had developed "very strong relations" with key decision-makers Tom Jakobek, Wanda Liczyk, and Jim Andrew. The trio had been enjoying Dash Domi's lavish hospitality while MFP was trying to persuade them that leasing was the way to go. Nevertheless, price was the critical factor in the bid. 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 would not tip the balance in its favour.

So they bid low—so low that it seemed MFP stood to lose nearly \$1.5 million. It didn't make sense, on the surface.

Lease pricing has two components—a front end (the lease rate) and a back end (the residual value). A leasing company will typically price its proposal attractively at one end or the other, but rarely at both. But MFP saw room to manoeuvre. MFP quoted a low 90-day lease rate but, unlike the other bidders, didn't tie future rates to an index or other benchmark. MFP President Peter Wolfram conceded that MFP's response did not really describe a mechanism to calculate rates beyond the 90-day term. It was a risk. But it was the mechanism MFP used for about 75 per cent of its business, and the risk of being disqualified was probably low.

MFP's front-end rate was significantly lower than its competition's, but MFP could have been outbid if another bidder had squeezed the back end. In an admittedly unusual and risky move, MFP squeezed both ends. On paper, it looked like a loss, but based on typical customer behaviour, MFP knew it could enhance the deal later if it won. How? Through lease rewrites, additions to leased assets, changes in asset groupings, early termination, end-of-term decisions, and penalties—or perhaps by extending the term of the lease. So MFP was not likely to lose money on the deal. Actually, it was in line to make a huge profit.

Price was the critical factor for the City, but it wasn't the only one. Value-added services would be considered, too. MFP spiced its deal with a range of services designed to be attractive to the City, like asset tracking and disposal of obsolete hardware, all at no cost to the City. Oddly, none of this ended up in the final contract.

The bid was ready, and it needed only a covering letter. MFP's letter began with "Dear Wanda." Of course, no one thought for a second that the CFO and Treasurer would open the bid envelopes herself. But the RFQ made it clear that the bidders' responses were to go to Dave Beattie, whose boss's boss's boss was 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. The letter was signed by Dash Domi, "Regional Sales Manager," an inflated title.

## X. DECISION TIME

JUNE 11, 1999, WAS THE DEADLINE for responses to the RFQ. For the hopeful vendors, it was all over but the nail-biting. They had crunched their numbers, polished and honed, and promised no end of excellence and service.

The Purchasing staff opened the bids the same day they were due. Dash Domi and Sandy Pessione, who had handed in MFP's bid with minutes to spare, testified that the bids had been read aloud and that MFP was the lowest bidder. The City's records weren't clear about whether the bids had been read out, and staff couldn't remember. 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 the responses still had to be evaluated and reviewed.

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 as was required in issuing the best possible RFQ. The problem, of course, was that the responses came back to the same dysfunctional source that had sent out the poorly drafted RFQ a mere 11 days before. 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. IT had one understanding, Finance had another, both unstated. As a result, in conducting the analysis, Finance ended up with the wrong idea of the scope of the analysis to be done.

Senior Financial Analyst Nadir Rabadi did what he was asked to do: compare the cost of leasing with the cost of purchasing. There were no pre-defined evaluation criteria, but it likely wouldn't have made much difference. This was supposed to be an RFQ, not an RFP. With an RFQ, the winner is generally the lowest bid that meets the specifications and requirements in the tender document.

Nadir Rabadi concluded that MFP had the lowest lease rate based on four assumptions.

- The reports to the Policy and Finance Committee (P&F) and to Council would be done within the 90-day guarantee period (they were).
- Council would make a decision within that same 90 days (it did).
- The lease documentation would be completed within the 90 days (the evidence is unclear, but one of the important documents wasn't signed until October 1, after the 90 days were up).
- Most important, \$43 million worth of assets would be put on one lease within the 90 days (they weren't).

Lana Viinamae and Brendan Power had given Mr. Rabadi to understand that all \$43 million of assets would be put on lease within the 90 days. That was wrong. But, inexplicably, Ms. Viinamae knew nothing about a 90-day rate guarantee. No one had ever told her, so she didn't know the City had to move quickly.

Mr. Rabadi asked Brendan Power to verify his numbers. Mr. Power gave them only a cursory look, not checking whether they tied in with IT's assumptions about the deal. And that was the only IT involvement. Neither Lana Viinamae nor Jim Andrew had anything to do with the evaluation. Mr. Andrew agreed in the inquiry witness box that the RFQ should not have been analyzed on price alone, IT should have been more involved, and an expert should have been retained. But he was four years too late with that appropriate management oversight.

Was there anything wrong with what Nadir Rabadi did? A leasing expert hired by the inquiry 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.

So the analysis of the bids was as flawed as the RFQ, and this would

lead to a flawed report to committee and Council. Jim Andrew and Wanda Liczyk signed the report, but before they did, about 10 people from Finance and IT had worked on it, mostly Mr. Rabadi and Mr. Power. No one person had version control, and it was difficult to make out who made what changes to the draft report. As version control was shifting, Mr. Rabadi's assumptions were becoming lost, and many of Wanda Liczyk's suggestions, which Mr. Rabadi had mostly incorporated, were deleted by Mr. Power.

After all the drafts, reviews, edits, and changes, the final version of the report that went to P&F recommending MFP as the successful bidder was not clear, accurate, impartial, or balanced. It wasn't written in a way that a non-IT person could understand, to start with. But other features made it puzzling even to IT experts. For instance, the wording of the report later caused confusion over the meaning of the recommendation to enter into a contract with MFP for a "three-year period." IT understood it to mean that the City would enter into a vendor of record relationship with MFP for three years, while Finance understood it to mean that the lengths of the contracts would be three years. The value of equipment to be leased, \$43.15 million, was buried in the report. And there were significant omissions.

- There was no reference to MFP as a vendor of record, even though IT assumed all IT acquisitions would be leased through MFP.
- It didn't say the lease rates were guaranteed only for 90 days or that future lease rates were anybody's guess.
- It didn't make the sale and leaseback component clear.
- There was no discussion about changes during the term of the lease (upgrades, buyouts, and other equipment changes) or end-of-lease options.

On the morning the report was to be signed, Wanda Liczyk was at home getting ready to play in a golf tournament with a City colleague. So Mr. Rabadi faxed her a version of the report, and then he and Jim Andrew spoke to her about it. While initially frustrated with the report, Ms. Liczyk ultimately authorized Mr. Andrew to sign it for her. Wanda Liczyk and Jim Andrew must share responsibility for the report's flaws.

## A. DEMOCRACY MISFIRES: THE JULY 20, 1999, POLICY AND FINANCE COMMITTEE MEETING

The staff report on computer leasing, shortcomings and all, went to the Policy and Finance Committee on July 20, 1999. At the meeting, Councillor Tom Jakobek moved 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.

This little innocuous-looking amendment, passed unanimously by P&F and ultimately approved by Council, was to have an explosive impact on the deal between MFP and the City. It effectively opened the door for MFP to enhance its deal, resulting in a huge profit.

Mr. Jakobek denied that he was trying to benefit MFP. He said he simply wanted to ensure that staff did not dispose of IT equipment that could last longer than the three-year term of the lease. He said he had shown the wording to Wanda Liczyk and she had confirmed that it covered his concern. But Ms. Liczyk, surprised by his unusual motion, denied that, and she was more believable than he was. In any case, his amendment wasn't necessary to accomplish what he said he was trying to do.

Right after the Council meeting, an emotional Mr. Domi chased after Mr. Jakobek, wanting to speak to him. It seems highly probable that Mr. Jakobek told Mr. Domi the results of the committee's recommendation at that time. Two hours later, Mike Flanagan of MFP was telling Irene Payne that he had heard that MFP had possibly been awarded the deal. Coincidence? Maybe, but it sure looks suspicious, especially in light of Mr. Jakobek's earlier request to Jim Andrew for the RFQ and everything Tom Jakobek did to try to distance himself from Dash Domi and MFP.

This P&F meeting was six weeks after the trip to Philadelphia. In June and July, Dash Domi called Tom Jakobek more than 30 times, including on the day before the P&F meeting. He would call 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 cellphone number.

Even though City staff thought the Jakobek amendment unclear at best, and much more expensive for the City, they did nothing to correct it before the Council meeting a week later. Nor did they seek clarification from Council on the amendment to guide them through the forthcoming leasing transaction.

## **B. THE BLACKOUT PERIOD**

Much confusion and contradictory evidence surrounded the so-called "blackout period." It was generally agreed that for the tendering process to be fair and be seen to be 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.

Everyone agreed on what the start of the blackout period should be: the public release date of the tender document. There was no consensus, however, with respect to when the period should end. Throughout the inquiry, there was evidence of contact between bidders and/or lobbyists and councillors and/or City staff in the time between the release of tenders and the Council decisions.

Contact between bidders and City staff, other than through official channels, creates an appearance of favouritism if not actual advantage. To alleviate concerns about inappropriate contact and ensure a level playing field for all bidders, a clearly defined blackout period is necessary, and it must be known and understood by all City staff and bidders.

## **C. COUNCIL VOTES**

The big day of decision wasn't big at all. On July 27, 1999, Council adopted the report from P&F, including the Jakobek amendment, without discussion or further amendment. It passed without fanfare; a pro forma vote, and MFP's fortunes were secured.

Dash Domi called Tom Jakobek twice that day, but Mr. Jakobek said he didn't remember getting a call from him.

What exactly did Council vote for when it approved the P&F report? The answer depended on who was asked. Staff members had differing interpretations of the Jakobek amendment, or the “flexibility clause,” and differing ideas about the computer leasing deal as a whole.

Council did not have the information it should have had, and that information could have prompted key questions. The CAO, Mike Garrett, intelligent and insightful, would have grasped every nuance properly reported to him, but he didn’t know that the MFP deal involved a sale and leaseback. Nor would readers of the report have known that MFP was the lowest bidder only within the 90-day guaranteed rate window, which was already half over when the report went to P&F. If staff had put this in the report, councillors might well have asked the crucial question: “What if all the equipment is not on lease within 90 days?” If they had been given the information that would have prompted that question, things might have turned out much better for the City.

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. Staff should have gone back to Council to clarify the amendment instead of just forging ahead blindly. If the amendment actually meant that five-year leases were now possible, the original tender had changed dramatically, and the City should have re-tendered the deal.

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.

## XI. WHEN DID MFP KNOW IT HAD WON?

WHEN AND HOW DID MFP LEARN the good news that it had won the computer leasing RFQ? Obviously, 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 have been an acknowledgment of some kind, at least. However, there is reason to believe that people at MFP were confident they had won the deal before City Council voted.

By July 14, MFP's in-house legal counsel had started to draft the contract between MFP and the City. MFP said it frequently did this before a deal was done in order to demonstrate to its clients that it was ready to go. On the same day, Brian Stevens, MFP's Treasurer and Vice-President of Debt Placement, e-mailed Dash Domi and Sandy Pessione. He congratulated them and asked for details of the deal so that he could start putting in place the necessary funding. Mr. Stevens testified that he had meant the congratulations sarcastically—he had been annoyed about not having been told sooner. But it was impossible to discern the sarcasm and hard to imagine how Mr. Domi could be expected to catch the intended tone, given that Mr. Domi and Mr. Stevens had never met.

Mike Flanagan, MFP's Senior Vice-President of Trading and Asset Management, also recalled hearing that MFP had been the lowest bidder,

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which had led him to believe that MFP would probably win. He called Irene Payne two hours after the P&F meeting to let her know what he had heard: MFP had possibly been awarded the deal.

This was Dash Domi's first win for MFP, but he couldn't remember how he had learned that MFP was the successful bidder.

So the question about when and how MFP found out that it had won remains open, but the events all point to the conclusion that MFP probably did know that it had won before Council made a decision.

## XII. MFP AND THE CITY SIGN A DEAL: THE MASTER LEASE AGREEMENT

WHEN MFP LEARNED THAT IT HAD WON the computer leasing contract, it was ready. It had already begun updating the 1997 councillors' computer lease agreement and had a draft agreement already to go. The lease rates were valid only until September 11. The clock was running. To benefit from the quoted rates, the City had to get the master lease agreement (MLA) in place, and fast.

Brendan Power was the City's point person; Rob Wilkinson was MFP's. While Mr. Power did have some expertise in leasing, he did not see himself as a leasing expert. Yet with very little oversight, he negotiated a multimillion-dollar contract almost entirely on his own. He did not involve the Finance department in negotiations. Nor did he make proper use of the City's outside counsel, Mark Fecenko, a senior lawyer who had co-written a book on computer-related agreements, and who had been specifically retained to help on Y2K matters such as this.

The City and MFP began negotiations in early August. By August 17, they were done. The next day, three weeks after the deal had been approved by Council, Mr. Power contacted Mr. Fecenko about the leasing deal for the

first time to ask him to review the document—to do the “legal scrubbing,” as he called it. He never once mentioned to him that the deal was worth \$43 million.

The MLA Brendan Power sent Mark Fecenko contained a reference to the RFQ and MFP’s response, and Mr. Fecenko asked for a copy of both to better understand the deal. 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 had had enough dealings with Mr. 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.

One day later, Mr. Power told Mr. Fecenko that the contract had to be signed quickly because key City officials were starting vacations soon. He wanted Mr. Fecenko’s changes so that he could get them to MFP’s lawyer. Mr. Fecenko had a turnaround time of about 24 hours, and he hadn’t seen the documents that should have been the foundation for the MLA.

The same day, Mr. Fecenko reviewed the MLA and wrote to Mr. Power to raise four points to discuss with MFP. They also talked that day about Mr. Fecenko’s concerns about certain terms and conditions. Later, Brendan Power let Mark Fecenko know that MFP had accepted all but one of the new terms. He didn’t tell Mr. Fecenko that MFP had rejected one of Mr. Fecenko’s important changes. Was there anything else he didn’t tell Mr. Fecenko? Yes, there was. There were four provisions in the MLA that appeared to vary from MFP’s response to the RFQ, but Mr. Power didn’t tell Mr. Fecenko about them. Why not? He didn’t notice.

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.

In the final analysis, the executed lease documents hadn’t incorporated 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 when the negotiations were done—and to do it in less than a day as a matter of urgency.

The MLA could very likely have been more favourable to the City, but the City was bound by the deal it had made. But approving the Master Lease Agreement was only the beginning. Administering the lease would bring more costly mistakes.





## XIII. MORE BUMBLING: EXTENDING THE LEASES FROM THREE YEARS TO FIVE

THE RFQ ASKED FOR THREE-YEAR LEASE RATES, yet the very first lease schedule the City signed with MFP on October 1, 1999, 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 had quoted in its bid. Yet experts told the inquiry that the extension to five years had little if any merit.

By the time MFP and the City signed the first lease, there was already \$38 million of equipment on lease. By the end of 1999, there was \$57 million. By the time the City halted the leasing program in June 2001, it was \$84 million. The inquiry's leasing expert testified that total lease payment obligations would end up being more than \$100 million.

How did it happen? The City was the victim of its own failings, plagued once again by poor communication between Finance and IT, insufficient analysis, and minimal attention paid to the matter by all involved. The lack of documentation is astounding. Not one person thought to document what was happening.

After City Council awarded MFP the contract at the end of July 1999, MFP had regular meetings with IT staff about the leases. One of the City's concerns was to get some breathing room to develop a refresh strategy for the desktop computers that had all been replaced at once because of Y2K pressures. Rob Wilkinson told them a five-year lease would give the City time to develop a strategy. 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.

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. 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 had felt confident that that would not happen.

The proposal looked attractive to IT staff, and Rob Wilkinson turned his attention to Finance. He met with Wanda Liczyk and Len Brittain on September 21 and presented the five-year lease scenario to them. He was under the mistaken impression that everyone in IT was on board with the five-year lease proposal. But Lana Viinamae, for one, was adamantly opposed to lease terms which extended beyond the life span of the computer assets.

Rob Wilkinson 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. 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 Mr. 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.

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. After the meeting, MFP prepared the first lease, a five-year term for \$20 million. Ms. Liczyk denied that she had directed MFP to prepare the lease. She claimed that she expected only that MFP would send a written quotation on five-year lease rates.

She also asked Len Brittain to assess whether the City should pursue the five-year proposal. Mr. Brittain didn't have MFP's final numbers, so he did a crude analysis of the 60-month option, at a conceptual level and using hypothetical numbers. But even this rudimentary analysis showed that a 60-month lease did not make financial sense, so he didn't take it any further than that. Unfortunately, Mr. Brittain didn't follow up on his conclusion or delegate further analysis to his staff. Nor did he inform his boss, Ms. Liczyk, that it made no financial sense to extend the lease terms to five years.

This minimal examination would turn out to be the City's only financial analysis of the five-year lease option before these leases were signed by Lana Viinamae on October 1, 1999. After signing, she sent out an e-mail that said the lease term was to be 60 months "as requested by Finance." Sixty months? Where did that come from? Council hadn't approved a 60-month lease term, so what did she mean? Neither Wanda Liczyk nor Len Brittain reacted to this comment in her e-mail. Len Brittain simply assumed the direction must have come from Wanda Liczyk, the very person he had not told about the results of his analysis.

So who actually authorized the five-year leases? The question was the cue for a chorus of "Not me." But it had to have been Wanda Liczyk. Lana Viinamae was adamantly opposed to five-year leases. No IT person would want leases longer than the life of the asset. Len Brittain would never have made 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 the change contravened the authority granted by Council and without 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.

Staff should have asked for Council approval of the lease extension from three to five years. Wanda Liczyk herself did not think the Jakobek amend-

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ment contemplated extending the lease term for all the 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 done so, the significant cost increase would have been obvious, as it had been to Len Brittain.

## XIV. 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 a tale of massive bureaucratic mismanagement that ended up costing the City millions of dollars.

The July 1999 report to P&F had specified that IT would centrally manage the contract administration. The Contract Management Office (CMO) was created within IT to do just that. By the fall of 1999, Lana Viinamae was in charge of computer leasing at the City. She had no prior technology leasing experience. She hired three people to staff the CMO, but none of them had any leasing experience either. As a result, the CMO was simply not up to the job.

The CMO and other IT staff were operating under the mistaken assumption that Council had approved a “leasing program.” There was no leasing program. Council only authorized putting \$43 million worth of equipment on a three-year lease with MFP. 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. It is difficult to understand how so many people

could have had such a complete misconception about what Council had really authorized.

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. CMO staff had meetings with other City departments and explained the leasing procedures. They created detailed electronic tracking spreadsheets for the leased equipment. As a result, the fiction spread throughout the City.

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 really a shambles, and four debacles would show that the office was really flailing about, without expertise, and with no effective supervision.

The first was the sale and leaseback. 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.

Because City Council had never approved a sale and leaseback transaction, staff had no authority to execute the plan. Moreover, administering the sale and leaseback of IT equipment was a bureaucratic nightmare. First, no one had tracked the assets to be sold to MFP, so there was no easy way to pull together that very basic information. The City then asked all suppliers who had sold IT equipment to the City in 1999 to reissue invoices to MFP. MFP would use the information on them to create lists of equipment for the sale and leaseback. However, some items on the vendors' lists should not have been leased in the first place: toner cartridges, laptop carrying cases, power cords. The whole process was so chaotic that MFP sent one of its employees to work at the City and help sort out the mess. It took several months to finally determine which items should be on lease. In the meantime, some vendors ended up being paid by both the City and MFP, and some complained that they weren't paid at all.

The sale and leaseback had another problem. It created a provincial tax liability for the City of more than \$1.6 million. This was because the City had paid GST and PST when it first bought the equipment and paid it again

in its lease payments to MFP. The City was able to recover its entire GST overpayment, but the Province denied all but \$200,000 of the City's claim because the City was unable to show that it had intended to lease the equipment at the time of purchase. The tax implications of the sale and leaseback did not dawn on anyone at the City when they planned the transaction.

The second problem was the lease rate factors. Before the beginning of each quarter, MFP sent to the City lease rate factors for anything to be put on lease in the next three months: a cost per \$1,000 for hardware and a cost per \$1,000 for software. But no analysis was ever done to determine whether these rates were competitive, or how they compared with the City's own borrowing rate. No one ever negotiated the rates with MFP. There was no procedure for sending the rates to Finance for analysis. Each quarter, staff at the CMO would simply compare the lease rates with the previous quarter's. Never once did they compare MFP's lease rate with a bond rate or other external benchmark, as they should have done.

The third problem involved new computers for the councillors in 2001. When the original 1997 leases for the councillors' computers expired, Jim Andrew mistakenly thought that a report to Council was unnecessary. As a result, 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.

The fourth and most egregious example of the mismanagement of the MFP leases was the rewrite of all the City's leases in July 2000. The rewrite also illustrates MFP's questionable business practices. On July 1, 2000, all of the City's hardware leases with MFP were collapsed and the assets were restructured in five new 57-month leases organized by equipment category. This increased the lease duration to between 63 and 66 months. Another \$623,860 worth of new equipment was added to the new leases.

MFP also increased its original aggressively low lease rates considerably, without any discussion with the City, assuming 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.

The reason for rewriting the leases and the origin of the decision to do it were both unclear. It appears that Finance had been looking for a way to

allocate the costs of leasing to individual departments, and in response, MFP had proposed rewriting the existing leases by asset class. But it wasn't necessary to collapse leases and place the assets on new lease schedules to meet the City's cost allocation objectives.

MFP rewrote these leases with questionable authority. There was nothing in writing authorizing it, and Rob Wilkinson couldn't remember who had told him to do it. Moreover, at no time did MFP ever tell its customer, the City, that rewriting the leases would cost another \$2.5 million.

Wanda Liczyk signed the rewritten leases without ensuring that proper procedure had been followed. Dash Domi brought a box of documents to her office, ostensibly from the CMO, in July 2000. She signed them without asking any serious questions. By then, Mr. Domi and Ms. Liczyk had developed quite a friendly relationship. He had taken to bypassing the CMO so regularly that staff complained to MFP about it. No one at the City had reviewed the documents before Ms. Liczyk signed them.

And what did the City gain from the lease rewrites? An independent expert said that the City realized no apparent benefit, yet it cost the City \$2.5 million.

Both MFP and the City bear responsibility here. MFP rewrote the leases 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 staff and waited for them to react. This was not appropriate.

Wanda Liczyk was in a compromised position when she signed the rewrites without due diligence. The staff in the CMO were also compromised. Dash Domi had an unusual level of access to the CMO, and by this point, all the CMO staff had attended hockey games in the MFP private box at his invitation. They liked him so much that they sent him a cookiegram for his birthday. And when the leases were rewritten, staff failed to make even the most basic inquiries about the purpose and effect of the operation.

The leases ended up costing nearly double the \$43 million authorized by Council. One of the many questions surrounding how that happened is: Why didn't the City's new state-of-the-art financial system, SAP, catch the discrepancy? The short answer is human error. The system did not fail. Staff failed to input the right information.



By 2001, Wanda Liczyk certainly knew that much more than \$43 million was actually on lease. She knew that staff had exceeded Council authority. She was the CFO and Treasurer. It was up to her to report clearly to Council. She did not. She buried this information in a report to the Budget Advisory Committee.

From beginning to end, the administration of the MFP leases was replete with misunderstanding and obfuscation. Staff exceeded their authority and failed to exercise effective stewardship of public money. Jim Andrew, Lana Viinamae, Wanda Liczyk, and Kathryn Bulko must bear responsibility for the shoddy administration of the leases.

MFP hired Dash Domi to be a hunter at the City, and the strategy paid off. Dash Domi had the run of the office, even delivering documents to the City's Treasurer for signature. Some might say let the buyer beware, but it is only honest business practice to tell the customer what the deal really is. MFP is far from blameless.

## WAS IT A “BAIT AND SWITCH”?

In its submissions, the City of Toronto alleged that MFP had carried out a “bait and switch” with the computer leasing deal, offering a temptingly low bid to win the deal but intending to switch the terms later and slip a much more expensive contract past unsuspecting City staff. MFP denied the City's allegation.

This transaction, and all the deeds and misdeeds associated with it, cannot be reduced to a one-dimensional theory of conspiracy and deceit. After a thorough investigation of all the circumstances, there are aspects of this complex transaction that simply do not fit neatly into a bait and switch theory. This is not to say that a judge, working under different procedural rules, could never find that a bait and switch happened.

The deal was worth more than \$43 million to begin with, and it seemed that everyone except Finance and City Council knew it. IT staff knew it, MFP knew it, Bombardier knew it, DFS knew it, and Jeff Lyons knew it.

While there is no doubt that MFP intended to bid low and then look for ways to enhance its deal along the way, this should not have been completely unexpected. In its response to the RFQ, Bombardier had warned the City of the dangers of making a decision based solely on lease rates.

Throughout the deal, there might be “gotchas” that would increase the real price. The City dismissed Bombardier’s warning as mere sales puffery.

At many stages of the transaction, City staff failed to protect the City’s interests. City staff involved in the transaction were decidedly ill informed about leasing. It is the City’s own failing that it did not ensure that staff had the required expertise for the transaction.

The City’s bait and switch allegation casts too wide a net over MFP. Though Dash Domi may have been capable of other deceptions, he didn’t have the business sophistication to pull off the sustained and complicated deception necessary for a bait and switch. Moreover, MFP’s internal counsel, Kim Harle, could not have been party to any such conspiracy.

While MFP certainly has much to answer for in the aftermath of the computer leasing deal, so too does the City.

## XV: THE MAKINGS OF A MYSTERY

ON FRIDAY, OCTOBER 29, 1999, MFP deposited close to \$100,000 into Dash Domi's bank account. It was part of his \$1.2 million in commissions on the computer leasing deal. Weeks before, the deal had become much richer for MFP when the leases were extended from three years to five. Staff attributed the extension to Councillor Jakobek's July amendment. The following Monday, November 1, Mr. Domi went to his bank and withdrew 25 \$1,000 bills. At 3:46 p.m., he called Tom Jakobek's cellphone. The call was answered and a 90-second conversation took place. At 4:45 p.m., he called again. Mr. Jakobek's cellphone was answered again. They were connected for about 20 seconds. Two minutes later, at 4:47 p.m., Dash Domi drove into the sprawling underground garage beneath City Hall. Thirteen minutes later, he drove out.

Early the next day, November 2, Tom Jakobek called his mother, Ursula. Later that day, she visited three banks in Toronto's east end. She carried out eight transactions and had three cheques certified, drawn on accounts belonging to her and her mother, Maria Michie, totalling \$15,000 and payable to American Express. She would later replenish these accounts with thousands of dollars in \$100 bills. Also on November 2, Tom Jakobek deposited \$3,400 into his bank account. It was not a payday for him. On November 3, \$21,000 went into his American Express credit card account, in four separate payments: \$3,700, \$4,000, \$6,000, and \$7,300. The pay-

ments were made three weeks before the account was due. In the preceding two months, Mr. Jakobek had paid his account on the last possible day.

All of this could be mere coincidence. But Mr. Jakobek had shown himself to be a calculating, strategic, and almost habitual liar. So the facts had to be investigated. The investigation was complicated by deceit and obstruction, 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 and Jakobek families told ever-shifting stories.

Dash Domi and his brother, Tie, were fiercely loyal to each other. Tie Domi would become a rich and famous hockey star. Dash<sup>1</sup> did not fare as well, and Tie would lend his brother money now and then. Dash said the loans totalled about \$40,000.

Dash Domi agreed that November 1, the day he withdrew 25 \$1,000 bills, was somewhat monumental. He had just received a very large commission cheque, and it was Tie's 30th birthday. As a birthday present, Dash said, he had decided to repay \$25,000 of his debt. Dash might be expected to remember that day vividly. Strangely, he remembered little with any certainty. Neither did Tie.

"They're using my brother as a punching bag," Tie Domi told the press before he testified. Tie tried to support Dash's story, but it is hard for two people to concoct exactly the same story. Dash had already shown his willingness to warp the truth, and his story and Tie's were either equally vague or different on important points: Did the family have a birthday party for Tie? When, how, and where did Dash present the gift to Tie? Who was present? How much cash was involved and in what denomination? How did Tie react? How did Tie spend the money?

Dash had never seen a \$1,000 bill before, but he couldn't remember what he did with 25 of them between leaving the bank and giving them to his brother. Dash thought he owed his brother \$40,000; Tie thought the debt was around \$80,000.

Dash said he could not afford to repay his brother before November

<sup>1</sup> This section 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.

1999. This was not exactly true. Nine months earlier, MFP had deposited over \$57,000 into his account. Dash never did repay any more of the debt.

Thread by thread, their attempts at an innocuous account of the \$25,000 cash withdrawal failed. So if that story wasn't true, what did happen to the money? The trail would lead into yet another of Tom Jakobek's webs of deceit.

People generally lie for a reason, often to avoid consequences. Dash Domi and Tom Jakobek both lied to conceal their relationship. Mr. Jakobek lied about his friendship with Jeff Lyons. Mr. Lyons lied, too. Why all the lying? Was it to cover up improper payments?

Dash Domi admitted that it was very likely that he was going to see Tom Jakobek on the day his car spent 13 minutes in the underground garage at City Hall. He conceded that it was possible that he had the \$25,000 with him. At first, Tom Jakobek didn't remember where he was that day. Later, he said he was at the waterfront dealing with a constituency issue. But no one could confirm that Mr. Jakobek was elsewhere when Dash Domi entered the parking garage.

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—just \$600 less than the \$25,000 Dash Domi withdrew on November 1. That might have been a coincidence. Yet Mr. Jakobek went to court in an attempt to keep the inquiry from calling him to testify. The court refused his request, calling it an effort to avoid testifying before the inquiry. Mr. Jakobek's stalling tactics backfired, and he had even more to explain by the time he testified.

In sworn affidavits, Mr. Jakobek said that the \$21,000 came from his wealthy father-in-law, Ken Morrish. The money was for a family trip to Disney World. Sadly, Mr. Morrish had suffered a stroke and could not confirm the story, but his financial records failed to confirm any such payment. And an earlier, unrelated gift of money to his son-in-law was very clearly documented.

The absence of any supporting record for the American Express payments was troublesome. Mr. Jakobek's explanation was now on slightly shaky ground. Then, without warning, the shaky ground collapsed.

At first, American Express had been unable to find the documentation behind the November 3 payments to Mr. Jakobek's account. Mr. Jakobek

knew this. So when he had sworn that the \$21,000 had come from his father-in-law, he could have assumed that no record would be found to refute his story. But before he returned to testify, American Express found the records. Only \$6,000 had been paid in cash. The remaining \$15,000 consisted of cheques from Mr. Jakobek's own mother and grandmother.

When Tom Jakobek re-entered the witness box, he was a changed man. Gone was the aggressive politician who had boasted of his phenomenal memory. As he drifted from lie to lie in a performance worthy of Pinocchio, his phenomenal memory conveniently failed him. Yet he stuck to his original story as best he could. He continued to say that some of the money had come from his father-in-law, but now he said that he had forgotten the gifts of \$11,000 from his grandmother and \$4,000 from his mother, both of whom lived on modest pensions. He didn't forget—he lied. He thrust his aging parents into the spotlight and cast himself as a shamefully ungrateful son and grandson. Why? Because the truth had to be worse.

To reconstruct the money trail, forensic accountants pored over the bank records of Mr. Jakobek's parents and grandmother. What they found was startling. Apart from the American Express payments, other cash flowed into their accounts from sources unknown—tens of thousands of dollars of it. And cash was flowing out of those accounts to Tom Jakobek's direct benefit. He said his parents were reimbursing him for things he had arranged and paid for on their behalf. There were no convincing details and no supporting documents. The money trail proved consistent with a deliberate attempt to mask the source of the funds.

Between October 1999 and December 2000, \$27,877 in cash, 83 per cent of it in \$100 bills, and another \$60,000 in unidentified deposits went into Tom Jakobek's bank account. This was on top of his salary. Mr. Jakobek had no helpful explanation for all this money.

Tom Jakobek's 71-year-old mother, Ursula, tried hard to portray the American Express story in an innocent light. But she faced the impossible task of overcoming her son's false account. It should surprise no one that she failed. It simply wasn't plausible that she and her mother put \$15,000 in his American Express account without telling him, without knowing if he would use that card to pay for the trip, and without knowing what the trip would cost. Mrs. Jakobek said her son was thankful for the gift, which made it surprising that he had forgotten it. Mrs. Jakobek said her mother, a pen-

sioner, had a great deal of cash stashed in a suitcase and in a shopping bag hung on her bedroom door. That was how she could afford to give her grandson a gift of \$11,000. When the family's way of storing cash became known at the inquiry, the money was moved to banks.

It seemed unrealistically convenient that Mr. Jakobek's 80-year-old father-in-law materialized at the elder Jakobeks' home just in time to take the three certified cheques downtown and pay them into Tom Jakobek's American Express account. He had never done this before, and there had been no prior arrangement. It also seemed odd that Mr. Morrish would add \$6,000 in cash to the total rather than simply writing a cheque.

Allegations that the American Express money came from Dash Domi were in Toronto's newspaper headlines. Mrs. Jakobek saw those headlines, yet, inexplicably, she didn't remind her son that the money couldn't have come from Dash Domi because it came from her and her mother.

If the money paid to Tom Jakobek came from cash stashed around his parents' home or from a shopping bag on the bedroom door of his grandmother's apartment, why the complicated series of transfers, deposits, certified cheques, and credit card payments? Why not just give it to him? Ursula Jakobek had no explanation.

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 the elder Jakobeks' accounts and out to her wealthy son, Tom, because, in addition to reimbursing Tom for expenses he incurred on their behalf, they were helping another son, Joe, repay a real estate debt to Tom. The details of that story fell apart too. Joe insisted on being heard at the inquiry in a last-minute effort to clear up the details, but he only made the story even less believable, and he contradicted his brother's version of events.

Mrs. Jakobek left the witness box with her head held high. She had tried gamely, but vainly, to prop up Tom's stories. 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.

The Jakobek family's evidence was a matrix of lies, irreconcilable discrepancies, obfuscation, and fantastic implausibilities.

So what happened in the underground parking garage beneath City Hall? Whatever happened, there is no evidence to demonstrate that Tom Jakobek had any connection at MFP apart from Dash Domi, so this does

not involve the company or any other of its officers or employees.

One theory is that Councillor Jakobek's motion at the P&F meeting gave MFP great flexibility to enhance its deal with the City. And when Dash Domi got his big commission payment, it was time to secretly reward the Councillor. Mr. Domi withdrew \$25,000 in cash and called Mr. Jakobek to set up a meeting in the underground garage. He called again an hour later as he was entering the garage. Councillor Jakobek hurried downstairs to meet Mr. Domi and take the package, and Mr. Domi left—all within 13 minutes. 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—staying carefully under the \$10,000 reporting threshold. Eventually, that money ended up in his credit card account.

The other theory is that Dash Domi withdrew \$25,000 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, and a generous father-in-law collectively prepaid almost the same amount into Tom Jakobek's American Express account for a family trip to Disney World. The busy councillor then forgot his mother's and grandmother's contributions.

Dash Domi and Tom Jakobek were given every opportunity to refute the theory of an improper payment. But nothing they offered withstood critical scrutiny. Both were proven liars. Their stories were inconsistent and unbelievable. Both forgot critical details when it suited their strategic purposes. For corroboration, both relied solely on their families, who were understandably intensely partisan, and whose stories didn't tally either with the objective evidence or with Dash Domi's and Tom Jakobek's testimony.

Dash Domi and Tom Jakobek lied in concert about the Philadelphia trip to conceal their association. They both lied about the movement of the mysterious money. Whether acting 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.

In the end there are two questions: Is there enough credible evidence to conclude that Dash Domi gave Tom Jakobek a payoff? Yes, there is. Has



either of them provided any believable evidence to contradict that conclusion? No, they have not.



## XVI. 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.

On December 31, 1999, the eve of Y2K, the City bought 10,000 Oracle "enterprise licences," along with technical support for five years, at a total cost of \$11,336,651. Enterprise licences were the most costly type of licence available from Oracle. The whole amount of software and support was put on lease with MFP. There was no competitive process for this acquisition.

How the decision was made to acquire over \$11 million worth of Oracle software and support, whether it was a reasonable decision, and whether proper procedures were followed are all questions virtually impossible to answer, given the almost complete lack of documentation. There was no financial analysis of Oracle's proposal or of the effect of leasing the acquisition. There was no clear chain of authority for spending that much of the taxpayers' money.

What the inquiry's investigations into the Oracle deal did reveal was a stunning lack of basic information, a haphazard approval process, hit-or-miss record-keeping, selective amnesia about attendance at relevant meetings, dubious use of a special Y2K procurement approval mechanism, and minimal involvement of legal counsel.

Lana Viinamae did not prepare a business case for this acquisition, even though detailed business cases were mandatory for priority requests to the Y2K Project. Without the business case, it was virtually impossible to evaluate whether the Oracle acquisition made sense. She didn't do her own analysis, relying solely on Oracle's projections of the City's future licence needs.

She predicted doom if these licences were not acquired by December 31, 1999, but neither the Y2K Steering Committee minutes nor witnesses supported her view. Moreover, even if up to 2,000 new Oracle licences were a genuine Y2K need, not all 10,000 enterprise licences fell into that category.

It made no sense at all for the City to put all 10,000 licences on lease with MFP. A lease composed of only software is unusual, since software has no residual value at the end of the lease. Putting maintenance contracts on lease makes even less sense. The City ended up making 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.

Without a proper analysis, it was impossible to know whether acquiring and leasing 10,000 Oracle licences was really a good deal for the City. It is now impossible to determine how many or what type of licences the City really needed in 1999 or the optimal level of support it needed for them. The City did not attempt to compile that information until 2002. The most up-to-date Oracle analysis in May 2003 showed only 5,972 Oracle users. In hindsight, it is not at all certain that the City needed 10,000 enterprise licences.

## XVII. THE BALL HSU STORIES

AT FIRST, BALL HSU AND HIS COMPANY were fully engaged with the inquiry. Then, suddenly, he was said to be in China and his intentions were unknown. Inquiry investigators tried everything to get in touch with him. They let him know that negative inferences could be drawn if he didn't participate. There was no response. Ball Hsu was gone, and he hadn't even said goodbye to his friends.

In his last five years in Toronto, Ball Hsu billed about \$37 million to the City. He started small, an IT consultant on his own, filling in for Lana Viinamae during one of her maternity leaves. In 1995, Metropolitan Toronto Council required bidders on IT consulting contracts to have annual revenues of \$1 million or more. Ball Hsu united other independent contractors under his company, Ball Hsu and Associates, and thus met that requirement.

In 1996, Metro issued a major RFP to create a shortlist of suppliers of IT consulting services. The RFP ended with "A-list" and "B-list" winners. The A-list winners would sign contracts for 1997, 1998, and 1999 and could bid on work without limit. The B-list consultants had ongoing work with Metro which they could finish in 1997 only, and they could bill only up to set amounts. Ball Hsu made the B-list with a limit of \$500,000. Metro Council approved the two lists without change in January 1997. Yet the same day, Ball Hsu and other B-list contractors signed A-list contracts

for three years with no limits. No one could explain how this had happened.

Jim Andrew was friendly with Ball Hsu. He had prepared the A-list and the B-list himself, yet he treated Ball Hsu like an A-list consultant, before and after amalgamation. Then came Y2K, a rich source of work for IT consultants. Ball Hsu was poised to vault into a much higher income bracket. In effect, he wormed his way into the City at a time when the apple was at its ripest and juiciest.

In 1999, Mike Garrett asked Jim Andrew for a report on IT consultants. Mr. Andrew reported that Ball Hsu was approved for three years in 1997, to bill up to \$800,000. That was not true, as Jim Andrew should have known. And by then Ball Hsu was billing millions per year. The same mistakes were made when Ball Hsu's contract was extended under the special Y2K spending powers. Y2K demand was not the only reason Ball Hsu's business at the City soared. There were six others.

- A hiring freeze meant more essential work went to consultants.
- Amalgamation was to reduce staff numbers, but it caused an increase in need for IT expertise.
- Managers often preferred consultants because they could be hired more quickly than staff.
- Consultants could strategically exploit a manager's preference by lining up the next short-term contract before the current one ended. Managers also preferred this continuity of service.
- In the confusion of amalgamation, contracts were not tightly managed.
- Competitive hiring procedures were not followed. The City would often ask Andy Lok, a Ball Hsu contractor himself, to hire contractors as needed, which he did, from Ball Hsu.

When the City finally re-tendered for IT service suppliers, Ball Hsu won—twice. He won under the name Ball Hsu and Associates and under the name Andall Technologies Corporation. Thereafter, he billed the City as one or the other of the two companies, at his discretion.

During Ball Hsu's lucrative tenure as a consultant to the City, he cultivated connections with Jim Andrew and Tom Jakobek. However, his connection with lobbyist Jeff Lyons was the most problematic.

Ball Hsu and Jeff Lyons had dinner in early 2000. They spoke of finance

and politics, and then of financing politics. Mr. Lyons asked Mr. Hsu if he wished to donate to municipal political campaigns that fall. Year after year, Jeff Lyons had delivered covering letters to candidates with bundles of cheques he had solicited from donors. The letters were airy and brief, full of sunny good wishes for success. But by attaching the funds he had raised, 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, but it didn't have to be.

Ball Hsu agreed to donate, but he was leaving for a long trip to China. The lineup of candidates for the next election was not yet known, so it was too early to write cheques to individual candidates. Mr. Lyons tried to put Ball Hsu's cheque in his law firm's trust account, but the firm declined. Mr. Lyons wrote to Ball Hsu telling him to make out a cheque to his assistant, Sue Cross, and she would make donations on Mr. Hsu's behalf when the time came. Under Mr. Lyons's direction, that's what she did. She donated all but \$900 of Ball Hsu's \$15,000. She spent the \$900 on her legal bills. She was prepared to return the \$900 to Ball Hsu but didn't know how to contact him.

Sue Cross signed the donation cheques in her own name, drawn on an account in her name. Out of 29 cheques, only one hinted that the money came from Ball Hsu, with the words "Re Ball Hsu" in the covering letter. Nobody collected receipts for the donations for Ball Hsu.

Did Jeff Lyons funnel Ball Hsu's money through Sue Cross 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. The OPP investigated this transaction and decided that there was no basis for charges under the Ontario *Municipal Elections Act*,<sup>2</sup> and it called what had happened a mere "technical breach."

But Jeff Lyons was an experienced lawyer who had been managing political donations for a very long time. It strains credulity to think he would not know that making donations under a name other than the donor's might run afoul of Ontario law. He never told Sue Cross that she was acting as a trustee and didn't tell her to open a trust account. He didn't tell her to identify Ball Hsu as the donor when she wrote the cheques.

When the donor lists were published after the election, the press noticed

<sup>2</sup> *Municipal Elections Act*, 1996 S.O. 1996, c.32, s.74(1)

Sue Cross's numerous donations. A reporter called her, and she, in turn, called Jeff Lyons. Mr. Lyons told her to lie to the press. At first, she did. Later, she went to a lawyer and came clean about the donation arrangement in an affidavit. Jeff Lyons opted to lie to the press. After Sue Cross's version of the story appeared in the *Toronto Star*, Mr. Lyons had his lawyer write to the *Star*, warning the paper that publishing a story suggesting he directed Sue Cross to make those donations would be "vile libel without a shred of truth" and he would sue.

To his credit, Jeff Lyons admitted his errors. His letter telling Ball Hsu to write the cheque to Sue Cross had been his Waterloo. He couldn't deny that he had been the architect of the donation plan and the deceit to cover it up. At the inquiry, 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 obliged to go on lying. When he left the inquiry's witness box, his lobbying practice had dwindled.

And what of Ball Hsu? We know that systemic errors, amplified by Y2K and amalgamation, made him fabulously rich. We also know his contractors provided excellent service to the City. But that is all we know, since the inquiry never heard from Ball Hsu.

The Ball Hsu stories underscore the importance of the ordinary elements of public service: proper procedures, documentation, record-keeping, and contract management, all in the interest of responsible stewardship of the taxpayers' money.



## XVIII. HAS ANYTHING CHANGED?

WHILE THIS INQUIRY WAS GOING ON, the City had been steadily laying the foundation for its own future. In the 2003 municipal election campaign, ethics and integrity had the prominence they must have if Toronto is to have the government it deserves. During the hearings, the City was encouraged to continue with necessary changes rather than simply await this report. Much of what led to the events examined in the inquiry has been improved. Some has not.

On the first day of the first hearings, then-Mayor Mel Lastman said that councillors were “out to kill each other, out to embarrass one another.” Nearly eight years later, some councillors are still hurling vulgar insults in the Council Chamber. There appears to be no progress at all.

In early 2005, councillors were invited for drinks, dinner, and a sports event in a suite at the Air Canada Centre, paid for by an industry association. At the inquiry, lavish entertainment accepted by public officials had just been exposed as deplorable, and had ruined reputations and perhaps careers. Yet in the inquiry’s last days, some councillors defended the entertainment, as if the inquiry had not happened. Councillors should not compromise their independence in the eyes of the public. They should not look as though they are open to persuasion in this way. Their behaviour should be an ethical compass for staff.

In many other areas, the City has made significant strides. The City now has a program to replace the equipment leased from MFP. It has tried to

clarify the responsibilities and accountability for each step of the procurement process, implemented new training programs, improved management controls and vendor communication guidelines, and developed a checklist for tenders. The City has also developed a new procurement policy and has started using external “fairness consultants” for certain unique procurements. Conflict of interest policy has been amended to require staff to report all entertainment by suppliers or potential suppliers. Toronto was the first city in Canada to create the office of integrity commissioner to help councillors in compliance with the code of conduct and other ethics-related bylaws and legislation. The City also has a voluntary lobbyist registry. Finally, Council approved a reorganization of much of the City’s administrative structure.

During this inquiry, the Toronto news media extensively covered the errors and misdeeds revealed inside City government. This volume summarizes those stories, but it would be a mistake to focus on the relentless parade of bad news. The City has taken governance matters seriously and has taken action. The City has worked hard to accelerate the healing process.

The past and the present meet in this report. The story of what went wrong is now told, and the City’s commendable steps to prevent a recurrence have been recognized. Volume 2 of this report, *Good Government*, contains full recommendations and commentary to contribute to the ongoing process of improvement.

# 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.

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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.

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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.

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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. City and provincial officials should work together 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;

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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;



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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.

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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
Brunner, 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

## 120 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



## Appendix B: Participants 121

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

## 122 Appendix B: Participants

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	

## Appendix B(i): Witnesses

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

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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

## 126 Appendix B: Participants

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
Punniyamoorthy, 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

## 128 Appendix B: Participants

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



## Appendix B: Participants 129

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.